

THE HIGHLAND COUNCIL

PLANNING, ENVIRONMENT AND DEVELOPMENT COMMITTEE

6TH NOVEMBER 2013

Agenda Item	11
Report No	PED 73/13

SCOTTISH AFFAIRS COMMITTEE: 432:50 – TOWARDS A COMPREHENSIVE LAND REFORM AGENDA FOR SCOTLAND

Report by Director of Planning and Development

SUMMARY

This paper introduces the UK Scottish Affairs Committee briefing paper on land reform in Scotland. The report summarises the briefing note and appends a response already submitted on behalf of the Highland Council.

Committee is invited to:

- a) Note the content and thrust of the SAC briefing note on land reform in Scotland, and;
- b) Homologate the response already submitted on behalf of the Highland Council.

1. Introduction and context

- 1.1 Within the economy theme of Working together for the Highlands 2012 – 2017 the Highland Council maintains its commitment to land reform.
- 1.2 On 7th June while attending the Community Land Scotland conference Scotland's First Minister announced the Scottish Government target that by 2020 there should be a further 500,000 acres of land in Scotland in community ownership. In short the Government wishes to see a doubling of the area of land in community ownership in Scotland by 2020.

2 Land Reform Review Group (LRRG)

- 2.1 The interim report of the LRRG was published on 10th May this year. The Council had earlier submitted a comprehensive response to the Group's initial call for evidence and a copy of the Group's interim report is available on the Committee bulletin for information.
- 2.2 The interim report was not well received by land reform campaigners, who felt that it did not go far enough and that the interim findings leaned too far towards improving community engagement rather than focus on the need to improve legislation; provide assistance, advice and support to communities; secure greater financial support for land reform; or tackle the more radical issues which are now the focus of the Scottish Affairs Committee.

3. UK Scottish Affairs Committee (SAC)

3.1 Partly in response to the disappointing interim findings of the LRRG, and partly to reintroduce more radical aspects of land reform to the Scottish debate, the UK Scottish Affairs committee (SAC) has launched a briefing paper titled: '*Towards a comprehensive land reform agenda for Scotland*' The SAC seeks evidence (by 30th October) on a number of topics not thus far tackled by the Review Group. These include:

- Tenant farmer rights to buy
- The human rights dimension of land reform
- The Crown Estate in Scotland,
- Scottish succession law
- Land value taxation

3.2 A copy of the SAC paper is available on the Committee bulletin for information and has already been copied to Committee members by e-mail. It has been drafted by Professor James Hunter, Peter Peacock, Andy Wightman and Dr Michael Foxley.

3.3 It is worth noting that, with the exception of views on land value taxation and succession law in Scotland, which have not been addressed by the Highland Council, the briefing paper issued by the SAC is very much in line with the views the Council has previously submitted in response to the call made by the Land Reform Review Group. The response submitted on behalf of the Highland Council is attached at appendix 1 for consideration and approval.

3.4 SAC now plans to gather evidence on the briefing paper during December 2013. During a recent meeting with Ian Davidson MP (SAC chair) in Orkney, attended by the Council's Deputy Leader, Mr Davidson asked if the Highland Council would be prepared to host the December evidence session. Confirmation that the Council will do so is contained within the response submitted.

4. Fit with the Programme for the Highland Council 2012 - 2017

4.1 The Council's involvement in land reform directly supports the Council maintain its support for land reform in the Highlands (Programme commitment - Economy 26 and 27).

5. Fit with the Single Outcome Agreement

5.1 Supporting land reform in the Highlands helps the Council deliver SOA objectives supporting:

- Empowering communities;
- Tackling inequalities;

6. Equality, legal and risk implications

6.1 There are no equality, legal or risk implications arising from this report.

7. Resource implications

7.1 There are no additional resource implications attached to this paper.

8. Climate change and Carbon Clever implications

8.1 There are no climate change or carbon clever implications attached to this report.

RECOMMENDATION

Committee is invited to:

- a) Note the content and thrust of the SAC briefing note on land reform in Scotland, and;
- b) Homologate
- c)
- d) the response already submitted on behalf of the Highland Council.

Designation: Director of Planning and Development

Date: 18th October 2013

Author: George Hamilton, Head of Environment and Development
(Ext 2252)

Background papers

- Highland Council response to the Land Reform Review Group – January 2013
- Scottish Affairs Committee: 432:50 – towards a comprehensive land reform agenda for Scotland

Mr Ian Davidson MP
Chair
Scottish Affairs Committee
UK Parliament
House of Commons
London
SW1A 0AA

Dear Mr Davidson

432:50 – TOWARDS A COMPREHENSIVE LAND REFORM AGENDA FOR SCOTLAND

Highland Council was very interested to receive the briefing paper produced on behalf of your Committee and the opportunity it presents to contribute further to the debate on land reform in Scotland.

The Highland Council is committed to supporting land reform in the Highlands, as set out within the Council's Programme; *'Working together for the Highlands'*. In addition to this land reform specific commitment, the Programme dedicates an entire section to empowering communities. Highland Council therefore recognises that advancing land reform in Scotland presents great opportunities for the Highlands.

For reasons above the Council was disappointed with the interim report of the Land Reform Review Group, which it felt did not go far enough. The Council welcomes the opportunity your briefing note now offers to re-engage on some of the wider aspects of the current land reform debate in Scotland, and hopes to influence the final report and recommendations of the Review Group.

Please find attached (Annex 1) Highland Council's evidence provided to the Land Reform Review Group in response to its original call for evidence. With the exception of views on issues yet to be discussed by Council (land value taxation, succession law in Scotland and tenant farmer rights to buy), there is considerable alignment between the views of your briefing papers authors and those of the Highland Council.

Also enclosed for reference (Annex 2) are relevant extracts from the Council's response to the Scottish Government's Community Empowerment and Renewal Bill. A copy of the full response is available on request.

Expanding a little on the subject of state aid, Highland Council feels there is an immediate opportunity to promote community ownership, particularly where woodlands are the subject of the community's interest and to make large steps towards the Scottish Government's 2020 targets, by reviewing the impact state aid considerations have on potential purchases. At present state aid considerations limit the ability of the Scottish Land Fund to intervene with support at a rate above 20% of the purchase price. As you can imagine the result is that communities find it almost impossible to find the remaining funds required to purchase the woodland they have an interest in. Interpretation of state aid rules which put community aspirations to the

fore rather than commercial gain would potentially allow higher intervention rates and so support woodland transfers to interested communities that could significantly contribute to the achievement of the Scottish Government's 2020 target.

The important contribution that public bodies can make to the achievement of the Government's new target is also something that should be recognised and a review of financial regulations governing the transfer of public assets to interested communities, so that they align with powers already available to local authorities, would support land reform and community development in Scotland.

Further discussion on your Committee's briefing paper produced would be most welcome and, following your meeting in Orkney recently with the Highland Council's Deputy Leader, Cllr David Alston, I can confirm that the Council is keen to host the evidence session you have planned for early December. Please get in touch with my office regarding the arrangements for the session.

Finally, you may be aware that the Highland Council and Community Land Scotland will jointly run a land reform seminar and workshop event early in the New Year. The theme will be based around the Scottish Government's target to have 1 million acres in community ownership in Scotland by 2020. You will be formally invited to participate in the planned event and I will contact your office once the date for the event is fixed.

Meantime, please let me know if you wish to discuss any of the above or enclosures

Yours sincerely

George Hamilton
Head of Environment and Development

The Scottish Government
Land Reform Review Group – call for evidence

Highland Council submission

Introduction

Highland Council welcomes the establishment of the Land Reform Review Group and the opportunity to contribute to current thinking on this important topic. The Programme for the Highland Council (*Working together for the Highlands 2012 – 2017*) commits the Council to promoting land reform in Scotland. Addressing this commitment Highland Council is an affiliate member of Community Land Scotland (CLS) and has been working with CLS on joint objectives for the review.

Highland Council has a long history of campaigning on land reform. It has been proud to support community land purchases such as those which have taken place on Eigg and Assynt, and has contributed to previous government reviews of land reform legislation.

The Council hosted a land reform conference on 23rd March 2010 in Inverness and the report of that conference is included as part of this submission. The report of the conference provides evidence of the benefits that can be realised, in sustainability and economic development terms, by communities who own their land and resources.

Linked to the land reform debate, Highland Council has recently responded to the Government's Community Empowerment and Renewal Bill. A copy of the Council response is included here for information.

Highland Council would welcome an opportunity to discuss the land reform review with the Group and particularly some of the wider aspects of land reform not developed further here. The Council would be happy to host a meeting with the Review Group if considered appropriate.

The submission which follows is split into the following sections:

- Access - Part 1 of the Land Reform (Scotland) Act
- Rights to buy - Parts 2 and 3 of the Land Reform (Scotland) Act
- Wider aspects of land reform

Access - Part 1 of the land reform (Scotland) Act 2003

There seems to be a general feeling that all is well with Part 1 of the Land Reform (Scotland) Act and that the access provisions of the Act have delivered for Scotland. While the Council recognises the improvements delivered by the access provisions, particularly in terms of freedom of responsible access and the heightened awareness of access takers in respect of their responsibilities, the Council feels that there remain major difficulties that cause concern for the access authority, access takers

and landowners. Four strategic concerns are set out below. The Council hopes that the current inquiry is an opportunity to address these concerns.

Resources available to access authorities

As we approach 8 years of implementation of Part 1 of the Act, access authorities still have major difficulties resolving locked gates and inappropriate signage. The legislation is cumbersome, costly (financially) and hugely resource intensive to apply, particularly when what are relatively simple issues have to be taken through the Court processes to be resolved. The Council feels that the legislation now needs to be streamlined to permit swifter resolution of what are often annually recurring problems where land managers fail to respond or to enter into dialogue with the Access Authority.

Wild camping

Clarification on what exactly constitutes 'wild camping' should be provided as guidance for access authorities, land managers and access takers. The spirit of the 2003 legislation and the guidance in the Scottish Outdoor Access Code expected this to be lightweight camping undertaken as part of a multi-day trip in remoter areas. It is not anticipated as an opportunity for families or groups to pitch up with frame tents for a two week holiday camping by rivers or beaches where there are no amenities or facilities. As you will imagine such activity causes major management issues.

Responsibilities of developers to maintain access provision

Increasingly we experience developers of wind farms and hydro schemes and now forest operators hiding behind 'Health & safety' legislation to close off extensive areas of hill and forest under the pretext that it is unsafe for the public to take responsible access into these areas because of personal risk of injury. Whilst public safety is paramount and no one disputes this, there is a general feeling that developers are misinterpreting the H & S legislation and unnecessarily closing off areas as an easy way out of managing their sites.

SNH, the Scottish Government's advisors on the access legislation and the Health & Safety Executive have met to discuss this and the consensus is that action to reduce the risk should be taken by developers and land managers to mitigate risks and that these should be proportionate, dynamic and flexible and focussed on the areas of activity where the risk may be highest. Seldom should there be a need to close a path and this should be the exception rather than the rule and enshrined in the legislation.

Notification of core paths existence and owner occupier responsibilities

On this topic the Council urges the Scottish Government to legislate requiring the Law Commission and the RICS to inform all purchasers of land about the requirements of 'responsible access' and their reciprocal duties as land owners. One of the major difficulties access authorities face is where purchasers and buyers from outside of Scotland, where different legislation applies, expect exclusivity and want to keep responsible access takers out of their estates and to ignore their access responsibilities.

Rights to buy - Parts 2 and 3 Land Reform (Scotland) Act 2003

- a) How can land reform enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland?***
- b) How can land reform assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their environment?***
- c) How can land reform generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland?***

Addressing these questions together, there are a number of key points that Highland Council would like the Review Group to consider when making recommendations to the Scottish Government. These are set out below.

Promotion of the legislation and of the benefits it can deliver

Research undertaken in 2010 for the Scottish Parliament in by the centre for Mountain Studies contributed to the Parliament's post legislative scrutiny of the Land Reform Scotland Act. Among other key findings was concern among those who had experience of the legislation in communities that the Act, and the benefits it could deliver, were not being promoted sufficiently. In addition insufficient support and advice was available to assist communities work their way through complex processes. These points were made in the context of Parts 2 and 3 of the Act and remain valid today. Highland Council suggests that these issues could be tackled by:

- Publication and promotion of Scottish Government policy on land reform alongside the Government's vision for land reform
- Publication of information setting out the process communities are required to follow and the where they can obtain the help and support they need
- Provision of resources and case officers equipped to work with communities requiring support through the processes leading to community acquisition
- Publication and promotion of case studies, which clearly indicate best practice and the benefits that can be realised by successful communities
- Ensuring that the role played by HIE in the Highlands and Islands is available across Scotland and is maintained and enhanced. Since the original Scottish Land Fund in 2001 to the present HIE has played a vital role in supporting community development via land reform. Throughout this period HIE has worked closely with the Scottish Government and the BIG Lottery Fund to ensure that limited resources make the maximum impact and as a result has developed considerable expertise in this field

Valuation and funding for acquisition and development

One of the main barriers to the growth of community ownership is the cost of acquiring and developing community assets. Communities find it very difficult to raise the necessary funding to buy assets and to develop and grow the value of the assets once acquired. Initial purchase rarely provides much by way of an income stream

which could be used to develop the asset and service commercial loans. In addition, public bodies find it very difficult to transfer assets at below market value or have established a policy position which prevents them from doing so. The Scottish Public Finance Manual permits transfer of assets at below market value but the procedures involved are complex and time consuming. Highland Council suggests that these issues could be addressed by:

- Increasing the value of the current Scottish Land Fund (suggest £10M initially) and maintaining high intervention rates (95%) for acquisition costs
- Publish Scottish Government guidance to public bodies on the transfer of their assets at below market value or 'best value'
- Permitting other funding organisations e.g. (BIG Lottery) to contribute towards acquisition costs rather than focusing on development costs post acquisition
- Review of the regulations governing public asset transfer to simplify procedures supporting transfer at below market value, where there is a clear public benefit to be achieved by doing so
- Implementing new schemes such as the current National Forest Land Scheme for other publicly owned land and assets outwith the national forest estate
- The establishment of a public register including details of all public assets deemed surplus to requirement, where the owner would welcome proposals from the community

The onerous nature and complexity of the legislation

There is no doubt that community groups and crofting bodies find the practical application of the legislation extremely complex, time consuming and expensive to comply with. This is another point arising from the earlier work of the Centre for Mountain Studies and features in the report of the 23rd March 2010 conference hosted by the Council.

A good example of the complexity of the legislative requirements is (in Part 3) the onerous mapping requirements, where much more limited requirements exist for land registration. Another is the complicated Part 2 community definition procedures involving the electoral register and ballot turn out requirements.

A further barrier appears to be the growing influence of State Aid concerns among public sector organisations involved in promoting land reform. There appears to be a lack of clarity around whether state aid regulation are a legitimate concern among land reform funders and if so, how they should be dealt with positively.

Addressing these concerns, Highland Council suggests that there is a need to:

- Simplify the legislation to make it less complex and easier to use, including the Part 3 mapping requirements which could easily be aligned with land registry requirements
- Review community definitions to allow a more flexible approach to community membership, including potentially individuals with clear community objectives
- Ensure that there are resources allocated nationally to support and advise communities and to lead them through the land reform process and to provide necessary after care. HIE are already experts in this field.

- Publish guidance on State Aid rules and their relevance in relation to community asset purchases receiving public sector support, and if necessary seek the approval from the European Commission for an appropriate notified scheme

Adversarial nature of the process and underused/neglected assets

It has also been reported that communities believe they have greater flexibility in purchase negotiations and more amicable relationships with landowners if purchases can be concluded outwith the Act. Allied to this, the Council notes that Part 3 of the Act has been used on only a few occasions and that what may be termed among the successful purchases (E.g. Isle of Eigg Heritage Trust and North Harris Trust) have been concluded outwith the Act. There may be occasion therefore where more can be achieved via private negotiated sales between a private (or public) willing seller and a community buyer

There may also be occasions where land or buildings are underused or unused and thereby contribute little to the local community.

Highland Council would welcome further discussion on how:

- Private sales between willing seller and community buyer could be incentivised where they are deemed more appropriate, quicker and less costly to conclude
- A form of compulsory purchase may be made available to communities that can demonstrate that their proposals will deliver significant additional benefits when compared to continued underuse or neglect on the part of the current owner

Defining a community

The Land Reform Act only applies to rural areas, defined by settlements of up to 10,000 people and can only be utilised by community bodies and crofting communities. The Act does not support individuals or public bodies to acquire land even though they may have clearly defined community objectives, and doesn't support urban communities who may wish to acquire land. Highland Council believes that the legislation should be extended to support acquisition by a range of community, public or non-governmental organisations to acquire land in rural and urban areas.

Wider aspects of land reform

The Crown Estate in Scotland

The Programme for the Highland Council commits the Council to working for the reform of the Crown Estate in Scotland. The Council has long campaigned on this issue, initially via the Crown Estate Review Working Group and latterly via its contribution to the inquiries undertaken by the UK Governments Treasury Select Committee and Scottish Affairs Committee, the Scottish Government Scotland Bill Committee and the Scottish Government consultation titled '*Securing the benefits of Scotland's next energy revolution*'.

Highland Council supported the findings of UK and Scottish Parliamentary committees on the Crown Estate

Highland Council also submitted evidence on the Crown Estate in Scotland to the Calman Commission on Scottish devolution and was extremely disappointed that the Commission reported so weakly on the matter.

The above submissions can be provided to the Review Group if required. Meantime and for further background on the Crown Estate in Scotland the Review Group is referred to the February 2007 report of the Crown Estate Review Working Group titled: *The Crown Estate in Scotland – New Opportunities for Public Benefit*

Specific to the remit of the Land Reform Review Group, Highland Council believes that review of the management and administration of the Crown Estate in Scotland could support further development of land reform by creating opportunities for:

- appropriately constituted communities to own and manage seabed and foreshore resources
- community owned renewable energy projects in the marine and coastal environment
- additional funding for community development projects in the coastal areas, via the Coastal Communities Fund, including asset acquisition and development.

Scottish Government Proposed Community Empowerment and Renewal Bill Consultation

Extracts from the Highland Council response - September 2012

Support for the aims of the proposed Bill

The aims of the proposed Bill are noted as 'strengthening opportunities for communities to take independent action to achieve their own goals and aspirations and ensure communities are able to have a greater role in determining how their local public services are delivered.'

In responding to the consultation, the Council supports these aims and views community empowerment and renewal as a means to strengthen our democracy so that:

- 1. People can have a say in how their public resources are distributed and managed;**
- 2. People are listened to about the services that affect them;**
- 3. People can play a part in the life of their community.**

The Council's programme for 2012-17, agreed in June 2012, has 129 separate commitments covering seven public service areas. One of these seven public service areas is dedicated to empowering our communities. It contains 19 specific commitments which aim to:

- **Improve participation** (creating local area committees, giving more young people a voice in the Council, agreeing a joint approach with partners to community development and volunteering, promoting multi-culturalism, widen access to adult basic education)
- **Support communities to do more for themselves** (introducing a new £1m community challenge fund, channelling community benefit into communities, maximising EU programmes for communities)
- **Let people have more of a say and to respond better** (allowing public petitions at committees, implementing the national community planning review findings, engaging with equalities groups and improving their outcomes, improving public engagement and complaints handling).
- **Be more accessible** (improving access to services and responses, web casting council meetings, ensuring more access to school buildings as community hubs, using Plain English, measuring Council progress and reporting on it openly).

Section 2 – Unlocking Enterprising Community Development

Communities Right to Buy

1. and 21a) *Would you support a right to buy for urban communities?*

Yes, the Council welcomes the opportunity to change the current Land Reform legislation to include urban communities. It would be appropriate for this to work in the same way as the existing Land Reform Act and it is an anomaly at present that urban communities do not have the same rights.

21.b) *How should urban be defined?*

In the case of Highland, the only area this would affect would be Inverness as all others are classified as rural as per the Government's Urban Rural classification. It is inevitable that postcodes would play more of a role in defining communities within an urban setting; however it is difficult to see an alternative methodology for doing so.

21. c) *How would urban/rural right to buy work alongside each other?*

Whilst it would be appropriate for the legislation to work the same as the existing Land Reform Act, urban land is more likely to be owned by an entity rather than an individual which may be more difficult for urban communities to access. It would also be important to restrict communities from buying land in order to prevent development which is likely to be more of an issue in an urban environment than a rural one.

The Council has welcomed the review of the Land Reform Act and it would be important to consider the implications of the review of the Land Reform Act prior to drafting this Bill.

Community Asset Transfer

22. *Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?*

There should be a presumption in favour of transfer of unused or underused assets to a community organisation if this is requested unless there is a compelling reason for not doing so. The community would need to demonstrate that there was a strong community interest and advantage in taking on an asset and not merely a desire to own. A strong business case, including how the asset would be used, would therefore be essential and would demonstrate the benefits for the community. The Council recognises that communities would need support through this process.

22. a) *What information should a community body be required to provide during the asset transfer process?*

The community would be required to produce a strong business case for their intentions and an assessment undertaken of the organisation's constitution and skills. It would also be important to consider the sustainability of any transfer and

should the project fail, what would happen to the asset. The community should also demonstrate widespread community support for the transfer at an appropriate level.

22. b) What information should a public sector body be required to provide during the asset transfer process?

Information that might be helpful could include existing running costs, maintenance costs and condition surveys or other information that it currently holds. If the Council were to be transferring an asset, for example a former school, formal legal agreement will be reached with the community body. This agreement will set out the respective parties' obligations to the other and may address issues such as condition, future liability, use etc.

2. c) What, if any conditions should be placed on a public sector body when an asset is transferred from the public sector to a community?

None in general but there may be specific conditions taken on in certain circumstances that would be agreed between the parties.

22. d) What, if any, conditions should be placed on a community group when an asset is transferred from a public sector authority to a community?

That it would have to be held by the community for the interests of the whole community. Disposal of an asset would have to be agreed by the community and embedded within the constitution of the body taking on the asset.

3. Should communities have a power to request the public sector transfer certain unused or underused assets?

Yes and communities should be encouraged to take on unused or underused assets. The Council already works with communities to enable them to be in a position to take on these assets. Care would need to be taken to ensure that any new legislation does not restrict the current positive engagement between the Council and communities. The importance of this is outlined below in the example of village hall transfer. The drafting of any legislation in this area is therefore critical and would require careful balancing to ensure flexibility is retained.

Examples of asset transfer include:

- **Social Work Day Centre** - In Tongue, Lochinver and Fort William, local groups have taken over former social work day centres, and are now running them for the benefit of the wider community, as well as maintaining services for older people.
- **Village Halls** - The transfer of 10 council-owned halls to community groups resulted from a Council decision to equalise its support for village halls. This was partly driven by:-
 - The belief that communities could become more engaged and empowered through the ownership and management of assets
 - A desire to address significant historic anomalies in support

- The need to ensure that the Council had a consistent policy and approach to halls
- A requirement to make budget savings

From the outset the Council recognised that because each community was different, had different capacities and were starting from different development points the timescales to achieve the transfers would also be different for each hall. Accordingly, although most halls had transferred within eighteen months to two years, the final hall did not transfer until some three years after the process started. Flexibility in the process was critical. Full details of this process can be found at annex 2.

- **Applecross Filling Station** - Applecross is a community of about 200 people located on a remote peninsula in Wester Ross. In 1993 a new filling station was established on Council-owned land in the middle of the village. While the land remained in Council ownership, the filling station infrastructure was owned by the Community Council and operated by means of a lease agreement to the village shop. However for a number of reasons, in 2009 a new charitable, not-for-profit Community Company was set up and ownership of the pumps was passed from the Community Council to the Community Company and ownership of the underlying land was transferred from Highland Council. Having been formed around the immediate issue of resolving a fuel crisis in the village, the Community Company is now progressing a range of community development projects. One of these is a project to take ownership of the village's public toilets, which are adjacent to the petrol pumps, with a view to refurbishing and improving the facility. Further details of this example are provided at annex 2.

4. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

No, there should be no automatic right to buy if they have leased or managed for a certain period. Communities can already request to buy an asset and the Local Authority may choose to do so if it fits within the priorities of the Council. These are public assets and therefore the sale of these must be in the interest of the public at large.

The only circumstances where selling an asset would be appropriate would be if the community group were to pay market value for any such asset. Otherwise, selling at less than market value would be asking the Council to forego the benefit that could be realised and that would go back in to delivering services for the public at large.

A compromise would be the first right of refusal within any lease should the Council choose to sell.

If yes

24. a) What, if any, conditions should be met?

Common Good

5. Do the current rules surrounding common good assets act as a barrier to their effective use by either Local Authorities or communities?

Given the antiquated nature of the existing legislation, a review of Common Good legislation would be appropriate to enable full consideration of the issues. The current rules are currently restrictive as communities have changed over time.

It is also unclear whether the role of the Local Authority is to maintain the underlying Common Good resource or whether assets at certain times should be realised. Common Good at present seems to be wedded to individual assets and not the fund itself. For example, in some circumstances, if it was a Local Authority asset, the value of that asset would be realised as it would be of greater benefit to do so.

Community benefit from renewables could now be viewed as the new Common Good and perhaps Common Good should be reviewed within the context of the current structures that have emerged.

6. Should common good assets continue to be looked after by local authorities?

Yes. With a clear governance structure and ensuring the democratic process is adhered to, the Local Authority is the most appropriate body to oversee Common Good assets. The Local Authority is representative of its communities and accountable. There is not an equivalent structure that would meet those criteria.

If yes:

a. What should a Local Authority's duties towards common good assets be and should these assets continue to be accounted for separately from the rest of the Local Authority's estate?

Yes, they should be accounted for separately. The Local Authority manages on behalf of the community however, as outlined above, the legislation would benefit from a full review.

b. Should communities have a right to decide or be consulted upon how common good assets are used or how the income from common good assets is spent?

Communities already have the opportunity to have their say. The Council is under a legal duty to ensure Common Good funds are managed in an appropriate way and through a clear Governance structure.

The Council structure is such that elected members make decisions but make those decisions in an open and accountable manner within a committee. This system already works effectively. Communities can scrutinise and pass comment on proposals to their elected members as their elected representatives. Elected members have to ensure Common Good is spent properly.

If no:

c. Who should be responsible for common good assets and how should they be managed?

NA

Asset Management

7. Should all public sector authorities be required to make their asset registers available to the public?

Yes and the Council supports the development of the land register which would make a list of assets available. This would be preferable to keeping a separate register up to date which would have significant resource implications.

If yes:

a. What information should the asset register contain?

NA

8. Should all public sector authorities be required to make their asset management plans available to the public?

Yes and Highland Council's asset management plan is already available to the public.

If yes

a. What information should the asset management plan contain?

Highland Council's current Asset Management plan can be accessed at the following link. Please note that this plan is due to be updated in the next year.

<http://www.highland.gov.uk/NR/rdonlyres/781DE861-6A1F-4CFE-A397-3B99FDE94101/0/res13407.pdf>

The Council's Corporate Property Strategy may also be of interest and this can be accessed at the following link:

<http://www.highland.gov.uk/NR/rdonlyres/6BF6160E-5915-4F56-ACBF-887D8EB1098C/0/Item12RES1111.pdf>

9. Should each public sector authority have an officer to co-ordinate engagement and strategy on community asset transfer and management?

No as this will be different for each Local Authority. One officer for the Highland Council area would not be practicable and there would be significant resource implications. In addition, many officers have a role in the engagement with communities during the asset transfer process. The Council does have Ward Managers who can act as a useful first point of contact.

10. Would you recommend any other way of enabling a community to access information on public sector assets?

The Government could consider developing the E-p-Pims property information management system and making this more widely available. This would be a better use of resources than public sector agencies all doing separate things.

Allotments

11. What, if any, changes should be made to existing legislation on allotments?

Highland Council's support for allotments has seen 11 new sites established since 2007, a significant addition to the 6 sites in place before 2007. In the current programme, we aim to add further sites by 2014. Our programme also includes encouragement of community growing and we will be reviewing how we can support grow-your-own initiatives as well.

Highland Council's allotments policy takes an asset-based approach to increasing allotment provision and realising the benefits for health, environment and communities. It aims to support allotment groups whether they are establishing sites on our own land that of our public sector partners or land held privately. In addition to the increase in allotment sites, the main objectives of our allotments policy are to increase biodiversity, promote the health benefits of allotments and to empower communities to establish and run allotments themselves. These were reported on in March 2012. The report can be seen at the following link:

<http://www.highland.gov.uk/NR/rdonlyres/471036DD-8789-4A60-806E-68003CD25B72/0/Item5racc912.pdf>.

At present, there are 225 allotment plots on Highland Council land and a further 120 plots on other land, with a waiting list of 154.

We note that providing allotments within a specified timeframe may be proposed. This would ensure that demand is satisfied within a reasonable timeframe. There is, however, the potential to create a bottleneck on implementation of such a requirement. For example, Highland Council currently has demand for allotments which would require 22 new sites to satisfy. This number of sites is driven by the geographical separation of the communities requiring allotments. To provide all 22 sites within a single timeframe would present challenges and we would recommend that provision is made to account for this if timeframes for provision are introduced. The time taken to establish a new allotment site varies but is typically a minimum of 2 years from the point at which sufficient demand has been identified. Our recommendation would be to require that a minimum of 4 sites should be established simultaneously per Local Authority area.

In instances where no suitable land is available under local authority ownership and other landowners are unwilling to lease or sell land, the costs of compulsory purchase can be high, especially if there is opposition to the purchase. If these costs are passed on to the allotment holders, they may affect the viability of the project. Simplifying the process of compulsory purchase in these circumstances would be helpful.

Consideration should also be made to provide allotments on the basis of demand rather than by a prescribed number per head of population. Demand varies over time and between different areas, and provision needs to be able to reflect that variation. Provision of land for food growing could be supported by including community gardens, where they are used for growing food, and other community gardening projects within the definition of allotments and within any quota for provision. It would

need to be clear from the definition of allotments, whether those provided by private landowners were included in a local authority's obligation to meet any quota.

12. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Apart from the issues discussed in the answer above, allotment legislation is sufficient and within the existing legislation, Highland Council has significantly increased the provision of allotments and will continue to do so. However, to encourage grow-your-own projects which do not fall within the current definition of allotments, it would be beneficial to include community food growing projects, which are not based on allotting plots of land to individuals, within a new definition.

13. Definitions for section 2

As outlined in the responses above for Section 2, definitions of various key terms within the consultation are critical but are open to interpretation. Any legislation would need to ensure clear definitions for:

- Unused or underused;
- Right to use/Right to request/Right to challenge.
- Scale of asset/property
- Common Good
- Community Benefit

Section 3: Renewing our Communities

Leases and temporary uses

14. Should communities have a right to use or manage unused and underused public sector assets?

In principle yes. Communities can already request to use or manage unused or underused public sector assets. They are required to produce a sound business plan, demonstrate sustainability and have in place appropriate insurance cover. The Council needs to be satisfied that the resource is going to be managed appropriately therefore it would not be appropriate for communities to have the 'right' to use but they should be able to request to use and that process is already in place.

If yes:

a. In what circumstances should a community be able to use or manage unused or underused public sector assets?

As above

b. What, if any, conditions should be placed on a community's right to use or manage public sector assets?

As above

c. What types of asset should be included?

The assets to be included should be surplus and vacant property assets for which the public sector organisation has no current need.

15. Should a temporary community use of land be made a class of permitted development?

The Council appreciates the reasoning behind the suggestion, and supports the principle that communities be given the opportunity to make use of land or property that is not currently being used but is being held by an owner against future development or sale. The Council would seek means to facilitate such community use of land but the suggested implementation of this through a class of permitted development raises a number of issues.

In terms of definitions, how should temporary be defined in terms of a class in the General Permitted Development Order (GPDO)? Also, if permitted development rights (PDR) are granted should these be time limited and should any exemption under the GPDO apply to buildings as well as to land?

The issues relating to use of land are generally the same whether the use is temporary or not. To grant PDR for such uses on a temporary basis without the requirement to undertake necessary investigations/works in relation to flood risk, archaeology, contaminated land, etc might be seen to be prejudicial against applicants who may seek to implement a similar use but without the benefit of PDR.

Temporary uses may be significant generators of traffic in their own right with transportation implications as a result. Certain temporary uses – such as car parking – might raise other issues relating to access for example. Might uses need to be excluded from PDR if they involve the formation of an access?

There would be inevitable issues of monitoring and enforcement unless reliance is to be placed on the landowner to secure this through the temporary use agreement.

16. Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?

A genuinely temporary and intervening use of land would not be given much weight as a material planning consideration in the determination of a later application for planning permission. However, much depends on how *temporary* is defined.

17. Are there any other changes that could be made to make it easier for landlords and communities to enter into meanwhile or temporary use agreements?

As outlined above, the concept is a good one but there are considerable hurdles to be overcome to put it into practice.

Dangerous and defective buildings

18. What changes should be made to Local Authority's powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building Act 2003?

It is suggested that if the owner of a property is untraceable then very little can be done to recover the costs for works carried out.

The Act sets out the power of the local authority to take urgent action on a dangerous building to reduce or remove danger in the event of failure by the owner to comply with any notice given. The LA is empowered to recover any expenses reasonably incurred from the owner.

There is a distinction to be drawn between the power to recover costs and the effectiveness of recovery. If the owner is untraceable recovery of the costs incurred will be ineffective and uneconomic.

Charging Orders was removed from the legislation when the new 2003 Act was introduced. The removal of Charging Orders has resulted in LA's often not being able to recover costs. The re-instatement of Charging Orders would allow the LA to place a burden on properties where the owner could/would not pay or where an owner cannot be traced.

In addition to the above, responsibility for *defective building* needs to have greater emphasis and clarity in law as a means of preventing building becoming dangerous.

The condition and appearance of some of the buildings in our villages, towns and cities would clearly indicate that there is a need for a more proscriptive approach to owners responsibilities for the inspection and maintenance of their properties on a regular basis.

The introduction of the compulsory inspection and maintenance of buildings by competent personnel should be accompanied by a publicly available register. There is obviously a resource issue associated with such proposals. The alternative however is the continuing deterioration of the built environment with all the associated risks to the properties and to life and limb. There is also the hugely negative visual impact that poorly maintained buildings have on the every-day lives of the people who live in, work in and visit these streetscapes.

19. Should a process be put in place to allow communities to request a Local Authority exercise their existing powers in relation to dangerous and defective buildings under the Building Act 2003?

There is already a process in place. If a complaint is raised then the Local Authority investigates the claim.

Compulsory Purchase

20. Should communities have a right to request a Local Authority use a compulsory purchase order on their behalf?

Communities already can request for the Local Authority to use a compulsory purchase order on their behalf. If the community has a strong business case, demonstrates sustainability and it is in the community's interest, then the Council would consider whether to assist. Under current rules the Local Authority can use a compulsory purchase order on another's behalf if it is for regeneration purposes.

However, it is important to note that any financial and ancillary costs arising from such action would need to be met by the community.

The Local Authority must be in the position to be make the final decision on whether to progress an action or not. The impact of any action requires to be considered, along with whether there is any conflict of interest. Accountability for the action also needs to be considered. Therefore, the current rules enabling communities to request an action is taken on their behalf is sufficient.

If yes:

- a. ***What issues (in addition to the existing legal requirement) would have to be considered when developing such a right?***

NA

21. Should communities have a right to request they take over property that has been compulsory purchased by the Local Authority?

A formal right to **request** is acceptable but this would be contingent on a reasonable business case being put forward.

If yes:

- a. ***What conditions, if any, should apply to such a transfer?***

Power to enforce sale or lease of empty property

22. Should Local Authorities be given additional powers to sell or lease long-term empty homes where it is in the public interest to do so?

Yes in principle but it needs to be recognised that some places are empty for legitimate reasons, for example estates being settled. It is also questionable whether the Council should have the powers to sell or lease property when under the terms of the Human Rights Act, people have the right to own property.

Any process for bringing empty homes back in to use would be challenging and resource intensive for any Local Authority to undertake. Given the complexities of this area, it should perhaps be considered that this element be investigated separately and included within a separate piece of legislation.

If yes:

- a. ***In what circumstance should a Local Authority be able to enforce a sale and what minimum criteria would need to be met?***
- b. ***In what circumstances should a Local Authority be able to apply for the right to lease an empty home?***
- c. ***Should a Local Authority be required to apply to the courts for an order to sell or lease a home?***

23. Should Local Authorities be given powers to sell or lease long-term empty and unused non-domestic property where it is in the public interest to do so?

In principle, the Council would be supportive but only if there is a clear business case and that any action is cost neutral to the Council. Perhaps any legislation also needs to consider the responsibilities of private owners and not merely additional powers for the Local Authority.

The Council would only want to exercise such powers as a last resort, perhaps where a community is declining and to ensure the sustainability of that community. Compulsory purchase can probably already be used for this purpose.

The Council would not be in a position to sell or lease the property until such time as the Council had acquired the property. In the event that the owner was unwilling to agree to such a transfer the cost of compulsory acquisition, if this were to be available, would have to be considered.

If yes:

- a. In what circumstances should a Local Authority be able to enforce the sale or a long-term empty and unused non-domestic property and what minimum criteria would need to be met?**
- b. In what circumstances could a Local Authority be able to apply for the right to lease and manage a long-term empty non-domestic property?**
- c. Should a Local Authority be required to apply to the courts for an order to sell or lease a long-term empty non-domestic property?**

24. If a Local Authority enforces the sale of an empty property, should the local community have a 'first right' to buy or lease the property?

No, this would not be appropriate.

If yes

- a. In what circumstances should a community have the right to buy or lease the property before others?**

25. Definitions for section 3

As outlined in the responses above for Section 3, definitions of various key terms within the consultation are critical but are open to interpretation. Any legislation would need to ensure clear definitions for:

- Long term empty property;
- Community;
- Temporary;
- Right to use/Right to request.

Question 22 Further Details

Village Halls' Transfer

Background

The transfer of 10 council-owned halls to community groups resulted from a Council decision to equalise its support for village halls. This was partly driven by:-

- A desire to address significant historic anomalies in support
- The need to ensure that the Council had a consistent policy and approach to halls
- A requirement to make budget savings

- The belief that communities could become more engaged and empowered through the ownership and management of assets

From the outset the Council recognised that because each community was different, had different capacities and were starting from different development points the timescales to achieve the transfers would also be different for each hall. Accordingly, although most halls had transferred within eighteen months to two years, the final hall did not transfer until some three years after the process started.

Although the process was led by the Education, Culture & Sport Service, elected members, other council services and external partners were closely involved with and major contributors to the process which included engaging with communities in the following ways.

- Public meetings
- Meetings with individual community groups
- Providing key contacts for each hall from the community learning and development team to work on an on-going basis with them and answer any questions they had. This frequently involved liaising with other council services and partners to be able to provide information and advice on a wide range of issues from property and legal matters to financial and legislative requirements.
- When these members of staff were made redundant halfway through the process, the CVS network provided invaluable support by offering individualised free training to community groups on a range of topics such as the roles and responsibilities of committees; financial management and business planning
- Running village hall seminars with CVS partners to provide networking opportunities for transferring hall groups; opportunities to learn from the experiences of successful independently run halls; provide information on the top topics that the community groups said they needed more detailed information about such as fundraising, environmental health, licensing laws.

The Council took the decision to transfer the halls with an Economic Development Burden (EDB) to preserve the value of these assets for the benefit of communities and to protect the public purse.

Main Outcomes

1. The Council now has fair and consistent policy and approach to village halls
2. It has helped to encourage community capacity building and social cohesion. The transfer process has directly led to the establishment of 3 new community organisations and the strengthening 7 existing groups. In some instances the transfer process brought previously disparate groups within the community together to “save the hall”.
3. It has helped to empower communities through the provision of a valuable asset to be owned run and managed by local people. The process has resulted in approximately £1m of previously council owned assets being successfully transferred to communities

4. It has helped to promote a “bottom up” approach to community development. When the halls were run by the Council they were heavily subsidised and significantly under-used. The lack of resources to upgrade, develop or promote them also meant that most were simply venues-waiting-to-be-hired. Communities are now able to make their own decisions, develop their own programmes and undertake their own promotional work. This has resulted in several of the transferred halls already reporting a significant increase in user numbers and user groups and one has already turned a deficit of £12k into a surplus of £7k.
5. It has opened up significant external funding opportunities to communities which were not available when the halls were council-owned. Since transferring, three halls have attracted over £0.5M for refurbishment and upgrading projects and several others are in the process of planning and making similar funding applications.
6. It has helped to ensure valued local facilities remains available for community use. In the present economic situation, it was recognised that there was a very strong likelihood that the Council would have significantly reduced resources to maintain or refurbish buildings or actively develop them. The Council decided to transfer the halls with an EDB to help ensure that the assets remain in community ownership.
7. It has helped the Council to save approximately £70k from its revenue budgets and has relieved it of the burden of on-going repairs and maintenance for 10 properties.

Applecross Filling Station

Applecross is a community of about 200 people located on a remote peninsula in Wester Ross. Lochcarron, the nearest village of any size is 17 miles away across the steepest mountain pass in Britain and in winter, when the pass is often closed by snow, the alternative coastal route becomes 37 miles. Certainty of fuel supply has always been important to the community and in 1993 a new filling station was established on Council-owned land in the middle of the village. While the land remained in Council ownership, the filling station infrastructure was owned by the Community Council and operated by means of a lease agreement to the village shop.

By 2008 this complex agreement was becoming problematic: high fuel prices and low turn-over meant that the shop had difficulty financing the fuel side of the business; increased realisation that the Community Council lacked any form of limited liability meant that Community Council office bearers were becoming anxious about their personal exposure to risk; the age of the pump infrastructure meant that renewed investment was going to be required to ensure long-term viability.

In 2009 a new charitable, not-for-profit Community Company was set up. Ownership of the pumps was passed from the Community Council to the Community Company and ownership of the underlying land was transferred from Highland Council. The

Community Company was able to raise the funding required to refurbish the facility, installing new pumps and a card-only payment system which enabled 24 hour operation.

Having been formed around the immediate issue of resolving a fuel crisis in the village, the Community Company is now progressing a range of community development projects. One of these is a project to take ownership of the village's public toilets, which are adjacent to the petrol pumps, with a view to refurbishing and improving the facility. The Highland Council is working with the community to transfer this further asset into community ownership and it is hoped that the legal process will be completed by December, so that the refurbishment can be carried out over the winter months and finished in time for the 2013 tourist season.

This case highlights a number of key points in the Community Empowerment debate:

- Lack of limited liability makes Community Councils poor vehicles for ownership of community assets.
- Transfer of assets to the Community can unlock the potential needed to revitalise local services.
- Once a community has taken responsibility for a vital community asset, it becomes more willing to take on other support roles in the community.
- Asset transfer can be a win/win for Community and Local Authority, delivering improved service at lower cost.