

## The Highland Council

Finance, Housing and Resources – 22 January 2013

Agenda Item	16
Report No	FHR/13/14

### Community Empowerment (Scotland) Bill

#### Report by Depute Chief Executive

#### Summary

The report summarises a Scottish Government consultation on the Community Empowerment (Scotland) Bill and asks Members to consider the Council's draft response which is set out at Appendix 1.

#### 1. Background

- 1.1 In 2012 the Scottish Government held a consultation on potential ideas for a Community Empowerment and Renewal Bill. The Council responded to this earlier consultation following discussion with members at the Community Safety, Public Engagement and Equalities Committee. This consultation is an opportunity to now comment on the [draft Bill](#).
- 1.2 Due to the slightly shorter timescale for this consultation than usual and the holiday period, this response will be considered by Finance Housing and Resources Committee rather than Community Safety, Public Engagement and Equalities Committee where the previous consultation had been discussed. The response is due by 24<sup>th</sup> January 2014.

#### 2. Scope of the Consultation

- 2.1 The consultation has two distinct areas: proposals with draft legislation and detailed policy proposals.
- 2.2 Proposals with draft legislation include:
- Community asset transfer requests
  - Community right to participate in discussions to improve service delivery
  - Increasing transparency about Common Good
  - Dangerous and defective buildings and the recovery of expenses
- 2.3 Detailed policy proposals with the intension of eventual inclusion in the Bill cover:
- Improving and extending the Community Right to Buy
  - Strengthening community planning
  - Allotments
  - Embedding the outcomes approach in legislation
  - Subsidiarity and local decision making

### **3. The Council's Draft Response**

3.1 A short description is provided below of each of the Bill proposals along with a summary of the Council's draft response for each section. The Council's full response can be found at Appendix 1.

#### **3.2 *Asset Transfer Requests***

3.2.1 This section of the draft Bill sets out which groups can request the right to own or use public sector land and buildings and the process that they must go through. The proposals also set out how any public authority must deal with these requests.

3.2.2 The Council's draft response welcomes the proposals in relation to asset transfer and the opportunities this will provide communities. The response highlights the need to ensure legislation includes a requirement for community bodies to submit a fully developed business plan and to show the benefits that will be achieved from their proposals. This will be important to ensure that best value for public assets is achieved. The response also notes that it will be essential that any timescales set against this process take account of the differing experience of community groups. The response notes that the experience in Highland has been for some transfers to take up to 24 months from the initial expression of interest and that it will be important for the Bill to take account of this developmental process for some groups.

This section also expresses disappointment that the proposed legislation does not address the unincorporated status of Community Councils and therefore does not intend to include Community Councils, who are democratically elected within their communities, within the group of community bodies who would have the right to request the transfer of an asset.

#### **3.3 *Community Right to Participate in Processes to Improve Outcomes of Service Delivery***

3.3.1 The purpose of this section of the Bill is to enable community groups, including Community Councils, to request to participate in discussions to improve aspects of service delivery. The Bill sets out what the group's request must cover along with how the public body must assess the request in determining whether or not to grant it.

3.3.2 The Council's draft response welcomes this section of the Bill and notes that it complements the Council's Community Challenge Fund as well as community planning requirements. The draft response suggests a number of elements to be included within the legislation to assist in managing participation requests. These include ensuring that the timing of requests do not impinge on service delivery e.g. discussions on winter maintenance during the busy winter months and also whether a similar discussion has already taken place within the previous six months. The draft response suggests that it would not be a good use of public time and resources to repeat discussions that have already taken place unless there are fundamental differences to the requests.

### **3.4 *Increasing Transparency about Common Good***

3.4.1 This section of the Bill proposes the establishment of a register of all property held by common good and consultation with community bodies and Community Councils in establishing the register. It also proposes that consultation should take place with these groups regarding the disposal and use of common good assets.

3.4.2 The current proposals fit well with the Council's current management of common good property and the draft response reflects this and supports the proposals. The draft response does highlight a concern regarding the proposed scope of consultation with community groups and believes the extent of this could be unnecessarily onerous. Instead, the response proposes that consultation should be limited to Community Councils, and only Community Councils for which that asset is relevant.

### **3.5 *Dangerous and Defective Buildings – recovery of expenses***

3.5.1 The final section of the drafted legislative proposals allow for a notice of liability expenses to be registered on a building which work has been done, meaning that when such a building is sold, the costs can be recovered.

3.5.2 The Council's draft response supports the cost recovery powers outlined and that they should also apply to the Building (Scotland) Act 2003 as proposed in the consultation.

### **3.6 *Improving and Extending the Community Right to Buy***

3.6.1 This section of the consultation is extensive and builds on previous Government consultations in this area however the main intention is to streamline existing legislation and extend the community right to buy to areas with a population of over 10,000.

3.6.2 The Council's draft response is supportive of the overall proposals outlined in the consultation and welcomes the extension of the right to buy. The response notes that streamlining the existing legislation, particularly in regard to the definition of community; more flexible timescales and assistance in balloting, would be welcome.

### **3.7 *Strengthening Community Planning***

3.7.1 The section on Community Planning proposes to strengthen the role and responsibilities of Community Planning Partnerships, place new duties on all public sector partners to play an active role in supporting the partnership and place the partnership's responsibilities on a statutory footing.

3.7.2 The Council's draft response to these policy proposals welcomes a legislative change that will strengthen community planning and that a greater focus should be placed on delivering outcomes. The response supports the idea of a list of core public bodies which these duties should apply to, however notes that this needs to be mindful of the need for local flexibility. It also highlights the importance of having appropriate external scrutiny. This means focusing on the achievement of outcomes, with all relevant partners subject to inspections and audit but that these should be streamlined and proportionate.

### **3.8 Allotments**

3.8.1 This section of the consultation proposes a series of changes in order to simplify allotments legislation. This includes detail around the definition of an allotment and the Local Authority's duty to provide allotments, powers to manage allotments and regulations.

3.8.2 The Council's draft response in general supports the proposals outlined but suggests a number of additions or slight changes to those outlined, some specifically to take account of the rural nature of Highland communities. This includes:

- That the definition of allotment is widened to include a definition for a Community Growing site which would enable the extension of the provisions and community benefits of allotments legislation
- Agree that Local Authorities should have a duty to provide allotments but that the trigger for this should be 15 households and not 15 individuals.
- The existing duties apply to a whole Council area which does not make sense in terms of an area like Highland and a smaller definition of area is suggested.

### **3.9 Embedding the outcomes approach in legislation**

3.9.1 This section of the consultation proposes a duty on Ministers to develop and consult on a set of outcomes that are strategic objectives for Scotland.

3.9.2 The Council's draft response welcomes the development of national outcomes but notes that this should not be to the exclusion of local outcomes and priorities and how they might be measured.

### **3.10 Subsidiarity and local decision making**

3.10.1 The consultation asks whether there are any other actions the Government could take to reflect local democracy principles that would benefit communities.

3.10.2 The Council's response suggests that there is concern about low voter turnout for elections and the associations between low turnout and poverty and also strengthening the role of Community Councils particularly in relation to owning assets to enable them to play a greater role within communities should they wish to do so. The response also notes the Council's wish to see Crown estate revenues and management transferred locally.

## **4. Next Steps**

4.1 The deadline for submissions to the consultation is the 24 January 2014. The Government have already confirmed that no extension will be granted. Members are asked to consider the draft response at Appendix 1 and agree a final response for submission to the Government.

## 5. Implications

- 5.1 Resources: As outlined in the draft response at questions 7 and 13, there are potential resource implications of the proposals relating to asset transfer and community participation in service delivery. The draft response suggests ways of managing requests in order to mitigate any additional costs. In addition there is the potential for asset transfers at below market value to result in the Council failing to achieve its capital receipts.
- 5.2 Legal: The Legal Team have been consulted and provided comments in relation to the Bill proposals.
- 5.3 Equalities: There is a need to ensure that hierarchies of empowerment are not created and therefore some groups may require support in order to achieve the positive impacts provided for within the legislation.
- 5.4 Climate Change/Carbon Clever: There could be environmental impacts from the Bill proposals given that the proposals cover property, land and allotments and if services community bodies want to participate in relate to the environment and depending on any proposed use of common good funds. Impacts would need to be considered at the time decisions are made and we suggest screening for environmental impacts, including climate change, would be good practice.
- 5.5 Risk implications: As outlined above, there are potential risks to the Council's capital receipts as a result of any asset transfers at below market value. The sustainability of transfers are a further risk and what role the Council may play if a transfer fails and the community group can no longer utilise the asset.

### Recommendation

Members are asked to:

- Consider the draft response to the consultation at Appendix 1 and agree a final response for submission to the Government.

**Designation:** Depute Chief Executive

**Date:** 13-1-14

**Author:** *Report:* Alison Clark, Policy Officer

*Response:* Legal Team, Corporate Property Asset Management Team, Elections Office, Environment and Development Team, Corporate Policy Team and Ward Management Team.

**Appendix 1:** Draft Council response to the Scottish Government's Community Empowerment (Scotland) Bill

## Appendix 1

# Consultation on the Community Empowerment (Scotland) Bill

## Highland Council's Draft Response

### Chapter 3 - Proposals with draft legislation

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper (from Chapter 3).

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

#### 3.1 Community Right to Request Rights in Relation to Property

**Please read Part 1 of the draft Bill (Annex C pages 1 to 9) before you answer these questions:**

Q1 Do you agree with the definition of community body at section 1?  
Yes  No

Do you have any changes to suggest?

The Council believes it would be more helpful to public bodies and community bodies alike to have one consistent definition of community body throughout the legislation. There are currently three different definitions at Part 1 section 1, Part 2 section 11 and Part 3 section 26.

The definition in this section lacks clarity and consistency with other parts of the Bill. It also appears somewhat confused; with the definition of community body being extremely narrowly defined compared to the widely drawn definition of a company.

It is proposed that the Government have not decided to progress any changes with regards Community Council legislation, which would have perhaps made the definition at Part 2 equally apply to Part 1.

This Council has consistently lobbied on the issue of Community Councils and the need for legislation to be amended to enable these bodies to have incorporated status. Some Community Councils already own assets but without a change in legislation, the liability and risk will continue to lie with individual office bearers. This is unhelpful and this Council would urge the Government to rethink this particular element, even if it can be considered as an enabling provision for those Community Councils keen to have such a role.

This would empower those Community Councils without expecting or compelling all Community Councils to take on this role.

It is important to emphasise that this would not change the fundamental definition of the role of a Community Council but provide protection for individual office bearers and enable any Community Council who would like to take a greater role within their community to enable them to do so.

Of course Community Councils can set up Community Trusts or alternative bodies to take on these roles, however, as noted in previous consultations, within small communities this can result in a lack of interest in a Community Council with individuals more interested in participating in the activities of the Trust.

A strength of Community Councils in terms of owning assets would be that their operation is governed by strict rules and regulations overseen by the Local Authority.

The Bill is about empowering communities and Community Councils are a key building block within our communities. Amending the unincorporated status of Community Councils would greatly assist and empower many Community Councils who wish to play a greater role within their communities. This is an ideal opportunity to address this challenge within an appropriate legislative process and we would urge the Government to rethink this element of the Bill.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?

Yes  No

What other bodies should be added, or removed?

Forestry Commission Scotland  
Crown Estates

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

The period of time for the authority to give notice of its decision will depend on a range of factors/issues, for example:

- The 'asset transfer request' should be defined and relate to a fully developed and competent request (including a 'business case') from the community body on which a decision can be made (rather than an 'initial expression of interest').

*Note: Reference to an 'asset transfer request' in the commentary*

*below will refer to a 'fully developed and competent request (including a 'business case')' from the community body on which a decision can be made (rather than an 'initial expression of interest').*

*Local experience*

*This usually concerns properties that have been declared surplus to the Council's operational requirements. The Council does not ordinarily require that a business case is produced and submitted by the community body where it is prepared to buy/lease the surplus property at full market value.*

- The specifics and timescale for preparation by the community body of an 'asset transfer request' vary considerably in terms of the community body's aspirations; size, nature and complexity of their proposal, and the nature and extent of the land/property that is the subject of the request.

*Local experience*

*In Highland, there are recent examples of community groups/bodies taking, not untypically, 12-24 months from their 'initial expression of interest', to getting constituted, developing their business case (their 'request') for a land/property asset transfer proposal. The Bill, whilst ensuring the rights of communities are not restricted, needs to foster this 'developmental' process.*

- The timescale required for the development of an 'asset transfer request' depends upon the competency of the community body e.g. whether the body is incorporated/constituted; whether it is and can demonstrate that it is representative of the 'community'; that they have relevant experience a) in developing requests, business cases, seeking funding etc, and b) in managing property assets etc, at the time of making their 'asset transfer request'.

*Local experience*

*Currently any request for an asset transfer of a property that is surplus to the Council's requirements at below market value should be in the form of a 'business case', prepared and submitted by the community body that demonstrates the feasibility, sustainability and viability of the community body proposal, including proposed development funding.*

*Central government/local agencies (eg. DTAS/COSS; SCVO; TSOs; Highland Third Sector Partnership (HTSP) etc) should provide community bodies with relevant knowledge and support in the development and preparation of competent business cases to meet the requirements of an 'asset transfer request'.*

- It may take an authority longer to deal with an asset transfer request relating to an operational asset (rather than land or property that is already vacant and surplus to the Council's requirements) where this is part of a 'Public Service Delivery' proposal, which should be



considered under 'Part 2 – Public Service Delivery' of the proposed Bill). A further consideration is the impact upon staff if the asset is an operational asset.

- The governance and decision making process and cycle within a Local Authority (e.g. Ward Business Meetings; CIP Asset Management Project Board; Area and Strategic Committees) could extend the period for a decision beyond six months. It is likely this will not take as long in other public sector bodies.
- The authority will need to undertake, during the 'decision period', legal searches and address any legal issues that may not be achievable, or resolvable within a short/prescribed timescale.

**Section 6(2)(c); 6(6)**

The six month period to conclude a **contract** from **offer date** does not appear unduly unreasonable where the request is sufficiently developed ( See above comments) and agreed (in principle), both parties have suitable arrangements and funding in place for the transfer to be completed.

A two stage process with separate and distinct timescales would appear appropriate. Further to this, it is suggested that an additional clause is added at section 5, para 6, which would allow an extension to the period Scottish Ministers choose to define: "The body may apply to Scottish Ministers for a direction to extend the period within which the decision is to be taken."

*Local Experience*

*The experience in Highland is that some major external funders require that a community body must 'own' a property asset before the funder will consider a funding application, so the completion of an asset transfer to the community body may not be achievable within a six month time period, or the authority' may come under pressure to agree asset transfers to community bodies that do not have secured funding arrangements in place.*

Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

Yes  No

Are there other appeal or review procedures that you feel would be more appropriate?

Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

It would not be appropriate nor practical to have an external body review a decision taken by a Local Authority regarding a decision about a Local Authority asset. It would be challenging to see how this could be approached whilst ensuring local democracy is maintained.

Q6 Do you have any other comments about the wording of the draft provisions?

The Council welcomes the proposals outlined in relation to asset transfer and the opportunities this will provide communities. There are a number of suggested amendments we would make in terms of the provisions of the draft Bill:

- **Under Sections 3 & 5:** Guidance about the approaches, timescale, and evaluation of community body requests for asset transfers at 'below market value'.
- **Under Section 3:** Where a community body is seeking an asset transfer at 'below market value', there should be a requirement on the community body to prepare and submit a fully developed business case (an 'asset transfer request') that demonstrates the feasibility, sustainability and viability of the community body proposal including the community body's ability to resource the property asset and service proposal, either purchase or lease, and ongoing capital, revenue costs. *(Please also see comment below titled 'Sub-section (58); p16; and (78); p20')* The Bill could be further drafted to include guidance to community bodies as to what would constitute a 'competent business case'.
- **Under Section 3:** Where a community body is seeking an asset transfer at 'below market value', the community body should be required to show what benefits will be achieved from their proposal, how these are aligned with the authority's national and local CPP objectives, and how these benefits will be measured and realised in order to offset the 'discount' on market and taxpayer value being sought. *(Please also see comment below titled 'Sub-section(63); p17')*
- **Under Section 4 or 5:** Guidance on measures to be adopted/agreed that would prevent the community body from selling on the asset transferred to them at less than market value to another party/body either at below market value, and/or for commercial gain.
- **Under Section 8:** the criteria prescribing the 'grounds for refusal'.

- **Under Section 9(5):** This clause appears to place an onerous responsibility on the authority to continue 'to be subject to any obligations under the lease of the land to the authority.' The transfer of an asset to a community body under a lease or occupancy arrangement should also transfer the lease obligations to the community body where this is appropriate to do so, and where the community body is reasonably able to accept the lease obligations.
- **Under Section 5 (3):** sustainability of the community body should be a further consideration of the Authority in determining the request.

Related to this section are several points noted under **section 4.1 - Improve and extend Community right to buy:-**

- **Paragraph (58); p16:** Refers to provision within The Land Reform (Scotland) Act 2003 for 'Land Fund Advisors' to be appointed to each applicant to 'support and encourage communities to become empowered in preparing their applications .... Which enable communities to successfully purchase (acquire) land (property assets)'.

Consideration should also be given to whether provisions within Part 1 of the draft Community Empowerment (Scotland) Bill should include how community bodies can be similarly supported, by central and local government/agencies (eg. DTAS/COSS; SCVOs; TSOs; Highland Third Sector Partnership (HTSP) etc) to support and encourage communities to become empowered in preparing their applications .... which will enable communities to successfully purchase (or acquire) land (property assets)'.

- **Paragraph (63); p17:** Refers to three key issues underpinning The Land Reform (Scotland) Act 2003:-
  - The need to consider the rights of both the community body and the landowner, and the need to strike a fair balance between them
  - The public interest in the application and the proposals for the land (property asset)
  - Sustainable development of the plans for the land to be brought into community ownership.

The provisions of the draft Community Empowerment (Scotland) Bill should consider the inclusion of similar key and fundamental principles underpinning the proposed legislation.

- **Paragraph (78); p20:** Refers to the underlying policy of the community right to buy within The Land Reform (Scotland) Act 2003 is that 'community bodies should prepare themselves for community ownership of land (property assets).'

The provisions of the draft Community Empowerment (Scotland) Bill –

part 1 and part 2 - should consider the inclusion of similar key principle underpinning the proposed legislation.

Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

*Savings*

- Ongoing revenue savings from transferring surplus properties and any liabilities to community bodies.

*Costs*

- Potential loss of capital receipt on open market disposals where community bodies are requesting asset transfers at below market value.
- Potential loss of capital receipts that can be recycled into the authority's capital programme, and/or to reduce capital programme borrowings (capital) that will in turn reduce loan charges (revenue)
- Resource (staff, legal etc) costs etc for authorities in dealing with asset transfers requests - e.g. legal searches, valuations, research and transactional costs - particularly in requests made for 'below market transfers'.
- Costs and liabilities associated with land and property being returned to the authority (at some future date/time) in the event that the community body are unable to maintain and operate the service and/or property asset as intended.
- Ongoing running costs of property held for the duration of community body request until a decision and asset transfer to the community body is achieved; Abortive costs to the authority and community body if the community body request is not agreed/does not proceed (for whatever reason).

### 3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

Please read Part 2 of the draft Bill (Annex C pages 9 to 14) before you answer these questions:

Q8 Do you agree with the definition of community body at section 11?  
Yes  No

Do you have any changes to suggest?

This current definition is widely drawn however scope to revise would be helpful in light of experience gained through the implementation of the Bill.

As noted at question 1 however, the Council believes it would be more helpful to public bodies and community bodies alike to have one consistent definition of community body throughout the legislation. There are currently three different definitions at Part 1 section 1, Part 2 section 11 and Part 3 section 26.

Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)?  
Yes  No

What other bodies should be added, or removed?

Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover?  
Yes  No

Is there anything you would add or remove?

The Highland Council welcomes the inclusion of this element of the Bill. Encouraging and responding to participation requests should strengthen community planning duties.

There are parallels between the approach proposed and the Council's Community Challenge Fund which was introduced in 2013. This fund encourages and supports communities to engage with the Council on where they believe they could:

- Deliver the same level of Council service at a lower cost and be sustainable going forward
- Provide a higher level of Council service for the same cost and be sustainable going forward

- Help to reduce the Council's costs for maintaining premises, by taking on the maintenance and running costs going forward with a one-off fund contribution.

The engagement of communities through this approach has been beneficial, although take up has been lower than anticipated and hoped. One of the actions being taken forward to address this is how to build capacity of community groups to enable participation.

The criteria utilised by the Challenge Fund could be a useful addition to section 13:

- Clarity about what the group wishes to do on behalf of the community.
- Ensuring that the service area is one which the organisation is responsible for.
- Clarity about what the group will contribute and what they expect the Council to contribute.
- Demonstrating how, or planning to ensure that, their community supports the project.

The Council is also exploring with communities where projects could be brought forward in relation to the preventative agenda and this is perhaps a further consideration for the Bill.

Further to this, it would be important for any community group to demonstrate in their request 'how' any outcome is to be achieved. This would be helpful to understanding the intentions of any group and ensure that the process is a proactive one and of clear benefit to the community.

Once a decision has been taken on a particular participation request or area of service delivery, this request should not be considered again for a period of 6 months. (Please see below for further discussion on this point.)

Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request?

Yes  No

Are there any other criteria that should be considered?

The Council would agree with the criteria outlined at section 15 however would suggest the inclusion of education and learning at 15 (3) [c] for completeness.

However, in terms of management of the process, and to be fair to the groups we receive requests from, we would also suggest the following for inclusion:

- The timing of the participation request and the scope for an extension

to be allowed. This could be critical if the request is made during a period of intensive service change or integration, external scrutiny (inspection or audit) or during busy seasonal times e.g. winter maintenance during the busy winter months. It would not be practicable to have full engagement on these matters when staff and management teams' capacity is reduced because they are focused on service delivery, inspection requirements or re-structuring. Scope should be built in to enable an extension where appropriate – not to prevent the discussion from taking place or to undermine our community planning duties, but to postpone the discussion until an agreed time when there is no risk to business continuity and when engagement can be focused and productive. The Government are therefore asked to consider this when prescribing the period for determining requests in regulation.

- Whether a similar request has already been considered within the previous 6 months. The Council's current Standing Orders do not enable a decision to be reconsidered within a 6 month period. It is suggested that such an approach as a minimum should be adopted here, with 12 months perhaps a consideration. This would apply whether it was the same or different organisation. Unless there are fundamental differences in the proposals, we would suggest that there should not be the necessity to repeat discussions that have already taken place. This would not be a good use of public time and resources.
- Although we would hope circumstances such as the following would never occur, consideration should be given to whether a clause similar to that contained within section 14 of the Freedom of Information Act 2003 should be included. Section 14 indicates that a public authority does not have to comply with a request if the request is vexatious. Guidance provided by the Information Commissioner's office scopes out in more detail what this may mean in practice. Inclusion of such a clause may be helpful to public bodies to ensure that engagement is constructive.

In subsection (4) the authority must agree unless there are 'reasonable grounds for refusing'. Guidance around this definition would be welcome.

Q12 Do you have any other comments about the wording of the draft provisions?

No

Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

*Costs*

It is important that this is a pro-active process but that it is also managed. Whilst Highland Council is strongly supportive of the move to empower and engage communities in aspects of service delivery and improvement, it is also important that expectations are managed otherwise the burden on staff time and resources could be considerable. Ensuring that there is a clear process and restrictions on requests already considered, will assist in mitigating against unmanageable costs.

From the Council's experience, the Community Challenge Fund has a budget of £1m to support community groups to take over the running of Council services. This fund should be replenished by the savings accrued from the new service arrangements.

*Savings*

Savings in terms of service delivery will be dependent upon the nature of the participation and discussions. This has also been our experience through the implementation of the Council's Community Challenge Fund.



### 3.3 Increasing Transparency about Common Good

**Please read Part 3 of the draft Bill (Annex C pages 14 to 16) before you answer this question:**

- Q14 Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal?

Yes  No

What other measures would help to achieve that?

The proposals set out in Part 3 of the draft Bill are, in the main, in line with the arrangements Highland Council already has in place. The Council has already established a register of Common Good Property, and therefore we would be supportive of what is proposed.

One area of concern however would be the extent of the consultation proposed. The definition of 'Community Bodies' in terms of the Local Government Scotland Act is extremely broad and would appear to be an unnecessarily onerous task and one open to interpretation. We would suggest it far more appropriate to consult *only* with Community Councils, as proposed, as representatives of their communities. This would require a change a 22 (5) and 24 (5).

However, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property. We would therefore suggest that the wording be amended to read "consult only with Community Councils that stand to benefit directly from the Common Good Fund in their area." This would require a change at 22 (5) and 24 (5).

### 3.4 Defective and Dangerous Buildings – Recovery of Expenses

**Please read Part 4 of the draft Bill (Annex C pages 17 to 19) before you answer these questions:**

- Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?

Yes  No

- Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?

Yes  No

## Chapter 4 - Detailed Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

### 4.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

Yes  No

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

The Council would support the move to extend the community right to buy to all parts of Scotland. Streamlining (or simplifying) the community right to buy legislation is a recognised need that the Council has supported throughout earlier consultations on this matter. Simplification is required across all of the examples provided including the definition of a community (less restrictive), support available to help register an interest, permitting 'late' registration, more flexible timescales and assistance balloting communities.

Q18 Do you think that Ministers should have the power to extend "registrable" land" to cover land that is currently not included as "registrable land"?

Yes  No

What other land should also be considered as being "registrable"?

Ministers should have the power to extend land which is registrable where this is in the public interest. Consultation should be carried out on proposals to do so when appropriate.

Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances?

Yes  No

What should these circumstances be?

There should be compulsory powers available to purchase land (or assets) which are neglected or abandoned where this is demonstrably in the public interest as determined by Scottish Ministers.

The system could work in the same way as the existing compulsory purchase legislation with similar checks and balances and public interest tests. However there is the issue of cost and who pays for this.

Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

Neglected or abandoned could be defined in terms of time left unused, worked or developed and also a public interest test related to decay or neglect. However it is important to note that any definition of this nature would be subjective.

The definition of neglected and abandoned land should be carefully defined so as to exclude land-banked sites or sites held for future development.

Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?

Yes  No

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

On the detail of this particular question, the Council believes it is best left to those using the legislation and registering an interest. The views of Community Land Scotland should be sought on this question.

On a more general point, the Council would support the need to simplify the form and the level of detail of accompanying information.

Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate?

Yes  No

If not, what should that information include?

On the detail of this particular question, the Council believes it is best left to those using the legislation and registering an interest. The views of

Community Land Scotland should be sought on this question.

On a more general point, the Council would support the need to simplify the form and the level of detail of accompanying information.

- Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

On the detail of this particular question, the Council believes it is best left to those using the legislation and registering an interest. The views of Community Land Scotland should be sought on this question.

On a more general point, the Council would support the need to simplify the form and the level of detail of accompanying information.

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act?

Yes  No

Do you have any other suggestions?

NA

- Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy?

Yes  No

If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

No changes are required to section 39. Ministers may still permit registration where there is good reason for late registration, strong community support and the registration is in the public interest.

- Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

Yes  No

- Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its "community", and that (3) granting it is in the public interest?

Yes  No

- Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

It would be helpful for the statutory period 2 months in S56, 3 (b) (ii), be increased to three or four months. Whilst there is a need to avoid the risk of a valuation appeal being used as a delaying mechanism in the process, 2 months seems to be quite a short period to conclude everything after the final outcome of an appeals process.

This would be particularly the case where the valuation appeal centres on a question of whether land should be valued at its developmental value or its bare-land value. In such a circumstance, the difference in values could be quite substantial and require a significant reworking of a community's funding package.

- Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

The Council would generally agree with the principle of making best use of time. We would suggest consulting Community Land Scotland on the details of any potential changes but rights of owners and the community body remain important.

- Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs.?

Yes  No

If you disagree, please provide your reasons.

The experience of the Highland Council Election Office is that whilst some Community Groups are very reticent in arranging their own ballots, others relish the challenge.

THC Election Office, through the Returning Officer, use the Full Electoral Roll to run any community ballot and normally has the capacity to run (multiple) ballots.

THC Election Office currently only recovers the direct cost of the ballot (Envelopes, papers and postages) from the community group – around £1.00 per elector.

Ballot arrangements should be either through the local election office or Scottish Ministers (using external ballot service companies).

Communities should not be able to run their own ballots in future given the level of local involvement and need for impartiality.

Q30 Should Scottish Ministers notify the ballot result to the landowner?

Yes  No

Please explain your reasons.

Yes, given the potential impact on the individual landowner, they should be informed directly of the result of the ballot along with the community group.

Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community?

Yes  No

Please give reasons for your view.

Yes. There are widely differing interpretations of what constitutes a business plan, feasibility plan etc. therefore a pro-forma would be helpful for communities to focus future planning.

Q32 Do you agree that community bodies should be able to define their "community" in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

The current Land Reform Act does not support individuals or public bodies to acquire land even though they may have clearly defined community objectives. It would be helpful to extend the current legislation to support acquisition by a range of community, public or non-governmental organisations.

A further strand would also be to recognised communities of interest as opposed to merely geographical communities.

The Highland Council has experienced problems where a community area has been defined by postcodes, especially where the "community boundary" crosses ward boundaries. Although this is a minor problem, it may create problems in more urban areas. Street level maps should be provided in urban areas.

Q33 Are there any other ways that a “community” could be defined?

Please see above.

Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

Yes  No

Q35 Do you agree that SCIOs should be able to apply under the provisions?

Yes  No

Provided they are acting in the public interest, are properly accountable and meet all other set criteria.

Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

It is questionable whether there should be restrictions on the legal entity community bodies should wish to use. Further options could include Company Ltd by Guarantee, CICs or Industrial and Provident.

Q37 Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?

Yes  No

Q38 Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

Five years is workable as a minimum but it would be important that some form of roll-over is possible with Ministerial approval.

Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body?

Yes  No

If you disagree, please give your reasons for your decision.

Valuation procedures should include counter representations in line with current arbitration practice e.g. through the District Valuer.

- Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?

Yes  No

Please explain your reasons.

It is likely to be challenging to incorporate such a provision without prompting claims under the European Convention on Human Rights.

- Q41 Do you think that there should there be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?

Yes  No

- Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?

Yes  No

If yes, please explain how secured community support should be measured

The current level of support for a CRB has not been criticised in the Highland area. The current level of support is deemed reasonable – at least 50% turnout and 51% of those voting in favour.

- Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?

Yes  No

- Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy "application" which Ministers would then take into account in considering their right to buy "application"?

Yes  No

Please explain your reasons.

Any decision of a 'right to buy' application, should be based upon the outcome



of the ballot. However, Ministers should be able to ask for additional information. If communities cannot get behind their application then Ministers have to ask if the necessary support exists. Additional information could therefore then be sought as confirmation of support rather than as an alternative to successful ballot result.

- Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

Yes  No

- Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

Yes  No

Please explain your answer.

Land that is subject to an option agreement should be exempt. Presumably the registered interest would only be effective if the option is not exercised.

- Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes  No

Please explain your answer.

It must be possible to ensure that the land owner or his/her representative receives the notice the day after the Ministers issue the prohibition letter.

- Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes  No

- Q49 Do you agree that where a landowner makes an "exempt" transfer, this should be notified to Scottish Ministers?

Yes  No

If you disagree, please provide reasons for your decision.

A landowner should only have to notify an 'exempt' transfer where a community interest has been registered.

Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes  No

Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes  No

How do you think that monitoring should be undertaken and what information should Ministers seek?

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes  No

## 4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?

The Council notes that legislation is not yet drafted for consultation on strengthening community planning and that the consultation questions are at the detailed policy proposals stage.

We welcome the Government's recognition in the consultation document that community planning is not only facilitated through 'high-level' Boards and partnerships, but that it takes place and is delivered through: an array of thematic groups; area and neighbourhood groups and local partnerships; and in the way that front-line workers collaborate locally to solve problems. We agree that these processes are not always recognised as community planning and that has not been helpful.

This has arisen partly because of a view by some that community planning is more about structures for partnership working, rather than being about the way people providing public services work together and with the communities they serve.

That does not mean that structures should not change, but that public service reform requires far more, and including:

- The focus for improving community planning through workforce development, performance improvement, being preventative and

- improving our partnerships as four pillars of reform;
- A focus on outcomes;
- Clarity in roles, duties and accountability, with appropriate partnership and external scrutiny.

The Council supports legislative change that will drive public service reform and strengthen community planning.

Requiring a CPP to be established in each local authority area in legislation is supported by the Council. This already exists in Highland and we are working through a review of our arrangements to make sure all partners contribute, challenge each other and deliver against the Highland Single Outcome Agreement.

The Council agrees that the core statutory underpinning for community planning should be amended to place stronger emphasis on delivering better outcomes. Outcome delivery cannot be achieved by one public service organisation working in isolation; it requires the right bodies engaging with the communities and people affected. This amendment also sits well with the provisions in the draft legislation under Part 2 on participation requests from a community body on public service delivery which have an outcomes focus.

Q53 What are your views on the core duties for CPPs set out, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

The Council agrees with all nine core duties set out in the consultation document. This includes the development and delivery of a shared plan for outcomes, akin to the SOA. Our experience has shown that the development of the SOA has provided a better focus for partnership working but that accountability for contributing to it and performing against it has been too weak.

Many of the nine core duties listed are interdependent; to develop and deliver a shared plan for outcomes, a common understanding of local needs and opportunities is needed and there needs to be agreement on who will do what, by when and with what resources. A focus on performance, scrutiny and challenge sits well with the pillars of reform. Involvement of the third sector is crucial, not just because of its role in civic society but also because of its role as public service providers.

It may be worth identifying the links with the equality duties on public bodies, particularly for community planning given that some people and groups require more support to participate fully in public life.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

Yes X No

What other changes may be required to make this more effective?

The duties proposed around ensuring the right engagement with communities in community planning and reporting on delivery and effectiveness to them make sense. This also sits well with the duty in Part 2 around participation requests.

However, any legislation in this area would need to be mindful of the new statutory instrument in Education and duties regarding community learning and development, given the need for capacity building and learning for many communities to engage effectively, and especially those communities where outcomes improvement is needed most.

This is contained in the Requirements for Community Learning and Development (Scotland) Regulations 2013. The statutory instrument places the duty on Education Authorities to facilitate a process for community learning and development, publish a three year plan in consultation with relevant communities and coordinate community learning and development activity for that plan. In addition the inspection regime expects local plans and partnership to be in place.

Core community planning partners have community capacity building as a role: the Council given its democratic base, NHS in promoting asset-based approaches to health improvement and reducing inequalities and HIE in rural community ownership are all examples. Yet to place the duty on community learning and development on education authorities might undermine the community engagement duties of community planning partnerships. It would make more sense for this duty to be included for community planning partnerships, especially given the same geography is covered by Education Authorities and CPPs.

Improving community engagement by all public service providers and by CPPs should improve our local democracy, with more people engaging in civic life, expressing their views about services and priorities and being able to have more of a say in decisions affecting them.

Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

Yes  No   
**Partly**

What else might be required?

The role set out in the proposed duties is comprehensive, but these duties

would only partly ensure that all relevant partners play a full role in community planning.

Where public bodies have a national remit for example, they may be unable to support local priorities in partnership. An example might be in the decisions made about police and fire services nationally that may impact in a detrimental way locally, even where there are good and transparent working relationships with local senior officers participating in community planning. Not all service decisions are delegated to them and a topical example in Highland is in the Council's proposal for co-locating partner control rooms in a shared building in Inverness. This would demonstrate good compliance with the duties proposed for community planning, but the decision about that is made at a national board level without direct local representation.

Also, the core duties themselves do not identify the relevant partners, just what the partnership and individuals partners are expected to do and achieve. See the response to question 57 below on this point.

Compliance with the duties is responded to in question 59 below.

- Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

This is an important area to consult on given some of the constraints around current governance arrangements noted in the national audit. The Highland CPP has undertaken a review of accountability and governance arrangements as set out in chapter 11 of the Highland SOA. In the peer review of the SOA this was regarded as good practice and could be a useful source of information for the Government to consider. Should the review in Highland be effective (we are still working through the review) then no legislation on this matter would be required.

However it is worth noting that one of the obstacles to all partners providing non-executive board members in the Highland CPP Board is their limited capacity to do that when their role is part-time and where some partners have several CPPs to participate in.

- Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

There should be a defined list of core public bodies subject to the duty, with scope for all relevant public service providers in an area to be involved where that would support the local SOA. That would reduce the risks around an expansive list while enabling a more local approach to be taken.

The core public bodies should involve those currently included in the legislation and those listed in the consultation document, but with the following caveats:

- How they perform their duties is agreed with the CPP and that might not mean participation in CPP Board meetings, but membership and participation in the relevant partnership group arrangements supporting a particular strand of the SOA. This would enable local flexibility in the CPP structure to be used while ensuring compliance with contributing to community planning;
- The capacity of some partners to carry out the duties needs to be considered where those organisations are relatively small and their geography covers several CPPs (e.g. National Parks).

It might be helpful to endorse the role of the 32 Third Sector Interface organisations as bodies to be included as they have emerged since the original legislation in 2003 was passed. They should be included but not to the exclusion of direct participation of individual third sector bodies. The extent to which the Interface organisations can be accountable for and to the third sector in an area is not the same as other public bodies in the CPP and this would need to be considered further.

It is noted that participation does not currently extend to bodies with accountability to the UK Government, e.g. DWP or Job Centre+. While we have developed working relations with local officers in the CPP, there is very little scope to influence their area of work and given the scale of welfare reform this can be problematic for the delivery of wider SOA outcomes.

Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

The community leadership of Councils needs to be supported through any legislation given their local democratic mandate and their role in informing partner organisations about their constituents' views. However it is important that all partners have a duty to participate and jointly deliver on outcomes.

More work is needed to understand why there might be the perception that community planning is an extension of the local authority. This would identify where arrangements could be adjusted to deal with these concerns. In Highland we are moving to CPP meetings having a rotating chair across partners and changing venues for meetings. Symbolic change that is easy to make can sometimes be all that is necessary.

Re-locating the duty on community learning and development to CPPs from Education Authorities may also help in this regard.

Also if the duties proposed in the consultation are enacted, the responsibility for participating in and contributing to community planning will have to be shared.

With better community engagement, elected members will have better information about local community views and there should be better dialogue on how to improve outcomes. These processes would strengthen local democracy and help to build on the community leadership role of councils.

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

The principles from the Crerar Review should apply. If partners are moving to integrating services and focusing on outcomes, so too should external scrutiny bodies. This means avoiding duplication in external scrutiny and moving from scrutiny of organisations to the scrutiny of outcome achievement where all relevant partners are subject to that scrutiny.

Some progress is being made in this area, for example around inspections for children's services but there are some areas of uncertainty, for example:

- How the new audits of community planning will avoid duplication in the Audits of Best Value and Community Planning on local authorities;
- The rationale for Education Scotland expecting community learning and development partnership arrangements to be managed around secondary school groups with inspections on that basis when the geographies for community learning and development may not be associated with schools but with e.g. care partnerships, transport partnerships, community land buy-outs and ownership of assets (this is an issue in Highland because there are 29 school groups, with a CLD plan expected to be developed, coordinated and managed in each of those geographies). Also the fit between CLD inspections and the role other external scrutiny bodies have in assessing community engagement is not clear, this includes the fit with Audit Scotland's role in auditing community planning which will include how well partners are engaging with communities.

The scale of external scrutiny needs to be proportionate to the risk of not achieving outcomes. Progress has been made to some extent through the Shared Risk Assessment process introduced for Councils and co-ordinated by Audit Scotland and this could be developed further in the partnership context.

Scrutiny bodies can support performance improvement in CPPs by sharing good practice and developing self-evaluation tools and methods for CPPs to use.

Q60 What other legislative changes are needed to strengthen community planning?

Based on the response to consultation feedback, it would be helpful to be consulted on draft legislation to identify if other changes might be needed.

#### 4.3 Allotments

Q61 Do you agree with the proposed definition of an allotment site and allotment plot?

Yes  No   
**Not entirely**

How else would you suggest they be defined?

Local food growing, alongside the health and social benefits and access to the countryside can also be achieved through community food growing projects. Indeed, the potential for social benefits from such projects, because of their collective nature, could be said to be greater than for allotments. Because of the similarities between allotments and community growing projects, an additional definition for a Community Growing Site would enable extension of the provisions and community benefits of allotments legislation.

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

The size of allotment plots on sites in Highland is partly determined by the needs of allotment holders and on some sites, sufficient demand for small plots has led to a minimum plot size of 30m<sup>2</sup>. To accommodate these existing sites, any definition based on allotment size would need to go down to 30m<sup>2</sup>. Our maximum plot size is 600m<sup>2</sup>.

Q63 Do you agree with the proposed duty to provide allotments?

Yes  No

Are there any changes you would make?

We agree that a duty to provide allotments and that a trigger point of 15 is appropriate. However, this should be 15 households, rather than 15 people. We feel there is a need to define the term "area" used in the proposed duties. The existing allotments acts apply to the entire Local Authority area,



but in an area as large as Highland a smaller definition of area is needed. This should be based on a reasonable travel distance between and allotment plot-holder's home and the allotment site. For urban areas we would suggest this would be 1 mile and for rural areas, 20 miles.

Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?

Yes  No

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

Option C is preferred as it allows for existing provision as part of the measure. This should apply to the list within an individual area (see answer to Q63 above) rather than to the entire Local Authority area. In the event that this triggers a need for more than one new allotment site for a Local Authority, provision should be made to limit the number of sites which must be provided simultaneously across an entire Local Authority's area. We suggest a limit of two.

Q65 Do you agree with the proposed list of local authority duties and powers?

Yes  No

Would you make any changes to the list?

Yes, some clarity is needed around the 2<sup>nd</sup> and 9<sup>th</sup> proposed duties and powers. If a Local Authority delegates authority for the management of allotment tenancies, rental and site finances to an allotment association, is there still a duty to report on those details in its annual report. If the land which the site occupies is leased to an allotment association and all other financial details are managed by the association, does the Local Authority's financial report include details of the lease only, or details of the allotment association's finances too? The proposals for asset transfer would further complicate this issue and clarity would be needed on whether an allotment site on land which has been transferred to community ownership is still subject to the Local Authority's duties.

We would question whether the value of a Food Growing Strategy (proposed duty no. 4) would justify the cost of production for a Local Authority such as Highland which is increasing the number of allotment sites rapidly and is meeting its duty to provide allotments under the provisions of clause 174 in this consultation. We see the role of a Local Authority being to provide the means for people to grow food locally, rather than to grow the food itself. As such, an allotments policy or strategy is more appropriate than a food growing strategy.

Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?

Legislation

Determined by local authority

Q67 Are there any other areas you feel should apply to private allotments?

Private allotments should be included in the duties to provide allotments, such that existing private allotments in an area are considered alongside existing Local Authority provision when determining whether there is a duty to increase provision. This would enable inclusion of any allotments sites asset-transferred to community ownership.

Other areas which should also apply to private allotments are:

- The definition of an allotment
- Selling of surplus produce
- Production and publication of regulations

Q68 Do you agree that surplus produce may be sold?

Yes  No

If you disagree, what are your reasons?

We agree that surplus produce may be sold for the benefit of the site, the allotment association, the local community or charities. The detailed provisions for selling of surplus produce should be determined by the Local Authority.

Q69 Do you agree with the proposed list of subjects to be governed by Regulations?

Yes  No

Would you make any changes to the lists?

We agree with the subject listed here and would seek the inclusion of GM-free principles in addition to organic principles in the issues regarding use of plots. It will need to be clear whether these regulations can be delegated to an allotment association under the 9<sup>th</sup> proposed power under clause 176 of this consultation.

## Chapter 5 – Wider Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

### 5.1 Scotland Performs – embedding the outcomes approach in legislation.

Q70 We invite your views on the proposal to include in the Bill a provision that places a duty on Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly progress towards these outcomes.

This approach would be welcomed.

However there would be concerns if CPPs were required to focus only on national outcomes and how they are measured within their locality. Currently the SOA enables local priorities and performance indicators to be used where the local context requires that and we would be keen for this arrangement to continue.

### 5.2 Subsidiarity and local decision-making

Q71 Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?

The Commission on Strengthening Local Democracy should be reporting early in 2014 and it would be helpful for any recommendations made by it to be considered if time allows.

Other points to note from the Council that could lead to further Government action are:

- Concern about low voter turnout for elections, and the associations between low turnout and poverty;
- Strengthening the role for Community Councils where they currently feel hampered to do more in their community, particularly around enabling them without personal risk or liability to take on the ownership of community assets (see the response to question 1 above).
- The Council wishes to see Crown Estate revenues directed to local coastal communities and management of the estate transferred from Crown Estate Commissioners to the Scottish Parliament and local communities, as appropriate.

## Chapter 6: Assessing Impact

Please read the draft Bill provisions and detailed policy proposals before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

### Equality

Q72 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” under the Equality Act 2010.

It will be important for Authorities to ensure that particular groups of people/deprived communities are not disadvantaged and are enabled to utilise the provisions contained within this Bill.

It is important that hierarchies of empowerment are not created therefore some groups may require support to achieve the positive impacts provided within the legislation.

Q73 What differences might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?

In several of the responses to questions we have noted issues regarding:

- Participation in elections and the association between low turnout and poverty;
- Capacity building for disadvantaged communities to engage with CPPs in improving outcomes;
- Support for disadvantaged communities to be able to request participation in service improvement.

With SOAs requiring CPPs to have a focus on tackling health inequalities and working together on prevention, this should help to reduce outcome gaps in our population, but this will take time and energy to change. In SOA reporting the progress being made should be measured.

## **Business and Regulation**

- Q74 Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

NA

## **Environmental**

- Q75 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.

There could be environmental impacts from the Bill proposals given that the proposals cover property, land and allotments and if services community bodies want to participate in relate to the environment and depending on any proposed use of common good funds. These impacts could be positive if they help reduce carbon emissions, enable resilience to adverse weather events, support biodiversity or generally improve sustainability. Impacts would need to be considered at the time decisions are made and we suggest screening for environmental impacts, including climate change, would be good practice. For the Bill, making links to overarching Climate Change statutory duties should be sufficient.