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Additional information:

The Council has submitted this response to the Scottish Government's consultation on proposals for a Community Empowerment and Renewal Bill, in accordance with a decision by Cabinet on 11 September 2012.

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Date	23/10/12

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Community Empowerment and Renewal Bill



The Scottish Government
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RESPONDENT INFORMATION FORM

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1. Name/Organisation

Organisation Name

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3. Please indicate which category best describes your organisation (Tick one only).

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NHS	<input type="checkbox"/>
Other statutory organisation	<input type="checkbox"/>
Representative body for private sector organisations	<input type="checkbox"/>
Representative body for third sector/equality organisations	<input type="checkbox"/>
Representative body for community organisations	<input type="checkbox"/>
Representative body for professionals	<input type="checkbox"/>
Private sector organisation	<input type="checkbox"/>
Third sector/equality organisation	<input type="checkbox"/>
Community group	<input type="checkbox"/>
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Please ensure you return this form along with your response.

Thank-you.

Community Empowerment and Renewal Bill

CONSULTATION QUESTIONS



PART 1: STRENGTHENING COMMUNITY PARTICIPATION

Community Planning

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

All areas of work should be able to demonstrate the active involvement of all relevant communities in processes and decision-making relating to outcomes, measures and associated plans.

This requires attention to the groups of people to be included. Often the interpretation is narrow: for example, economic development requires the involvement of business but we need to think in the widest possible sense, for example to include social enterprises as well as private firms.

Also it is important to enable as wide a diversity of people as possible to participate, through overcoming barriers to participation by different groups, including people of all ages and differing physical and mental abilities. Consultation and involvement methods need to be accessible to all. Certain groups including children and young people and families who are living in poverty are often seldom heard.

There must be engagement on issues at Council-wide level, but also at more local level. All parts of the local authority area should be covered by Community Planning.

Evidence of effective community engagement could include:

- documented use of/compliance with the National Standards for Community Engagement and covered in auditing (the VOiCE tool with further development);
- documented capacity building and support for communities to fulfil this role;
- an example of evidence of effective engagement with seldom-heard groups would be Community Planning Partners' commitment to implementing participation strategies - such as a participation strategy for children and young people;
- compelling evidence of effective community engagement would be to actually see physical outcomes from all the meetings etc.

In relation to many of the proposals in this consultation, we should understand that on occasion there can be competing and contradictory views or demands from within communities, and we have to be able to balance those views and take appropriate decisions.

Finally, it is important to acknowledge that councillors are themselves

elected as both representatives and leaders of their communities; they can and do play an active part in representing the interests of their constituents and communities in the Community Planning process.

Q2. How effective and influential is the community engagement currently taking place within Community Planning?

Community engagement within Community Planning has been developing and is improving but there is still a considerable distance to travel to achieve effective, informed and accountable community involvement across all community planning outcomes.

Active involvement of communities is strong in some areas of work: perhaps more so in relation to personal services (care, tenants) and less in universal services. The terms “community engagement” and “community participation” can be subject to interpretation, and there can be confusion between the different types of engagement.

For engagement to become embedded (for example, children and young people’s engagement in Integrated Children’s Services planning), it must become part of everyone’s everyday practice, from senior management to frontline staff, not an add-on or something that is seen as the role of a number of specialist workers.

Community engagement is one of the cross-cutting themes in East Lothian’s Single Outcome Agreement.

Q3. Are there any changes that could be made to the current Community Planning process to help make community engagement easier and more effective?

Current legislative requirements are adequate. However, the policy and theory of community engagement needs to be put into practice. Community Planning partners and partnerships need to actively involve communities in all areas of work and in all localities. They need to be clear specifically about what this involvement entails in terms of membership of decision making groups, etc. and provide support to communities to enable them to take on this role.

It would be helpful to have a simple and clear expression of the commitment to participatory democracy as well as representative democracy: there can be confusion and conflict between community organisations without this.

It would also be helpful to have a simple and clear expression of the formal relationship between the two local tiers of representative democracy - councillors and community councillors - and their respective roles (see section on community councils). There is an inherent overlap of roles as both are elected to represent local interests but are also expected to work in partnership.

Community engagement needs to evolve to take on board, embrace and make use of new tools and resources if it is to reach all groups and communities. For example social media is an essential tool to engage with children and young people.

Bearing all this in mind, while we believe that councils and their partners can develop community engagement further, we do not think that any perceived problems or challenges in this developing area should be addressed by a centralising approach.

The Council is supportive of the principle of extending “community empowerment” and taking measures to support and bring about sustainable community renewal. The Council Plan 2012-2017 includes a commitment to establish Local Area Partnerships to give local communities, Community Councils and local groups more say and to devolve decision-making and budgets.

However, the Council is not convinced of the merit of the proposals contained in the consultation paper.

An overarching duty to engage

Q4. Do you feel the existing duties on the public sector to engage with communities are appropriate?

Yes, existing duties are adequate.

Q5. Should the various existing duties on the public sector to engage communities be replaced with an overarching duty?

Yes No

Please give reasons for your response below.

We are concerned about what an overarching duty would involve, particularly about the feasibility of monitoring performance, enforcing compliance and measuring success.

If you said ‘yes’ to Question 5, please answer parts a. and b. –

a. What factors should be considered when designing an overarching duty?

Whilst **not** supporting the introduction of a new, overarching duty, if such a duty were introduced we suggest that factors to consider should include:

- involvement of people by life stage (including children, young people, young adults, older adults) ;
- communities of interest as well as geographic communities;

- thematic areas of interest e.g. health and well being;
- relationship with neighbourhood/ locality planning;
- performance management;
- staffing and training;
- resourcing;
- the ability to make use of existing services such as schools to reach specific groups of people.

b. How would such a duty work with existing structures for engagement?

N/A

Community Councils

Q6. What role, if any, can community councils play in helping to ensure communities are involved in the design and delivery of public services?

A Community Council's fundamental purpose is 'to ascertain, co-ordinate and express to the local authority, the views of the community it represents.'

Community councils can and do already act as a representative voice for communities.

East Lothian Council is committed to a good and constructive relationship with community councils and appreciates their role.

However, there are undoubted challenges in establishing the capacity of community councils to form appropriate relationships for regular community engagement, and in resourcing that capacity. Community councillors are volunteers; we cannot afford to be unrealistic about the time and skills required effectively to broker community involvement or be involved in the design and delivery of public services.

Perhaps community councils could be community partners in the design and delivery of services, within the framework of a local area plan based on an agreed vision for the locality. However, they do not have the capacity or remit to do this on their own, which is why there is a need for neighbourhood/ locality planning involving as wide a range of community interests as possible.

Q7. What role, if any, can community councils play in delivering public services?

East Lothian Council is supportive of community councils and supplies a budget to community councils for local priority projects. This devolves responsibility for a wide range of community enhancement projects.

However, community councils were not set up to deliver public services and it is difficult to see how they could develop this as a role beyond the (undoubtedly crucial) statutory role they already have, without a serious review at national level of the different levels of engagement and delivery including the functions of local authorities themselves. In East Lothian the Council believes we have the balance of responsibility (Local Priorities Scheme) just about right.

If community councils were to take on a direct delivery role they would require to be formally constituted in a different way in order to adequately manage resources with formal governance arrangements and accountability (for example through constitution as a local development company).

Q8. What changes, if any, to existing community council legislation can be made to help enable community councils maximise their positive role in communities

We would suggest clarification of the scope of the role in relation to the range of issues in which community councils are involved, including reference to community planning.

Community councils would need to commit to developing their capacity and skills base, beyond induction for members.

At a national level, we should look at resourcing, possibly at enabling community councils to buy independent support from accredited organisations.

Any new legislation should also address the perceived overlap in the remit of other prescribed community representative structures (such as tenants groups) with the remit of community councils.

Third Sector

Q9. How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?

The development of the third sector interfaces is a first step to ensuring more effective involvement of the third sector as full community planning partners. Further work is needed to:

- achieve integration of the third sector to become a strong local voice in community planning in each area;
- develop capacity to operate and deliver effectively;
- demonstrate the contribution the sector makes to the local economy and across the different areas of work.

Single Outcome Agreements should demonstrate partnership strategies to

actively strengthen the capacity of the third sector as well as the community sector. This could include consideration of a shift in resources to the sector and the impact of this work on third sector capacity.

The third sector can and does work to support the engagement of hard to reach groups.

National Standards

Q10. Should there be a duty on the public sector to follow the National Standards for Community Engagement?

Yes No

Please give reasons for your response

East Lothian Council does not support the creation of new and unnecessary duties on local authorities.

The Standards were not devised or written to be legislative duties but as a form of 'best practice'.

The duty being suggested would be difficult, if not impossible, to enforce. The Standards can be interpreted and implemented in different ways.

A key issue is the one of proportionality. The legislative standards would be far too onerous and unachievable if applied to all forms of public engagement undertaken by public bodies.

Community engagement plans

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

Yes No

Please give reasons for your response

East Lothian Council does not support the creation of unnecessary duties on local authorities.

Merely making it a duty to publish a 'plan' does not ensure that the plan is meaningful or fit for purpose. The creation of the duty would entail guidance on the content, structure or scope of such a plan; i.e. centralisation. Resources would need to be allocated to monitoring compliance etc.

Local authorities should have the discretion to publish their own community engagement plans meeting their own and their communities' needs rather than have to meet a restrictive public duty to do so.

East Lothian Community Planning Partnership has adopted a Community Engagement Strategy for East Lothian, and East Lothian Council also its own Consultation and Engagement Strategy.

If you said 'yes' to Question 11, please answer part a. –

a. What information would be included in a community engagement plan?

N/A

Auditing

Q12. Should community participation be made a more significant part of the audit of best value and Community Planning?

No.

Audits of best value and Community Planning are moving towards concentrating on auditing the outcomes of the processes rather than the inputs. Focussing on trying to audit 'community participation' would be a move back to auditing inputs and processes.

We note the use of the term community participation rather than community engagement in this question, reflecting the difficulty in ensuring consistency of terminology and meaning in this issue.

Named Officer

Q13. Should public sector authority have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Yes No

Please give reasons for your response

Speaking from our point of view as a local authority, it is impracticable to have one point of contact for "communities".

It is better to have people directed to an officer who knows about the particular issue they want to raise.

Whilst there will be circumstances where one officer or one "hub" can coordinate and oversee engagement and participation, we do not think that this should be a legislative requirement.

Tenants' right to manage

Q14. Can the Scottish Government do more to promote the use of the existing tenant management rights in sections 55 and 56 of the Housing (Scotland) 2001 Act?

Yes No

Please give reasons for your response

This is difficult to answer with a straight “yes” or “no”.

We are working within the current arrangements. East Lothian Council Housing and East Lothian Tenants and Residents panel have enjoyed a long-standing and strong partnership working when developing housing policies, monitoring service delivery/performance and agreeing Business Plan priorities. This work is being developed further with the development of the new Social Housing Charter which will set out the standards of service delivery that tenants can expect to receive.

Q15. Should the current provisions be amended to make it easier for tenants and community groups to manage housing services in their area?

Yes No

Please give reasons for your response

This is difficult to answer with a straight “yes” or “no” because tenants are already empowered through the Housing (Scotland) Act 2001 with a statutory right to be consulted on housing and related policy matters. In East Lothian this commitment has been well-supported to enable meaningful involvement of our tenants at a high level of influence.

The East Lothian Tenants and Residents Panel (ELTRP) is the umbrella organisation for all of the local tenants and residents groups across the county. The new Social Housing Charter will further enshrine this key role tenants play in influencing housing policy and service delivery.

Community service delivery

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Yes No

Please give reasons for your response

Rather than looking to community groups themselves to deliver public sector contracts, we should be working with the third sector through voluntary organisations and social enterprises.

Local authorities are increasingly working with the ‘enterprising third sector’ to develop various forms of ‘co-production’ to deliver public services.

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Yes No

Please give reasons for your response

This is difficult to answer with a straight “yes” or “no”, because communities already have the right to challenge service provision: both through the existing democratic process, and through the complaints procedures which councils have.

We would not support the legislative creation of a new right which would bypass councillors' responsibilities.

If the Government were minded to go down this route, we would want careful thought to be given as to how to distinguish the concerns of individuals from the thoughts of "communities".

Our Commissioning Strategy for Children's Wellbeing aims to ensure that the views of service users and their families inform the commissioning and direction of future services. Consultation with children, young people and their families is key to ensuring best value. However this also needs to be balanced with the right of families to a quality service and ensuring the safety and wellbeing of all children and young people.

The new Social Housing Charter, being developed in conjunction with our tenants, will set out clear standards of service which tenants can expect to receive from ELC as their landlord. Performance information showing actual outcomes against targets will be publicly available and will enable tenants to hold their landlord to account if the agreed standards are not being met.

Community directed spending – participatory budgeting

Q18. Should communities have a greater role in deciding how budgets are spent in their areas?

Yes No

Please give reasons for your response

Yes, but it would be an unwelcome form of centralisation to impose a duty governing how, when and to what extent communities are given a greater role in deciding how budgets are spent.

East Lothian Council, along with many other local authorities and Community Planning Partnerships, is developing proposals for Local Community Planning which involve devolving decision making to local communities.

Q19. Should communities be able to request the right to manage certain areas of spending within their local area?

Yes No

Please give reasons for your response

This is difficult to answer with a straight "yes" or "no", because communities are already able to make such requests.

East Lothian Council already involves communities in the management of areas of spending, through for example local management committees for

our community centres, the use of community trusts, and the provision of Local Priority Scheme funds to community councils.

Communities do not always have the capacity or the will to manage areas of spending. In two recent consultations in East Lothian, the conclusion was that the community preferred the Council to continue to manage schools and cultural services rather than create a community-led new vehicle or 'outsource' more services to a Trust.

If you said 'yes' to Question 19, please answer parts a., b. and c. –

a. What areas of spending should a community be responsible for?

N/A

b. Who, or what body, within a community should be responsible for making decisions on how the budget is spent?

N/A

c. How can we ensure that decisions on how the budget is spent are made in a fair way and consider the views of everyone within the community?

N/A

Definitions for Part 1

Q20. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 1. Please also give us examples of any definitions that you feel have worked well in practice

The differences between participation, consultation and engagement and empowerment need to be clearer as they mean different things.

- **Participation** is about providing choices and opportunities for people to have an input into decisions that affect their lives. It is about talking, listening to and hearing people as well encouraging and supporting them to contribute, and acting on their views and ideas whilst being open, honest and realistic with them on the levels of involvement they can have.
- **Consultation** is the process by which people are asked their opinions. Consultation requires a commitment to listen, give due weight to the views expressed and feedback outcomes to the people consulted

PART 2: UNLOCKING ENTERPRISING COMMUNITY DEVELOPMENT

Community right to buy

Q21. Would you support a community right to buy for urban communities?

Yes No

Please give reasons for your response

To provide equity with rural communities.

If you said 'yes' to Question 21, please answer parts a., b. and c.:

a. Should an urban community right to buy work in the same way as the existing community right to buy (as set out in Part II of the Land Reform (Scotland) Act 2003)?

Yes.

b. How should an 'urban community' be defined?

The Office for National Statistics defines an urban area as: "an extent of at least 20 ha and at least 1,500 census residents." Separate areas are linked if less than 200 m (220 yd) apart.

However there should also be some consideration given to communities of interest within an area, not just geographical communities.

c. How would an urban and rural community right to buy work alongside each other?

They would work in the same way in terms of level of access to support – if anything rural communities would need more support.

Community asset transfer

Q22. The public sector owns assets on behalf of the people of Scotland. Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?

- Where there are clear non-financial benefits identified for the community in taking over such an asset.
- Where the financial value of community use of an asset transfer can be calculated to allow deductions from market value to be justified.
- Where a transfer will result in savings to the Council.

In many circumstances it will be appropriate for the council to retain

ownership of an asset but have it run by a local management committee drawn from the community. Assets – particularly buildings – can also become liabilities, and it would be sensible to consider how a community would propose to assess, monitor and meet its liabilities in respect of an asset.

Please also answer parts a. to d. below:

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

Business case including Social Return on Investment (SROI) indicators to demonstrate future sustainability of transfer.

Good governance documentation.

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

All information held on asset register including condition surveys, floor plans, title constraints, rateable values etc.

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

Ensure relevant advice and support is provided to ensure that the group has the capacity to fulfil its requirements.

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

- Agreement to use the asset for the agreed purpose(s);
- Transparency of accounts, governance etc;
- Regular reporting on SROI indicators if applicable;
- Agreement that asset reverts to public sector body should conditions not be met (e.g. poor maintenance);
- Timescales to be agreed.
- Facilitation of monitoring by the authority (e.g. by including authority link officer in meetings and enabling his or her access to the facility).

Q23. Should communities have a power to request the public sector transfer certain unused or underused assets?

Yes No

Please give reasons for your response

This is difficult to answer with a straight “yes” or “no”, because communities

are already able to make such requests. Subject to similar considerations as given in response to Q22:

- communities can often utilise assets more flexibly than the public sector;
- communities can access funding streams denied to local authorities;
- assets can support delivery of local objectives which may not be a priority for the public sector, particularly in the current financial climate.

However, local authorities should consider every request on its merits and should be able to agree or reject such a request.

Q24. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

Yes No

Please give reasons for your response

Communities already have the right to *request* the transfer of ownership and local authorities should consider every request on its merits and should be able to agree or reject such a request.

However, we do not believe that there should be an automatic right for communities to buy assets which they have managed or leased as there could be legitimate and sound reasons why the local authority would not want to sell the asset:

- to do so might pre-empt other possible decisions on potential uses;
- it could inhibit councils from agreeing long-term leasing arrangements;
- assets could be vulnerable to the formation of “breakaway” groups.

If you said ‘yes’ to Question 24, please answer part a:

a. What, if any, conditions should be met before a community is allowed to buy an asset in these circumstances?

If the right to buy an asset were to be granted we suggest that the conditions to be met should include:

- consideration to clawback/ sharing of profit if asset is disposed of;
- possible restrictive condition re sale – for example, requirement to offer the public authority first right to buy back.

Common good

Q25. Do the current rules surrounding common good assets act as a barrier to their effective use by either local authorities or communities?

Yes No

Please give reasons for your response

The current rules surrounding common good assets can cause uncertainty, confusion and expense.

Current legislation requires a Local Authority to make a judgement call on whether or not there is “any question as to the right of the Local Authority to alienate” Common Good assets, whether by sale, lease, grant of security etc. There is no clear guidance available on determining this question. If it is deemed that there is a question, then court authority in terms of Section 75 of the 1973 Act is required for any planned alienation. Often the courts will be asked to rule on whether there is a question or not. Members of the public can challenge such court applications, and indeed challenge a decision by a Local Authority that an application to the court is not required.

Q26. Should common good assets continue to be looked after by local authorities?

Yes No

Please give reasons for your response

Local Authorities have always been seen as the custodians of Common Good assets and seem better placed to carry out that role than private individuals or groups.

- (a) The duty should be to hold the assets for the benefit of the relevant local communities, and to look after, maintain, repair and insure the assets, and utilise them for the public benefit, as opposed to Council convenience/preference. So long as Common Good status continues to exist in some form, such assets should be held and accounted for separately from general Local Authority assets.
- (b) It would not be unreasonable for there to be a right for communities to be consulted, especially on any significant or potentially “controversial” plans for assets, such as building demolition or large commercial leases with no immediately obvious community benefit. However, passing on the right to decide to communities seems incompatible with the Local Authority retaining ownership and responsibility- the right to decide should run with ownership.

If you said ‘yes’ to Question 26, please answer parts a. and b.:

- 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?**

Common good assets should continue to be looked after by the local authority for the clear benefit of their communities, either by means of revenue from lease to Common Good fund or through their direct function. Common Good assets should continue to be accounted for separately, for the sake of transparency.

- 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 should be consulted on how income is spent. However, it is unclear how this could be turned into a 'right' and how this 'duty' would be enforced.

If you said 'no' to Question 25, please answer part c.:

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

N/A

Asset management

Q27. Should all public sector authorities be required to make their asset registers available to the public?

Yes No

Please give reasons for your response

For the sake of transparency and accountability and in keeping with the principles of Freedom of Information.

If you said 'yes' to Question 27, please answer part a.:

a. What information should the asset register contain?

- Address, type and use of the property;
- Rateable value;
- Some caveat that properties with sensitive uses may have been excluded from the register.

Q28. Should all public sector authorities be required to make their asset management plans available to the public?

Yes No

Please give reasons for your response

For the sake of transparency and in keeping with the principles of Freedom of Information; recognising that commercially sensitive information may need to be 'redacted'.

If you said 'yes' to Question 28, please answer part a.:

a. What information should the asset management plan contain?

- Public sector body's vision and objectives;
- Key drivers;
- Governance and organisational arrangements;
- Priorities for investment;
- Summary of individual asset management plans;
- Capital investment planning process.

Q29. Should each public sector authority have an officer to co-ordinate engagement and strategy on community asset transfer and management?

Yes No

Please give reasons for your response

It is for each public sector authority to determine its staffing structure and the roles of its officers. The role outlined in the question could fall on several officers depending on the structure of the authority. Stating that there should be a single officer to perform a certain role would be restrictive.

Q30. Would you recommend any other way of enabling a community to access information on public sector assets?

No.

Allotments

Q31. What, if any, changes should be made to existing legislation on allotments?

In the current legislation if there is a demand for and an opportunity then a local authority can, if it so wishes, provide allotments, but it does not have to. Where the opportunity has arisen, East Lothian Council has taken measures to provide allotments in accordance with statute.

There should **not** be a specific timescale for allotment provision or specific number per head of population. There is too much local diversity of availability of land for this to be achievable.

Q32. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Planning Policy could require the Local Development planning process to identify suitable land for allotments in each community. This could form part of the Local Development Plan consultation process. Possibly, there could be a requirement within planning legislation for developments of over a certain size to provide space for grow-your-own projects. This does not just have to be in housing developments but would include business parks, industrial estates etc.

Definitions for Part 2

Q33. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 2. Please also give us examples of any definitions that you feel have worked well in practice

N/A

PART 3: RENEWING OUR COMMUNITIES

Leases and temporary uses

Q34. Should communities have a right to use or manage unused and underused public sector assets?

Yes No

Please give reasons for your response

Communities are already able to **request** to use or manage unused or underused assets and local authorities should consider every request on its merits and should be able to agree or reject such a request.

There may be benefits in granting such requests. For example:

- Communities can access funding not available to local authorities to regenerate communities and increase provision.
- Underused areas of open space could be used for community growing projects or, if of appropriate size, could be developed as a community garden or local park.

However, every case/ request should be considered on its merits and there can be no automatic 'right' for a request to be granted.

If you said yes to Question 34, please answer parts a., b. and c.:

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

N/A

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

If it is of clear benefit to the communities or their regeneration, and there is a clear vision for the asset

Good governance arrangements need to be in place.

Some form of legal agreement or lease would be required that clearly set out what uses would be permitted, the responsibilities of the local community group in managing and maintaining the ground, the transfer of liability from the local authority to the local community group and the duty of the local community group to ensure public access to the land.

c. What types of asset should be included?

N/A

Encouraging temporary use agreements

Q35. Should a temporary community use of land be made a class of permitted development?

Yes No

Please give reasons for your response

Yes, within appropriate parameters. It would give local groups confidence to enter into a temporary use agreement if they know that the temporary use they have for the ground will be permitted development. Without some form of security local groups may be reluctant to invest time and resources in the temporary use of the ground in case they would lose it all if there are objections to the land use.

Q36. Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?

Yes No

Please give reasons for your response

Yes, otherwise landowners, such as house builders, may be reluctant to enter into a temporary use agreement, which would mean the `hope` land remaining in a derelict state with a negative impact on the local community and amenity of the area.

Q37. 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?

N/A

Dangerous and defective buildings

Q38. What changes should be made to local authorities' powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

East Lothian Council has previously responded to consultations on the topic of recovering costs for work carried out in relation to dangerous and defective buildings (most notably the Private Members Bill Keeping Scotland Safe – The Building Repairs (Scotland) Bill Consultation.)

Legislation requires that a local authority must take action to make safe a dangerous building if the owner fails to react to a notice, therefore they must incur costs. As a result of charging order being removed from the Building (Scotland) Act 2003 costs can only be recovered through civil means which can be expensive to pursue and often result in low recovery rates.

The Building (Scotland) Act 2003 gives local authorities the discretionary power to act on a defective building. However, due to the lack of finance and the inability to ensure costs are recovered most local authorities are not using this power. With the lack of a legal definition of what a “defective building” is and the reducing local authority staff and financial resources even the reintroduction of charging orders may not see increased activity by Building Standards to resolve defective buildings.

In addition to dangerous and defective building legislation the Housing (Scotland) Act 2006 gives local authorities the power to service a Work Notice on owners where a house falls below the tolerable standard (BTS), is

in serious disrepair or is in disrepair and is likely to deteriorate rapidly. Non-domestic property can be included in the Work Notice where it forms part of a block containing houses. Should owners fail to comply with the notice the local authority can undertake work on their behalf. Local authorities have the power to recover any costs incurred through a Repayment Charge in relation to houses; costs related to non-domestic properties must be recovered through civil means.

Changes should be made which enable local authorities to recover costs associated with carrying out work to properties as quickly and effectively as possible. The recovery mechanisms should be the same regardless of the legislation used or building type.

Q39. 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 (Scotland) Act 2003?

Yes No

Please give reasons for your response

It is difficult to give a straight “yes” or “no” answer to this question.

Local authorities are already required to take action to make safe a dangerous building, if following the serving of a notice the owner fails to act. The local authority will investigate any complaint relating to a property which may be dangerous and as such there is no requirement for a separate process for communities to request the local authority exercises the powers.

In relation to defective buildings and houses which are Below Tolerable Standard, in serious disrepair or in disrepair and likely to deteriorate local authorities currently have discretion to use powers as appropriate. The serving and enforcement of notices is an extremely resource intensive activity, where costs can only be recovered through civil means the level of debt recovery is also a significant issue. The definitions of ‘defective’ and ‘serious disrepair’ are also open to interpretation.

Any action taken by local authorities must be proportionate, must reflect the availability of resources and demonstrate value for money. Setting a process for communities to request local authorities to use powers is likely to raise expectations beyond those that can be delivered in practice.

Consideration should be given to how communities and individuals can be better empowered to progress work on buildings where they have an interest. The Tenements (Scotland) Act 2004 gives groups of owners the right to carry out repair work to a building where the majority is in agreement and recover costs from any owner who fails to pay their share of the costs. In many cases owners will have the relevant skills, knowledge and expertise to organise works (or can be supported to do so through the local authority Scheme of Assistance) however they will not progress because they cannot get all owners to pay. While legislation enables local authorities to pay missing shares this is underdeveloped.

Finally, it is unclear why only dangerous and defective building legislation is being considered in relation to this consultation.

Compulsory purchase

Q40. Should communities have a right to request a local authority use a compulsory purchase order on their behalf?

Yes No

Please give reasons for your response

It is difficult to give a straight "yes" or "no" answer to this question.

Whilst we would support for example the use of measures to bring vacant properties back into use, much more detail would need to be provided on how 'communities' would be involved in this process.

Compulsory purchase as currently understood is only available for certain restricted purposes.

There could be significant financial implications relating to the compulsory purchase and subsequent renovation of derelict property and then significant revenue costs associated with using a property for community use.

If you said 'yes' to Question 40, please answer part a.:

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

N/A

Q41. Should communities have a right to request they take over property that has been compulsory purchased by the local authority?

Yes No

Please give reasons for your response

See Q40 above.

If you said 'yes' to question 41, please answer part a.:

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

n/a

Power to enforce sale or lease of empty property

Q42. 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 No

Please give reasons for your response

It is difficult to give a straight “yes” or “no” answer to this question.

East Lothian Council is in the early stages of developing work in relation to empty homes. However, this is clearly a priority for the Scottish Government and should form an element of any authority’s strategy to increase housing supply.

It is difficult to comment at this stage on the particular powers needed to bring empty homes back into use. However, it is clear that at present local authorities are likely to be restricted by the lack of powers to take action against owners who are unwilling or unable to engage. It is likely that powers to sell or lease long-term empty properties could be useful as part of a range of options but are unlikely to be the only answer.

It should be noted that Empty Homes Management Orders have been available for local authorities in England for some time but have had a very limited impact / use. Careful consideration should be given to the lessons that can be learned from our colleagues down South who have far greater experience in this area before embarking on a particular route.

If you said ‘yes’ to Question 42, please answer parts a., b. and c.:

a. In what circumstances should a local authority be able to enforce a sale and what minimum criteria would need to be met?

N/A

b. In what circumstances should a local authority be able to apply for the right to lease an empty home?

N/A

c. Should a local authority be required to apply to the courts for an order to sell or lease a home?

Yes No

Please give reasons for your response

Presumably this question refers to an empty home. It is difficult to give a straight “yes” or “no” answer to this question.

Any power which requires an application to the courts is likely to be complex, onerous, and as a result, underused. In relation to a right to lease, it is likely that a robust process which includes a right of appeal to the courts by the owner would offer sufficient safeguards to owners while

ensuring local authorities can use the power effectively. It may be more appropriate to require a court application in relation to an enforced sale however the criteria etc decided upon has a bearing on further comment.

Q43. 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?

Yes No

Please give reasons for your response

It is difficult to give a straight "yes" or "no" answer to this question.

Local authorities already have powers in limited circumstances.

Where land or buildings in private ownership are neglected and run-down to the extent of impacting severely on an area, local authorities should be empowered to step in as a last resort.

If you said 'yes' to Question 43, please answer parts a., b. and c.:

a. In what circumstances should a local authority be able to enforce the sale of a long-term empty and unused non-domestic property and what minimum criteria would need to be met?

As above and where property is potentially at risk. Criteria should relate to individual context, including length of time property has been unused, whether listed or in conservation area, if there is a history of anti-social behaviour, neighbour nuisance etc as a direct result.

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?

As above and if community best placed to do this.

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?

Yes No

Please give reasons for your response

This may be an appropriate safeguard but care would have to be taken not to build unnecessary expense into the process for any of the parties involved.

Q44. If a local authority enforces a sale of an empty property, should the local community have a 'first right' to buy or lease the property?

Yes No

Please give reasons for your response

Any action taken by a local authority in relation to an enforced sale must be taken with the positive benefits to the local community in mind. Therefore, a

'first right' to the community to use the property to support locally agreed priorities and initiatives would be advantageous.

If you said 'yes' to Question 44, please answer part a.:

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

Consideration should be taken as to:

- the asset's significance to community regeneration;
- evidence as to the possibilities for revitalising that asset to meet community needs;
- how the use would meet social and economic criteria (for example in generating employment and training opportunities);
- the community's capacity to take it on.

A 'first right' must not disadvantage the original owner in terms of financial compensation i.e. the sale or lease amount should not be lower than could otherwise be achieved in the market. Use of the building should be in keeping with current use, particularly in relation to right to lease.

While sufficient time must be given to enable the community to raise funds etc this must be restricted to period which is reasonable but not open ended.

Definitions for Part 3

Q45. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 3. Please also give us examples of any definitions that you feel have worked well in practice

N/A

ASSESSING IMPACT

Q46. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular group or groups of people?

N/A

Q47. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

N/A

Q48. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on the environment?

N/A

Q49. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any of the proposals in this consultation may have?

This consultation proposes the introduction of a range of duties on local government - and powers and rights to “communities” and “community groups” - which could place major pressures on local authorities at a time when they are facing other substantial changes and pressures.

East Lothian Council is supportive of community management and ownership of assets and is committed to working with the enterprising third sector and encouraging the development of social enterprises to provide services such as homecare. The Council also supports the concept of participatory budgeting and devolving decision-making and budgets. Whilst not being supportive of all the proposals in the consultation paper, the Council welcomes the further consideration being given to how local authorities can support community empowerment and renewal. The Council would be willing to take part in helping to develop these concepts and ideas in a constructive dialogue with the Government and East Lothian’s communities and enterprising third sector.

Thank-you for responding to this consultation.

Please ensure you return the respondent information form along with your response.