

## **Community Empowerment Act Consultation**

### **Report by Dr Mary Smith, Director, Education, Communities and Economy**

#### **1 Purpose of Report**

Council is asked to approve the attached response to the formal consultation on the statutory guidance and regulations emerging from the Community Empowerment Act 2015. This consultation closes on the 13 June. The consultations can be found on the Scottish Government consultation hub at [https://consult.scotland.gov.uk/advanced\\_consultation\\_finder?tx=community+empowerment+act&st=open&au=&in=&de=](https://consult.scotland.gov.uk/advanced_consultation_finder?tx=community+empowerment+act&st=open&au=&in=&de=)

#### **2 Background**

##### **2.1 Expectations placed on CPP Boards**

The Guidance makes clear the changed status of Community Planning Boards, which are now statutory and must include a set of named partner agencies, including the Council. The Guidance expects the Council and its partners to demonstrate:

##### **2.1.1 Shared Leadership**

- Partners demonstrate collective ownership, leadership and strategic direction of community planning.
- Partners use their shared leadership role to ensure the CPP sets an ambitious vision for local communities; the CPP involves all partners and resources that can contribute towards delivering on that vision; and those partners deliver on it.
- The CPP is clear about how they work with public service reform programmes (including health and social care integration and community justice reforms).

##### **2.1.2 Governance and Accountability**

- The CPP understands what effective community planning requires, and the improvement needs for it and its partners.
- The CPP and its partners apply effective challenge and scrutiny in community planning, built on mutual trust, a shared and ambitious commitment to continuous improvement, and a culture that promotes and accepts challenge among partners.
- The CPP organises itself in an effective way, which provides platforms for strong strategic decision-making and action, and effective scrutiny and challenge.
- The CPPs and partners can demonstrate, including to local communities through annual progress reports, how they are working effectively in partnership to improve outcomes as part of how they are held to account.

### **2.1.3 Community Participation and Co-production**

- The CPP and community planning partners work with community bodies to ensure that all bodies which can contribute to community planning are able to do so in an effective way and to the extent that they wish to do so.
- The CPP and community planning partners have a clear understanding of distinctive needs and aspirations of communities of place and interest within its area, as a result of effective participation with community bodies.
- Effective community participation informs decisions about the CPP's priorities, how services are shaped and resources deployed; this includes working with community bodies on co-production where these bodies wish to do so.
- Effective community participation informs how the CPP manages and scrutinises performance and progress, and how it revises its actions to meet its ambitions as a result of its performance management.
- The CPP embraces the principles of effective co-production which is aimed at combining the mutual strengths and capacities of all partners (including community bodies) to achieve positive change.
- Understanding of local communities' needs, circumstances and opportunities.
- The CPP has a strong understanding of its local areas, including differing needs, circumstances and opportunities for communities (geographical and communities of interest) within its area.
- This understanding is built on appropriate data and evidence from partners and community perspectives flowing from effective community engagement.

### **2.1.4 Focus on Key Priorities**

- The CPP uses its understanding of local needs, circumstances and opportunities to establish a clear and ambitious vision for its area and identify local priorities for improvement.
- The CPP is clear about the improvement it wishes to make locally in terms of better outcomes for specific communities, reducing the gap in outcomes between the most and least deprived groups and moderating future demand for crisis services.
- The Local Outcomes Improvement Plan places a clear emphasis on identifying local priorities which focus on how the CPP will add most value as a partnership to improve outcomes and tackle inequalities, and the CPP targets activities around these priorities.

### **2.1.5 Focus on Prevention**

- The CPP and partners plan prevention and early intervention approaches as core activities which help people and communities to thrive and contribute to addressing poor outcomes and moderating future demand for services.
- The CPP places strong emphasis on preventative measures to achieve ambitious improvement goals on the local outcomes it prioritises.
- CPP partners provide resources required to support preventative measures to the scale required to fulfil these ambitions.
- The CPP works with local communities and uses a close understanding of local needs, circumstances and opportunities to design services and focus resources to where it has greatest preventative benefit.

### **2.1.6 Tackling Inequalities**

- The CPP has a strong understanding of which households and communities in its area experience inequalities of outcome which impact on their quality of life.
- The CPP focuses its collective energy on where its partner's efforts can add most value for its communities, with particular emphasis on reducing inequalities.

- The CPP develops locality and thematic approaches as appropriate to address these, with participation from community bodies representing the interests of persons experiencing inequalities.
- The CPP should build the capacity of communities, particularly those experiencing inequality, to enable those communities, both geographic and of interest, to identify their own needs and opportunities; and support their efforts to participate effectively in community planning, including in the co-production of services.

#### **2.1.7 Effective Performance Management**

- The CPP has a deep-rooted commitment to continuous improvement.
- The CPP has effective processes and skills to understand and scrutinise performance.
- The CPP acts wherever appropriate to improve performance in light of this understanding and scrutiny.

#### **2.1.8 Resourcing Improvement**

- The CPP and its partners understand how their collective resources are supporting shared local priorities, and whether together these are sufficient and the right resources to enable the CPP to meet its improvement targets.
- Partners demonstrate strong shared leadership by working with other bodies to use collective resources in more effective and efficient ways to improve outcomes and reduce inequalities.
- Partners deploy sufficient resource to meet agreed ambitions for the CPP's local priorities.
- Partners align their collective resources in ways which support its local priorities effectively and efficiently.
- The CPP and its partners keep under review whether partners' deployment of resources remains appropriate for meeting its ambitions, and take corrective action where necessary.

#### **2.1.9 Regulation – Locality Plans**

- A clear expectation that there will be locality plans for areas of deprivation, and a regulation specifying a maximum population size of 30,000, with no minimum size, or use of electoral wards as boundaries for such plans.

Further sections of the Guidance arising from the Act set out other expectations on the Council and partners as summarised below.

### **2.2 Asset Transfer**

Under the Act, an asset transfer request is a request made by a community transfer body to a relevant authority (these terms are explained in chapters 4 and 5). *The community transfer body can ask to buy, lease, manage or use any land or buildings which belong to or are leased to the relevant authority. They have to set out what they plan to do with the property, and how much they are prepared to pay.*

The relevant authority has to decide whether to agree to the request or not, taking into account whether the community transfer body's proposals (including the price) provide more benefit than the current use, or any other proposals that have been made. Equalities and the relevant authority's functions and obligations are also considered. *The request must be agreed to unless there are reasonable grounds for refusal.* Then the community transfer body makes an offer, and a final contract is negotiated.

If the request is refused, or no answer is given, or the community transfer body does not agree with conditions set by the relevant authority, *the community transfer body can ask for the decision to be reviewed or can*

*appeal to the Scottish Ministers.* They can also appeal if the request is agreed and an offer made but no contract is completed within 6 months of the date of the offer.

### 2.3 Participation Requests

These are the public authorities who can receive a participation request from a community participation body (as defined in the Act).

- A local authority
- A Health Board
- The board of management of a college of further education
- Highlands and Islands Enterprise
- A National Park Authority
- Police Scotland
- Scottish Enterprise
- The Scottish Environment Protection Agency
- The Scottish Fire and Rescue Service
- Scottish Natural Heritage
- A Regional Transport Partnership
- Or any other body added by Scottish ministers order

A Community Participation Body must:

- Specify an outcome that results from (or is contributed to by virtue of) the provision of a service provided to the public by or on behalf of the authority.
- Set out the reasons why the community participation body considers it should participate in the outcome improvement process.
- Provide details of any knowledge, expertise or experience the community participation body has in relation to the specified outcome.
- Provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation.

### 2.4 Land Reform

When deciding whether land is eligible to be bought by a community body, either because it is abandoned or neglected or because the use or management of it is causing harm to the environmental wellbeing of the local community, Ministers are required to have regard to prescribed matters:

- The physical condition of the land or any building or other structure on the land, and the length of time for which it has been in such a condition.
- Whether, and to what extent, the physical condition of the land or any building or other structure on the land is detrimental to the amenity of land which is adjacent to it.
- Whether, and to what extent, the physical condition of the land is a risk to public safety.
- Whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm.
- Whether the physical condition of the land complies with the standards for good agricultural and environmental condition.
- The purpose for which the land or any building or other structure is being used or has been used, and the length of time for which it has been so used.
- If it appears to the Scottish Ministers that the land or any building or other structure on the land is not being used for any particular purpose, the length of time for which it has not been so used.
- Whether, and to what extent, the land or any building or other structure on the land is being used for public recreation.
- Whether, and to what extent, the land is being held for the purposes of permanent preservation for the benefit of historic or national interest and

for the preservation of its natural aspect and features and animal and plant life.

- Whether, and to what extent, any building or other structure on the land is being held for the purposes of the permanent preservation for the benefit of historic or national interest and for the preservation of its architectural or historical features so far as of national or historic interest.
- whether the land, or any part of the land, is or forms part of a nature reserve or conservation area.
- whether the land, or any part of the land, is designated a special site.
- whether any building or structure on the land is a listed building.
- whether any building or structure on the land is a scheduled monument.

Section 97C(5)(a) of the 2003 Act provides that land which is eligible for purchase by a community body does not include land on which there is a building or other structure which is an individual's home *other than a building or other structure which is occupied by an individual under the terms of a tenancy*. Similarly, land which is to be treated as a person's home will not be 'eligible land' which can be bought by community bodies, *unless that home is occupied by an individual under the terms of a tenancy*.

The Guidance considers that land pertaining to a person's home may include a number of elements. Each of these elements may have a number of roles for the home. It proposes that land within the curtilage of a home should be land 'pertaining to a home', with a series of detailed definitions.

Section 97C (5)(f) provides that Ministers may set out in regulations, descriptions or classes of other land which is not eligible land for the purposes of Part 3A of the 2003 Act. Comments are invited on what these should be.

Section 97C (6)(b) of the 2003 Act allows Ministers to set out in regulations the descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of Part 3A of the Land Reform (Scotland) Act 2003.

Section 97J(7) of the 2003 Act allows Ministers to, by regulations make provision for, or in connection with, enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

Section 97T of the 2003 Act allows any person, in the circumstances listed in section 97T(1) of the 2003 Act, including the current or former landowner, to recover loss or expense from either the community body (if the application was consented to) or Scottish Ministers (if the application was refused).

### **3 Report Implications**

#### **3.1 Resource**

The guidance makes clear that there is now a legal duty that the 5 core partners, Council, NHS, Police, Fire and Scottish Enterprise share resources to deliver the outcomes agreed in the local outcomes improvement plan (which in Midlothian is the Single Midlothian Plan).

### **3.2 Risk**

Failure to respond to the consultation runs the risk of finalised guidance imposing interpretations on the Council that elected members are unhappy with.

### **3.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

All these are affected by the Guidance and Regulations.

- ☒ Community safety
- ☒ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☒ Improving opportunities in Midlothian
- ☒ Sustainable growth
- ☒ Business transformation and Best Value
- ☐ None of the above

### **3.4 Key Priorities within the Single Midlothian Plan**

The Act is now the basis of community planning duties, expectations, structures and sharing of resources.

### **3.5 Impact on Performance and Outcomes**

As the CPP and council have an agreed set of outcomes for the next 3 years , it is not anticipated that there will be significant change in what is to be worked on .What will change is the legal duty to report publicly and jointly with CPP partners on performance towards these outcomes.

### **3.6 Adopting a Preventative Approach**

The Single Midlothian Plan already commits partners to working in this way.

### **3.7 Involving Communities and Other Stakeholders**

The new Act and this guidance, makes a major shift in rights of community groups to request participation in public service decision making processes .new systems and procedures are required to address this duty.

### **3.8 Ensuring Equalities**

The guidance makes clear that there must be a demonstrable effort to support involvement in decision making of excluded groups in the community. This includes requiring community facing staff to be provided to assist and enable such participation.

### **3.9 Supporting Sustainable Development**

The guidance makes clear a continuing expectation that use of public land and assets is sustainable, including requiring a food strategy, provision of land for allotments, re- use of derelict land or surplus buildings by the community for social benefit.

### **3.10 IT Issues**

There are no specific IT issues.

## **4 Recommendations**

Council is requested to approve the attached response to the consultation.

**Date 28/04/2016**

**Report Contact:**

**Name Alasdair Mathers Tel No 0131 271 3438**

**alasdair.mathers @midlothian.gov.uk**

**Background Papers:**

**Proposed Response**

