

Community Empowerment Act Implementation

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

1 Purpose of Report

The purpose of this report is to update Council on the progress and implementation of the Community Empowerment Act 2015.

2 Background

2.1 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.

The formal guidance makes clear the Government's policy intent:-

"Ownership or control of land and buildings is a powerful tool for communities to drive change and achieve their own goals. In the first place it provides a base for activities and services that might not otherwise be accessible to members of a particular community, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement".

The Council adopted a Community Asset Transfer policy in July 2015, in advance of the passage of the Act and subsequent statutory guidance. Formal procedures were established alongside the policy which is currently being revised to ensure alignment with the statutory guidance and to clarify the roles of different sections of the Council.

As required by the Act, a Council asset register has been produced. The policy has been presented by the Property Manager to partner organisations. The first formal request for community asset transfer is being prepared by the Ladywood Centre management committee with support from the Communities Team; with property, finance and legal services staff considering the business case. This will be the first such application since the pilot request by the Bonnyrigg Hub in 2015 for the transfer of the former Bonnyrigg Leisure Centre, considered under draft procedures which were rejected by the Council in favour of an alternative charitable group being given an operating agreement (rather than an asset transfer), seconded staffing and subsequent capital investment support.

An officer Community Management Assessment Group will be established as a priority to ensure a consistent and transparent approach to asset transfer.

2.2 Revised Governance Arrangements

Part 2 of the Community Empowerment (Scotland) Act 2015 came into force on 20 December 2016. It places new expectations on public authorities to work together with local communities to make a positive difference on the issues that matter most in local areas.

The Act requires CPPs to:

- Prepare and publish a Local Outcomes Improvement Plan (LOIP) which sets out the local outcomes which the CPP will prioritise for improvement.
- Identify smaller areas within the local authority area which experience the poorest outcomes, and prepare and publish locality plans to improve outcomes on agreed priorities for these communities (the outcomes prioritised for improvement in a locality plan may differ from those in the local outcomes improvement plan).
- Review and report publicly on progress towards their LOIP and locality plans, and keep the continued suitability of these plans under review.

The CPP Board has confirmed with Scottish Government representatives that the process through which the Single Midlothian Plan is produced is compliant with these expectations and as such constitutes a LOIP.

The CPP Board has also confirmed with Scottish Government representatives that the existing neighbourhood planning processes for the area which experience the poorest outcomes, (Dalkeith, Mayfield and Gorebridge) enable the CPP provide a mechanism to fulfil the requirement to LOIP based on agreed priorities for these communities.

An 'area targeting' group has been established reporting to the Board, which is working with these communities. A revised neighbourhood plan is in place and published in Gorebridge and a new plan has now been adopted and published in Dalkeith, with work currently underway to revise the Mayfield plan.

Part 2 of the Act also expands the number of public sector bodies that are subject to community planning duties. Statutory partners under the 2003 Act are the local authority; the Health Board; Scottish Enterprise / Highlands and Islands Enterprise; Police Scotland; the Scottish Fire and Rescue Service, and the Regional Transport Partnership. Schedule 1 to the 2015 Act expands this list to include:

- Historic Environment Scotland
- The Health and Social Care Integration Joint Board for the area
- National Park Authority
- The Board of Management of a Regional College
- Regional Strategic Body under the Further and Higher Education (Scotland) Act 2005
- Scottish Environment Protection Agency
- Scottish Natural Heritage
- Sport Scotland
- Skills Development Scotland
- Visit Scotland

The five statutory partners are now also required to co-facilitate community planning rather than this duty falling on the Council alone. Following agreement at the December CPP board, a governance review has been initiated to effect this change. This is anticipated to report both to the CPP board and to Council after the election.

Other partners listed above are either not relevant to Midlothian (national park authority) or are already partners at a specific level. For example, Sport Scotland whilst not on the CPP Board, are partners in the delivery of the Physical Activity Health and Sport strategy; Visit Scotland are partners in the sustainable growth thematic partnership's tourism strategy sub group. The review will invite each partner listed to consider whether their level of engagement is suitable.

2.3 Participation Requests (Part 3 of the Act)

A community participation body is defined in section 20. It can be a community body (with or without a written constitution), a community council, or a body designated by the Scottish Ministers. A community controlled body does not have to be incorporated. It can have a written constitution that includes:

- A definition of the community to which the community body relates.
- A provision that the majority of members of the body are members of that community.
- A provision that the body is open and controlled by members of that community.
- The aims and purposes of the body, including the promotion of a benefit for that community.
- A provision that the funds and assets of the body are to be used for the benefit of that community.

A community body could also be a more loosely associated group without a written constitution but which has similar features to a community controlled body described above.

These are the public authorities who can receive a participation request from a community participation body.

- 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.

The Act sets out that the community participation body must specify an outcome that results from the provision of a service provided to the public by the public body. The Act does not define what an outcome is.

Typically outcomes are the changes, benefits, learning or other effects that result from what the organisation makes, offers or provides. This is often compared to outputs which are the products, services or facilities that result from an organisation's activities.

Draft statutory guidance has been consulted on and it is anticipated regulations covering this part of the Act will be issued by Scottish Government early in 2017, coming into force after parliamentary approval. Midlothian Council is unable to produce the required procedure as the statutory guidance for this part of the Act has not yet been issued.

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 Act 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 implement the terms of the Act would be a breach of the law .

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

3.4 Key Priorities within the Single Midlothian Plan

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

3.5 Impact on Performance and Outcomes

As the CPP (and Council) have an agreed set of outcomes for the period up to 2019, and there is an agreed annual updating and revising process involving community groups, it is not anticipated that there will be significant change in the Midlothian level. What will change is the legal duty to report publicly and jointly with CPP partners on performance towards these outcomes and the rights of community groups to initiate requests to participate in outcome improvement plans.

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. No Integrated Impact assessment is required for this report which summarises progress rather than introducing a new strategy or policy or resource allocation.

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:

- Note progress on implementation of the Community Empowerment Act.
- Note the proposal to report back on Governance arrangements following the Local Elections as set out in Section 2.2.
- Seek a further report on procedures for managing participation requests once the statutory guidance is issued, as outlined in Section 2.3.

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Background Papers: None

