

EAST RENFREWSHIRE COUNCIL

CABINET

30 January 2014

Report by Deputy Chief Executive

CONSULTATION ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

PURPOSE OF REPORT

1. To seek Cabinet approval of the East Renfrewshire Community Planning Partnership's draft response to the Scottish Government's Consultation on the Community Empowerment (Scotland) Bill. The draft response is attached to this report.

RECOMMENDATION

2. The Cabinet is asked to consider and approve the draft response (included at Annex 1) to the Scottish Government's Consultation on the Community Empowerment (Scotland) Bill.

BACKGROUND

3. The Scottish Government has stated its clear purpose to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth, and it is determined to work in partnership across Scottish society to deliver on that purpose.

4. The government's Programme for Scotland 2013-14 placed community empowerment and public service reform at the heart of its agenda. The Community Empowerment (Scotland) Bill is intended to provide a legislative underpinning that will support and drive forward these key areas of policy.

5. This is the Scottish Government's second round of consultation on the proposed Community Empowerment (Scotland) Bill.

6. The first phase of consultation during the period June to September 2012 was an exploratory consultation seeking the views of stakeholders on potential proposals for greater community empowerment. East Renfrewshire Council provided an in-depth response to the initial consultation and this was approved by Cabinet in September 2012.

7. In November 2013 the Scottish Government issued a consultation outlining the draft Community Empowerment (Scotland) Bill, resulting from analysis of responses from the initial consultation in 2012. This second phase of consultation has a more technical focus, seeking stakeholder views on the specific provisions of the draft Community Empowerment (Scotland) Bill and further detailed policy proposals which do not yet appear in a draft Bill.

8. It is worth noting that some of the proposals consulted on in the exploratory consultation have not been taken forward including proposals that community councils are involved in the delivery of services, having a named accountable officer for community participation and the community right to manage areas of spending.

CONSULTATION DOCUMENTS

9. The Scottish Government's consultation paper (available at <http://www.scotland.gov.uk/Resource/0043/00437584.pdf>) consists of the draft Bill itself (24 pages) and this is supported by a detailed 55-page consultation paper with specific questions within each section. Respondents are required to read the consultation paper and the associated sections of the draft Bill, where relevant, in order to comment on the consultation questions.

10. The consultation document itself consists of six chapters. Chapters 1 and 2 simply provide introduction and background and Chapter 6 is about assessing the impact of the proposals. Chapters 3, 4 and 5 cover the key proposals for consultation with 76 consultation questions, as detailed below.

- i. Chapter 3 covers proposals which have already been subject to some consultation, and on which draft legislation is provided for comment, including:
 - Community right to request rights in relation to property
 - Community right to request to participate in processes to improve outcomes
 - Increasing transparency about common good
 - Defective and dangerous buildings – recovery of expenses
- ii. Chapter 4 sets out detailed policy proposals on issues which have been discussed in more general terms elsewhere, but have not yet reached the stage of draft legislation, including:
 - Improve and extend community right to buy
 - Strengthening community planning
 - Allotments
 - Local relief schemes for non-domestic (business) rates
- iii. Chapter 5 proposes some new policy ideas on wider issues about the organisation of central and local government and how we express our ambitions for creating a successful Scotland, including:
 - Scotland Performs
 - Subsidiarity and local decision making

11. The East Renfrewshire CPP's response, attached in Annex 1, is structured in line with the chapters of the consultation document and as a result of the specific and technical nature of many of the questions, the responses to each question are relatively technical and detailed. Please note that the CPP has not responded to all of the consultation questions, only those where there are views and comments held by the relevant organisations.

EAST RENFREWSHIRE RESPONSE – MAIN POINTS

12. In general, the CPP is supportive of the proposals and recognises the need for legislation in this area. Our response comments that there is limited focus on building community resilience and developing sustainable solutions. However we do recognise that the Bill is intended to provide the legislative framework to support other strategic policies such as implementation of the Strategic Guidance on Community Learning and Development.

13. Throughout the consultation document, reference is made to “community bodies” within a range of contexts. It is important that the definition of a community body in any context is as clear as possible for the resulting legislation to be consistently applied.

14. In relation to community assets, revision is required over the powers local authorities have when attributing and charging for costs around building work, in addition to a review of the requirements set out in relation to allotments – for the latter a lighter touch approach is suggested.

15. The proposals in relation to strengthening community planning build on the recommendations of the Christie Commission. East Renfrewshire CPP has embraced the change agenda for community planning since the outset and therefore is supportive of these proposals. However it is noted that specific provisions for strengthening community planning have yet to be included within a draft Bill. It is crucial that any provisions to enhance the roles played in the community planning process by partner organisations other than local authorities are robust.

16. Finally, our response stresses that it is important that the legislation fosters inclusive engagement and empowerment of communities, ensures that hard to reach members of the community are equally involved, and that decisions are made by local authorities that benefit the wider community rather than select groups.

FINANCE AND EFFICIENCY

17. There are no finance and efficiency implications to the Council in submitting this draft response.

CONSULTATION

18. Community Planning Partners and Heads of Service across the Council were invited to contribute comments to inform the draft response.

EQUALITY

19. The draft consultation response highlights the need for a clear focus on the needs of diverse communities as a consideration going forward.

CONCLUSION

20. East Renfrewshire Community Planning Partnership welcomes the opportunity to be consulted on the draft Community Empowerment (Scotland) Bill. This draft response to the consultation broadly supports the proposals, while highlighting the need for clarity in some areas.

RECOMMENDATION

21. The Cabinet is asked to consider and approve the draft response (included at Annex 1) to the Scottish Government's Consultation on the Community Empowerment (Scotland) Bill.

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Annex 1

Consultation on the Community Empowerment (Scotland) Bill

East Renfrewshire Community Planning Partnership Response

Background

This response is compiled on behalf of the East Renfrewshire Community Planning Partnership. The Community Planning Partnership (CPP) is the main vehicle through which partner organisations in East Renfrewshire come together to plan and deliver services for our local communities.

The response

We have split the consultation response into general comments, followed by key points by consultation question (and page number of the consultation document), incorporating all key points from contributing partner organisations. Contextual information relating to each question is in ***bold and italics*** and the relevant response is in normal text below.

East Renfrewshire General Comments:

- In general, the CPP is supportive of the proposals and recognises the need for legislation in this area. However while our response comments that that there is limited focus on building community resilience and developing sustainable solutions, we do recognise that the Bill is intended to provide the legislative framework to support other strategic policies such as implementation of the Strategic Guidance on Community Learning and Development.
- Throughout the consultation document, reference is made to “community bodies” within a range of contexts. It is important that the definition of a community body in any context is as clear as possible for the resulting legislation to be consistently applied.
- In relation to community assets, revision is required over the powers local authorities have when attributing and charging for costs around building work, in addition to a review of the requirements set out in relation to allotments – for the latter a lighter touch approach is suggested.
- The proposals in relation to strengthening community planning build on the recommendations of the Christie Commission. East Renfrewshire CPP has embraced the change agenda for community planning since the outset and therefore is supportive of these proposals. However it is noted that specific provisions for strengthening community planning have yet to be included within a draft Bill. It is crucial that any provisions to enhance the roles played in the community planning process by partner organisations other than local authorities are robust.
- Finally, our response stresses that it is important that the legislation fosters inclusive engagement and empowerment of communities, ensures that hard to reach members of the community are equally involved, and that decisions are made by local authorities that benefit the wider community rather than select groups.

CHAPTER 3 - PROPOSALS WITH DRAFT LEGISLATION

• **Community Right to Request Rights in Relation to Property (pages 8-9)**

The draft Bill identifies provisions that are designed to give community bodies a more proactive role in identifying public sector land and buildings that they would be interested in owning or using. East Renfrewshire CPP has provided comment on the following questions.

Q3 What do you think would be reasonable timescales for dealing with (asset transfer) requests, making an offer and concluding a contract?

East Renfrewshire comments:

It is difficult to provide specific timescales e.g. providing sufficient time to community bodies to develop business cases, obtain statutory permissions and additional funding. This could leave a Local Authority maintaining a property that is no longer in use, and in addition each property will have its own issues. A flexible approach is key.

Timescales must take into account:

- The process of community bodies becoming companies;
- Developing business plans;
- Applying for funding and undertaking other associated procedures;
- Timescales to develop community bodies will be challenging, particularly in relation to asset transfer and management.

It will be useful for the Scottish Government to note that the current Property Asset Disposal Framework allows 12 months from the date of an offer for community bodies to submit a full application (which requires a full business plan and delivery plan. This is on the basis that the Council will continue to incur costs for the security and maintenance of the property.

The draft Bill makes provisions for community bodies to appeal to Scottish Ministers should there asset transfer request be refused.

Q4 Do you agree that community bodies should have a right of appeal to ministers as set out in section 8 (of the draft Bill). Are there other appeal or review procedures that you feel would be more appropriate?

Q5 What form of appeal would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

East Renfrewshire comments;

The right to appeal should be available – the process must include hearing the aspirations of the community body and reason(s) for rejection via the Local Authority.

Q7 What costs and savings do you think would come about from the draft provisions of Bill to invite asset transfer requests?

East Renfrewshire comments:

Potential costs and savings are difficult to predict. Any additional procedures that public

bodies are required to adopt will put pressure on existing resources.

Sustained investment in community based assets is often required at early stages of a transfer, however, assets should only be released to a community body on the basis of a mid to long term business plan highlighting ability to maintain and sustain the asset. Savings should not be the key requirement of acquisitions. A community body would be likely to focus on delivery of outcomes rather than cost savings.

- **Community Right to Request to Participate in Outcome Delivery (pages 10-11)**

The draft Bill proposes that where a community body (which in this part of the Bill, specifies community councils) believes it would help to improve a outcome it will be able to make a request to the relevant public body or bodies asking to be part of the process to improve that outcome. The community body must explain what it can contribute and the public body must agree to that request unless there are reasonable grounds for refusing it.

The draft Bill provides a description of a participation request. In making the request a community body must:

- (a) specify an outcome—
 - (i) that results from, or is contributed to by virtue of, the provision of a service provided to the public by or on behalf of the authority, and
 - (ii) that is capable of being improved by the outcome improvement process,
- (b) set out the reasons why the body considers it should participate in the outcome improvement process,
- (c) provide details of any knowledge, expertise and experience the body has in relation to the specified outcome, and
- (d) provide an explanation of the improvement in the specified outcome which the body anticipates may arise as a result of its participation in the process.

Q10 Do you agree with the description of what an outcome participation request should cover?

East Renfrewshire comments:

The content of a participation request from a community body should also include a requirement of its membership to declare any interests on a personal basis as part of the process;

Sustainability of a community body is also key, particularly in relation to taking on property. It should be recognised that support and guidance from local authorities or other bodies would be required as would additional resources to ensure this is done effectively and efficiently.

It is important to consider whether community council structures are robust enough to take on these responsibilities as they feature highly within the document. This is something that East Renfrewshire highlighted in its response to the 2012 consultation.

- **Defective and Dangerous Buildings**

The draft Bill proposes to improve the powers of local authority to recover the costs of dealing with dangerous and defective buildings from the building owners and where relevant applying these to the Building (Scotland) Act 2003.

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

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

East Renfrewshire comments:

It should be simpler and more straightforward for Local Authorities to apply charges to a property or recover costs directly from the owners of dangerous or defective buildings, where they have to carry out works. Preferably this could be done under the Buildings (Scotland) Act 2003 as this is the legislation used to serve dangerous and defective building notices.

The problems faced by Local Authorities in recovering costs has tended to lead to a reluctance in some larger Local Authorities to use their current powers to carry out works, unless the building in question is immediately dangerous. This is due to the number of dangerous or defective buildings that they have. A change to Local Authority powers to allow for a more immediate method of attributing and charging for costs should be considered.

Some building owners are aware that Local Authorities have to act and refuse to discharge their own responsibilities, forcing the Local Authority to carry out works. Perhaps a penalty fine or charge, on top of the costs incurred by the Local Authority, should be considered. It should be large enough to be a deterrent to building owners who would otherwise refuse to carry out any necessary works to their properties.

We are also aware that The Dangerous & Defective Buildings (Recovery of Expenses) (Scotland) Bill was introduced to the Scottish Parliament on 30 October 2013 and we await the outcome.

CHAPTER 4 - DETAILED POLICY PROPOSALS

This part of the consultation document covers the following detailed policy proposals, which do not yet feature in a draft Bill:

- Improve and extend the community right to buy
- Strengthening community planning
- Local relief schemes for non-domestic business rates
- Allotments
- **Extension of the Community Right to Buy**

The consultation document proposes that community bodies could have greater flexibility in how they define their community. And proposes that they should be able to define their community by use of any of the following:

- postcodes/postcode sectors
- settlement areas (defined and updated by the General Register Office for Scotland (GROS))
- localities of settlements (defined and updated by GROS)
- electoral wards (set out by the Local Boundary Commission for Scotland).

Q32 Do you agree that community bodies should be able to define their community in a more flexible way?

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

East Renfrewshire comment:

There may be cases where community members have an interest in a community asset outwith the neighbourhood in which they live. If members of a community body have an interest in an associated activity or property outwith their residential area, they must be able to demonstrate and provide evidence of connection to this.

- **Strengthening Community Planning: Role of Community Planning Partners, Governance Structures & Outcome Delivery**

The broad proposals for community planning in this part of the consultation document are to:

- i. Place increased emphasis on the planning and delivery of outcomes;
- ii. Put CPPs and their key roles and responsibilities on a statutory basis;
- iii. Place new duties on partner bodies so that the CPP can fulfil its responsibilities, and so that each partner's role in community planning is fully reflected in its own governance and accountability arrangements; and
- iv. Ensure that the external scrutiny provided by the Accounts Commission, the Auditor General and other bodies reinforces the above and supports progress towards the Statement of Ambition.

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?

Q53 What are your views on the core duties for CPPs set out above, 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?

East Renfrewshire comments:

We particularly agree with proposals for CPPs to be established in Local Authority areas and for amending the core statutory duty underpinning community planning to place stronger emphasis on delivering better outcomes.

The East Renfrewshire CPP has embraced the SOA process and has adopted this as the key strategic document for the area. Therefore we support the proposal to have a shared outcomes plan for the area.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors? What other changes may be required to make this more effective?

East Renfrewshire comments:

The proposed duties do support this engagement, however it is suggested that the local third sector interface is included on the list of organisations to which duties should apply.

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 core duties set out above achieve that? What else might be required?

East Renfrewshire comments:

Legislation must lead the way so that all partners are strongly encouraged to participate. It is important that each Partner takes a lead role where relevant to deliver shared partnership outcomes as having a lead role encourages ownership and participation.

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?

East Renfrewshire comments:

The legislation needs to strengthen and support the mandate of local elected politicians as visible and accountable leaders of the process.

Q57 Should the duty on individual organisations 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?

East Renfrewshire comments;

The list should be clearly defined to avoid ambiguity. There should be an opportunity within the legislation for this list to be reviewed and updated by Ministers in future if necessary.

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?

East Renfrewshire comments:

CPPs could share leadership roles across the partnership to secure outcomes.

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?

East Renfrewshire comments:

It is important that the audit and scrutiny framework takes account of legislative changes as they become clear. The requirements for BV2 and Community Planning audits should be examined to ensure that there is minimal overlay and duplication affecting Community Planning partners.

- **Allotments**

The policy proposals include duties for local authorities to provide and manage allotments.

East Renfrewshire comment:

The focus needs to be on issues of national concern e.g. affordable housing and care in the community rather than allotments.

Chapter 5 - Wider Policy Proposals

Chapter 5 proposes some new policy ideas on wider issues about the organisation of central and local government and how we express our ambitions for creating a successful Scotland, including:

- Scotland Performs
- Subsidiarity and local decision making

East Renfrewshire comments:

The Government should await the findings of COSLA's Commission on Strengthening Local Democracy before finalising their proposals in relation to subsidiarity and local decision making.

CHAPTER 6: ASSESSING IMPACT

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 “protected characteristics”.

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?

East Renfrewshire comments:

There needs to be wider community involvement and engagement incorporating the views of particular groups' specifically protected characteristics and those experiencing deprivation or disadvantage. There is potential that people who are well informed and more affluent may have the opportunity to be more involved rather than those from specific backgrounds, including protected characteristics. It is essential that officers are properly resourced to consider and recommend outcomes based on an understanding of the full implications of issues.

Working together with communities to develop and integrate sustainable asset-based, solution-focussed approaches such as Timebanking (Organisation to Organisation, Community to Community) in order to support these processes and share skills across the board – skill exchanges rather than relying on use of scarce funding or other limited resources – is suggested. This will enable further capacity building, empowering communities, building community resilience and use of asset-based approaches to achieve outcomes.