

**COMMUNITY EMPOWERMENT AND RENEWAL BILL  
RESPONSE FROM ARGYLL AND BUTE COMMUNITY PLANNING  
PARTNERSHIP**

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**1.0 SUMMARY**

- 1.1 This report details the response on the draft Community Empowerment and Renewal Bill on behalf of Argyll and Bute Community Planning Partnership.

**2.0 RECOMMENDATIONS**

- 2.1 That Partners note the contents of the response to the draft Bill.

**3.0 DETAIL**

- 3.1 The Scottish Government carried out a consultation with local authorities, agencies, third sector and Community Planning Partnerships on the content to be included in the draft Community Empowerment and Renewal Bill, and responses were to be submitted by the 26 September 2012.
- 3.2 A draft response was circulated to the Community Planning Partnership via the Management Committee. Amendments and additions from partners were included in the final response which is attached.
- 3.3 In some cases the response from the Third Sector Partnership differed from the response from other partners. In such cases, both responses were included, and the Third Sector Responses were noted in red.
- 3.4 A late response was received from Strathclyde Fire and Rescue Service after the final response was submitted. These comments have been noted for any future response required on the Bill.

**4.0 CONCLUSION**

- 4.1 The response from Argyll and Bute Community Planning Partnership to the Community Empowerment and Renewal Bill was submitted to the Scottish Government on 26 September 2012.

## **5.0 IMPLICATIONS**

- 5.1 Policy: None
- 5.2 Financial: None
- 5.3 Legal: None
- 5.4 HR: None
- 5.5 Equalities: None
- 5.6 Risk: None
- 5.7 Customer Service: None

## **6.0 APPENDIX**

- 6.1 Response to the Draft Community Empowerment and Renewal Bill.

**Margaret Fyfe  
Community Development Manager  
Argyll and Bute Council**

**1 October 2012**

# Community Empowerment and Renewal Bill



## RESPONDENT INFORMATION FORM

Please Note both pages of this form **must** be returned with your response to ensure that we handle your response appropriately.

### 1. Name/Organisation

Organisation Name

Argyll and Bute Council (on behalf of Argyll and Bute Community Planning Partnership)

Title Ms  Mrs  Miss  Mr  Dr  *Please tick as appropriate*

Surname

Fyfe

Forename

Margaret

### 2. Postal Address

Library Headquarters

Sandbank

Dunoon

Postcode

PA23 8PB

Phone

01369 708668

Email

Margaret.fyfe@argyll-bute.gov.uk

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

Executive Agencies and NDPBs	<input type="checkbox"/>
Local authority	<input type="checkbox"/>
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"/>
Academic	<input type="checkbox"/>
Individual	<input type="checkbox"/>
Other – please state...Community Planning Partnership	<input checked="" type="checkbox"/>

#### 4. Permissions - I am responding as...

<input type="checkbox"/> Individual / <input checked="" type="checkbox"/> Group/Organisation	
<i>Please tick as appropriate</i>	
<p><b>(a)</b> Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><b>(c)</b> The name and address of your organisation <b>will be</b> made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p> <p>Are you content for your <b>response</b> to be made available?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>(b)</b> Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available <input type="checkbox"/></p> <p>or</p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p>or</p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>	
<p><b>(d)</b> We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

Please note that for some questions it was not possible to get consensus. For a number of questions, the differing responses have been noted in black/red text.

**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?**

Appropriate structures to enable representation of views from community level to strategic level. Representation, and the evidence that communities are being represented, is vital.

Local community plans should be able to feed into area and strategic community plans.

Effective communication and transparency is vital to the whole CP process. Communities need to know the decision-making process and how it impacts at a local level. This applies to the policy and practice of all CP partners.

Training and capacity building at a local level to allow communities the power to make informed choices and to engage at a strategic level.

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

The structures in Argyll and Bute allow for good representation from partner agencies and communities, via Third Sector Partnership and Community Councils. The Third Sector Partnership has identified that the main issues around effectiveness lie with third sector and community representation. Local Third Sector Fora have been established to enable views to move up through the community planning process to Area CP Groups and to the CPP Management Committee. These third sector fora are not always well attended, which reduces effectiveness. Other mechanisms include e-bulletins and 'virtual' fora. Recent focus groups evidence that voluntary groups wish to maintain their third sector fora but also to participate in other ways, perhaps through social media.

Community Councils have Area network meetings, allowing them to be represented at Area CP Groups, but again these vary in attendance and effectiveness. Community Councils vary in terms of their capacity and therefore effectiveness in participating in engagement processes.

Annual events to engage with communities have been successful in the past, and are planned for the future. These allow for greater attendance, and by using interactive methods and tools for engagement, provide more evidence of influencing plans. Improved feedback would strengthen

confidence. Effective community engagement is an ongoing process not best served solely by one-off events but by a range of methods including, electronic, questionnaires, and smaller more localised meetings.

Video-conferencing has been used to good effect in engaging with rural and island communities, and in enabling active participation.

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

Communities are often represented by the Third Sector organisations which have the capacity, and staff, to enable attendance at meetings and events. Capacity of community groups is limited, and community engagement requires communities to feel their input is worthwhile and is making a difference. Support to build capacity of groups is vital to ensure community participation. Training is a vital component. Training needs to start with better explanation of community planning and information to demonstrate its relevance to community life. Many community groups feel they have insufficient time to attend meetings unless there are clear benefits and outcomes which relate directly to their interests.

Within this widespread rural area, every effort should be made to broaden the opportunities for rural communities to be meaningfully engaged in consultation processes.

Increased channels to target hard to reach groups and young people should be taken into consideration.

**An overarching duty to engage**

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

These are appropriate for the local authority, but may require to be increased for some other areas of the public sector.

**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.**

No consensus of opinion in this question.

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

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

YES - The diversity of communities, and in particular the remote, rural and island communities and the shared responsibility to engage.

NO - Third Sector felt that if National Standards of Community Engagement are deployed there is no need for additional duty to be imposed.

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

YES - It could work effectively if all partners had the duty placed upon them.

NO - As above, Third Sector felt to be adequate provision in existing standards if these were applied consistently.

## 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?**

Community Councils should be much more effective at carrying out community engagement- this has been highlighted by many Community Councils in a recent training needs analysis carried out, and will be part of a training programme about to be delivered.

Community Councils should make much more effective representation into local Community Planning structures at which they have direct access to service providers and the opportunity to engage directly with them on local service delivery developments and issues. Better understanding amongst Community Councils about the effectiveness of Community Planning for local communities would ensure they were better able to carry out these functions.

Community Councils should be effective vehicles for transparent communication, which is vital to the whole CP process, thereby ensuring that communities know the decision-making process and how it impacts at a local level.

Specific response from Third Sector Partnership: Some community councils felt that they were all volunteers and should not be seen as an answer to community engagement. Number said that the 3<sup>rd</sup> sector interface was better at this and had the ability to reach more communities / people – some had participated in previous community engagement work carried out by 3<sup>rd</sup> sector which has provided greater feedback than they could hope to achieve. Working together would seem the obvious pathway.

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

Community Councils have much more of role to play in engaging/influencing, than delivery of public services, though there is the potential to develop this possibility, particularly in remote and rural communities. There are other more appropriate vehicles which can play a

role in delivering public services are voluntary organisations and PSPs. Community Councils can set up community trusts or other structures which can successfully deliver services.

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

A clearly defined duty to engage effectively in Community Planning structures as the key mechanism for developing and shaping local service delivery would increase the role that Community Councils have in their communities. Improving the coordination of community councils through overarching representative forums tying in each delegate community council would make the engagement within CPPs more manageable and effective.

### **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 Third Sector can:  
Support communities to build capacity,  
Ensure their governance arrangements are fit for purpose  
Disseminate information to encourage them to participate in CP events  
Work with local authority and partners to ensure support is shared, and avoid duplication in times of limited resources  
The Third Sector Partnership is already networking formally and informally but requires additional resources and time. There are good links in place and some excellent examples of change made through those channels. Felt important to ensure third sector fora are maintained and groups encouraged to attend, with recognition that some are happy to be kept informed by email / e-bulletin and will access when need arises. In one area a monthly surgery is to be piloted on a drop in basis which if successful could be rolled out.

### **National Standards**

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

Yes X No

**Please give reasons for your response**



They are good practice, and should underpin any consultation. They are tied into the town planning process (PAN2010), but are relevant to a much broader spectrum of subjects.

Support in terms of evidencing each of the Standards would be required, so this is not too onerous or formal.

The Council's Planning Service uses different tools, so maybe need to encourage some consistency of recording.

Areas of work where they require to be followed would need to be clear. Any duty should not take away the flexibility required to work with communities.

### Community engagement plans

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

Yes X No X

**Please give reasons for your response**

No consensus of opinion.

NO - Community engagement and adherence to the community engagement standards should be an integral part of every CP Plan rather than comprising a separate plan.

YES – there should be a published plan – felt this should be a 'given'

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

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

Forward plan or calendar of forthcoming actions affecting communities.

Dates and times of access to respond and opportunities.

How and why CPP are engaging and clear outcomes.

This would support process of engagement. This can be done via 3<sup>rd</sup> sector to allow collated responses, so does not have to impact on time.

### Auditing

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

Again no consensus of opinion.

NO – however the audit should consider the actions of all partners in community participation/ engagement.

YES - if only to demonstrate that is not a 'top down' approach.

## 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**

NO - Within the local authority it would be very difficult to have **one** named accountable officer. Community engagement and participation is a responsibility of everyone, and signposting is vital.

YES - although recognise it would be challenging.

## 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**

On balance, we would not see great value or benefits in further promotion of Tenant Management Cooperatives particularly at a time of limited resources and public sector spending constraints. The evidence suggest that there has been little or no interest in this specific mechanism from Tenants over the last decade while in this authority there already is a well-established and fairly extensive culture of tenant involvement and community ownership in the housing sector. The Council stock was transferred to an RSL (ACHA) in 2006 and across the social rented sector; tenants actively lead on governance and service provision by housing associations. In addition, Argyll & Bute has been at the forefront in community right to buy and management of local housing assets, most notably on Gigha.

Therefore, we remain unconvinced of any additional merit in targeting scarce resources into further active promotion of what is evidently an unnecessary and unattractive mechanism.

**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**

As Q14 above. Existing provisions already allow for full and active participation and leadership of housing services by tenants and local communities in various forms and at varying levels. We can see no compelling reasons for further amendments in this particular instance.

## Community service delivery

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

Yes x No

**Please give reasons for your response**

Community groups are sometimes not aware of the required tender processes that local authorities are legally obliged to carry out due to their council standing orders, EU regulations etc. The processes themselves need to be made more accessible for all potential suppliers so they are aware of what tendering entails.

The Council and its CPP partners have provided additional training for 3<sup>rd</sup> sector organisations and small businesses to assist them to participate in tender activity. The tender documentation and guidance has also been revised to improve the accessibility of the process and ensure local competitiveness.

There is anticipation that the new Procurement Bill will assist this process, as well as current third sector work on tendering and contracting.

**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 x No

**Please give reasons for your response**

If the community is a stakeholder in the procurement process then yes, but challenge would have to be with Council as party to the contract. The issue is as always in the contract terms, and the contractual parties will be the council and another party. As part of the regular monitoring that council services should be undertaking via the contract and KPIs, any issues that arise from the communities should be addressed under the contract where and if appropriate. The contract management arrangements should ensure any issues that the communities raise with the council could be addressed if relevant to the service delivery. We would not recommend setting up other structures/ complaints processes beyond those already in place – we believe there is no evidence to suggest that the formal internal complaints process/ SPSO route is not effective.

Third sector partnership states that the community is always a stakeholder in any service (frequently as the end user) and should have the ability to make their needs known.

## 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**

Our experience of consulting with communities on budget savings has brought some ideas on prioritising spend and on different ways of delivery, particularly by communities in remote and island areas.

Consultation and engagement can identify real opportunity to prioritise and deliver services in different ways to meet local community needs. However this may not be appropriate to all local government services and all areas.

**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 requires careful consideration both in terms of statutory responsibilities and use of public money. A clear framework and rules would be required, but it could restrict the ability to apply funding according to prioritised need over a full council area.

Possibility of an eventual move towards small scale participatory budgeting is likely to be a challenge but would ensure community 'buy-in' and engagement.

**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?**

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

**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?**

Is not a quick process and would need to be smaller scale and local. Some of the island communities achieve a high percentage of population turnout where issues are relevant and affect them directly – possibly suitable for piloting.

## 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**

Terms are often used as interchangeable; therefore it would be useful to have consistency.

The Consultation Institute has put together 'The Consultation Charter', with a definition of 'consultation': **'Consultation is the dynamic process of dialogue between individuals or groups, based upon a genuine exchange of views, with the objective of influencing decisions, policies or programmes of action'**.

The National Standards of Community Engagement have a very lengthy definition of community engagement which includes a useful principle: **"Underlying effective community engagement is the commitment of service providers and planners to listen to those for whom services are being planned."**

## **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**

N/a Argyll and Bute is a rural area.

**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)?**

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

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

## 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?**

When the community can demonstrate that there is a sustainable future for the building, through a robust business case that stands up to evaluation.

**Please also answer parts a. to d. below:**

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

Feasibility study including a robust business plan; evidence of need; community buy-in; strong board or plan to up-skill board; constitution with relevant powers; evidence of no duplication of other services/business unless lack of capacity; Governance by an incorporated body to ensure there is some responsibility for success / failure and recourse for public sector.

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

Building conditions survey and running costs. Information on support available to assist communities, including a step by step guide and transparent process.

**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?**

Need to monitor success of transfer and of the process.

**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?**

Need to monitor against proposed outcomes and, in the event of dissolution, pass on to similar organisation for prescribed purposes.

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

Yes  No X

**Please give reasons for your response**

Communities should have an opportunity to request transfer, but this would not be expressed as a power.

**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 X

**Please give reasons for your response**

An automatic right to purchase in these circumstances may in some circumstances be contrary to Council, CCP or SOA objectives. Ultimately, in selling an asset, the Council should have the opportunity to ensure that a sale ties in with wider objectives. The proposal should also take cognisance of the Conversion of Long Leases legislation.

**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?**

### 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 X No

**Please give reasons for your response**

Common good funds whilst useful in their time are now an oddity in the 21<sup>st</sup> century. There is a blurring of responsibility in terms of Councils and common good funds. Both are responsible for public good / benefit but geographical remits and implantation of that role varies. It would be clearer to transfer common good within the local authority framework. This would allow a much more holistic and considered approach to be taken to the overall estate / asset base /resource available for public good / benefit.

Third Sector Partnership believed the common good fund (those who knew what it was) is held by the Council but not for the Council – for communities. Would like to see it taken out of Council remit and transferred to third sector who could then bid into it.

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

Yes X No

**Please give reasons for your response**

See Question 25 above.

**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?**

It would be more clear to transfer common good within the local authority framework. This would allow a much more holistic and considered approach to be taken to the overall estate / asset base / resource available for public good / benefit.

- 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?**

The same rights should apply to common good as apply to the overall budget of a local authority. The local authority should consult / make available its overall budgetary and planning proposals. Common good would also fall into this. This may also allow better use to be made of common good funds.

**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?**

Third Sector Partnership - By communities and community groups for whom they seem to be designed. Therefore by third sector or community councils, or partnership of both.

## **Asset management**

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

Yes X No X

**Please give reasons for your response**

NO - Asset registers are essentially long lists of individual assets or assets groups. They should be made available on request to the public.

YES

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

- a. What information should the asset register contain?**



Against each asset should be noted current ownership and contact details and whether held in perpetuity, how long, or if available.

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

Yes X No

**Please give reasons for your response**

Asset management plans including service asset management plans are submitted annually for Council approval so they are already in the public domain.

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

**a. What information should the asset management plan contain?**

Local authorities are obliged to ensure that their asset management plans comply with the requirements set under the Best Value 2 Regulations. Essentially, this ensures that they are defined and categorised as far as possible for condition, suitability and sufficiency. Where appropriate they also contain information on factors such as running costs, energy efficiency and utilisation rates to justify investment plans or proposals for disposal.

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

Yes X No

**Please give reasons for your response**

To enable an easily accessible first point of access for the public.

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

No – the above arrangements are simple and clear and should be supported by a publicly accessible procedure.

## **Allotments**

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

None proposed.

Third Sector was not sure what the legislation was but would like to see a register of vacant allotments available.

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

These do not require further legislative change.

### **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**

This should not be an automatic right as public authorities should have the opportunity to ensure that any proposed use is compliant with their plans and strategies as well as being safe and sustainable.

Communities and community groups would like to use or manage sometimes for short term basis and would also like to see encouragement of private sector to release empty buildings for use by community or groups - again this might be short term.

Assets should include minibuses and pool cars at times when not being used.

**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?**

See above.

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

See previous comment.

Wherever there is a good use which can be implemented whether short or long term. Participants felt this was always preferable to empty buildings and to seeing minibuses unused for holiday periods or pool cars unused out of standard working hours.

**c. What types of asset should be included?**

There need be no restrictions as long as the compliance outlined within the response to question 34 is assured.

**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**

There is no specific definition 'community use' provided. The document alludes to 'recreational purposes' or as 'growing spaces' but it would need to be specified. Whilst we are encouraged by vacant sites coming forward for new uses we would seek to retain the planning mechanism to ensure an assessment of the new proposal is considered in the context of surrounding uses. If brought forward by Community Council there is discount in fee and if compatible with surrounding land uses a positive outcome is likely.

**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**

If planning powers are retained this question is irrelevant. The current provisions of the planning system would provide due weighting to temporary uses and landowners future use / aspiration is unlikely to be prejudiced. If new PD for temporary community uses is enacted then we agree that it should not be taken into account as they only serve a time limited purpose.

**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?**

## 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?**

1. It is our view that Local Authorities should not be disadvantaged by the actions of individuals in failing to maintain or secure their buildings and it is our view that a better alternative should be available than currently exists within the Building (Scotland) Act 2003.
2. We would argue that the option for recovery through charging orders should be re-introduced but would note it should be recognised that Local Authorities still require to access funds at the time of carrying out works in order to pay the costs they have incurred in dealing with the situation; including costs incurred by contractors acting on behalf Local Authorities to rectify the danger/defect.
3. Therefore if the Scottish Government is serious about protecting the built environment and reducing the cases of defective and dangerous buildings, a support mechanism both to Local Authorities and to private industry and individuals must be in place both in monetary terms and in expertise and resource.
  - in essence, while charging orders will aid the recovery of costs options available to a local authority, they will do little to stimulate activity generally with no access available to funding for the remedial works, and
  - Equally, while charging orders will aid the recovery of costs options available to a local authority for dangerous buildings where the Local Authority has a duty to act, they will do little to stimulate activity in the defective building field, given the lack of a statutory duty to act in the case of defective buildings.
  - The re-introduction of charging orders along with the provision of a national fund allowing Local Authorities, who are carrying out work, to draw money from it to remedy the dangerous/defective building would provide Local Authorities reassurance that they could arrange to carry out the work now within current budgets, with the national fund being reimbursed once the charging order is discharged either directly by the owner or at the time of a future sale of the property.
  - The Act should contain powers to issue a charging order on a property where an owner or owners fail to pay for work undertaken by the local authority in default. Currently the lack of such power is considered to contribute to a disincentive to become involved with disrepair/ danger where the owner cannot be relied on to co-operate.
  - It would be extremely useful if Data Protection rules could be relaxed to permit all information on ownership held by a local authority can be shared within that authority provided it is for the purposes of enforcing legislation. At present for instance Local Authority Tax will not release ownership details to Building Standards.

**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**

1. Experience within Argyll & Bute is that communities can and do currently request that the Local Authority exercise its existing powers in relation to dangerous and defective buildings. As such there is no need to change the current process or procedure in this area. Building Standards staff investigating the matter use their knowledge, skill and experience to determine whether a building is dangerous or defective and if so, what action is required by the Local Authority.
2. In practice early intervention by the Local Authority in defective buildings cases does not routinely happen as intervention is not mandatory. The case for such empowerment at this time of falling budgets and falling resources within Building Standards services however is untenable without the creation of a national fund for Local Authorities to draw upon and without changes in primary legislation.
3. At present any person or group can report dangerous/ defective buildings to the local authority. Communities are no different in being able to make such requests. Ultimately the local authority must retain the power to determine as and when they decide to undertake work in default. It should be encouraged that community groups themselves should seek to work with property owners within their own area to ensure that property which may or may not be unoccupied but is in disrepair does not become a blight.

### **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**

They should have the right to request but Local Authorities must have policy and procedure to assess each request on merit based on business case and cost / benefit analysis.

**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?**

Identification of sufficient funding and expertise for CPO (can be expensive and drawn out process), business case that community is putting forward to justify using CPO. Local Authority should only proceed where 'back to back' opportunity with Community is established. Authorities need suitably qualified officers to review business cases. There is a further consideration as to how the council would recover the costs associated with the exercise of their powers on behalf of another party.

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

Yes X No

**Please give reasons for your response**

As above. In current economic climate it is unlikely that CPO would occur without 'B2B' deal being in place.

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

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

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 X No

**Please give reasons for your response**

This would potentially resolve a lot of vacant / dangerous building issues and planning amenity issue.

**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?**

If planning amenity notices (S179) have been served and not complied with and where building is becoming dangerous but before Building Standard have to intervene under Building (Scotland) Act 2003.

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

As above.

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

Yes X No

**Please give reasons for your response**

To facilitate the above.

**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 X No

**Please give reasons for your response**

**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?**

If planning amenity notices (S179) have been served and not complied with and where building is becoming dangerous but before Building Standard have to intervene under Building (Scotland) Act 2003.

**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?**

Where Pressured Area Designation (PAD) had been granted and there was demonstrable housing need and the criteria at a) was met.

**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 X No

**Please give reasons for your response**

**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 X No

**Please give reasons for your response**

Yes, in some cases but there should be a clear definition as to who the "local community" comprises to avoid dispute over eligibility. This should be subject to an appropriate test of community benefit and not an absolute right.

**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?**

In most instances for a period of 8 weeks, minimum.

### 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?**

Third Sector Partnership felt this was premature and unrealistic to ask.

**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?**

**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?**

**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?**