

Cunninghame House,
Irvine.

19 May 2016

Cabinet

You are requested to attend a Meeting of the Cabinet of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **TUESDAY 24 MAY 2016** at **2.30 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

Members are requested to give notice of any declaration of interest in respect of items of business on the agenda.

2. Minutes (Page 7)

The accuracy of the Minutes of (i) the ordinary meeting held on 26 April 2016 and (ii) the special meeting of the Cabinet held on 10 May 2016 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copies enclosed).

GENERAL BUSINESS FOR DECISION

Reports by the Chief Executive

3. Gallowgate Square, Largs (Page 17)

Submit report by the Chief Executive on the current position in relation to Gallowgate Square, Largs (copy enclosed).

Reports by the Executive Director (Economy and Communities)

- 4. Queen Elizabeth II Fields in Trust Challenge (Page 21)**
Submit report by the Executive Director (Economy and Communities) on the Queen Elizabeth II Fields in Trust Challenge proposals (copy enclosed).
- 5. North Ayrshire Landfill Advisory Fund Panel - Scottish Landfill Communities Fund (Page 27)**
Submit report by the Executive Director (Economy and Communities) an overview of the proposed Terms of Reference for the new North Ayrshire Landfill Advisory Fund Panel (copy enclosed).
- 6. EU Funding & Poverty Social Inclusion (Page 33)**
Submit report by the Executive Director (Economy and Communities) on recent approvals of EU funding and the intention to submit an application for funding to the Poverty and Social Inclusion ESF programme (copy enclosed).
- 7. Community Empowerment Act (2015): North Ayrshire Council consultation responses (Page 41)**
Submit report by the Executive Director (Economy and Communities) on the submission of the consultation responses to Scottish Government (copy enclosed).
- 8. Community Asset Transfer Applications (Page 105)**
Submit report by the Executive Director (Economy and Communities) on the current applications within the terms of the Council's Community Asset Transfer arrangements (copy enclosed).

Reports by the Executive Director Finance and Corporate Support

- 9. Procurement Reform Scotland Act 2014 & Public Procurement (Scotland) Regulations 2015 (Page 129)**
Submit report by the Executive Director (Finance and Corporate Support) on the actions required to comply with changes to the Public Procurement rules as result of the Procurement Reform Scotland Act 2014 and Public Procurement (Scotland) Regulations 2015 (copy enclosed).
- 10. North Ayrshire HSCP 2015/16 Final Position (Page)**
Submit report by the Executive Director (Finance and Corporate Support) (copy to follow).

CONTRACTS

- 11. Authority to invite tenders for the Framework for Construction Design and Management (CDM) Services (Page 139)**
Submit report by the Executive Director (Finance and Corporate Support) on tenders for the Framework for Construction Design and Management (CDM) Services (copy enclosed).

EXEMPT INFORMATION

12. Exclusion of the Public

Resolve in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for the following items of business on the grounds indicated in terms of Paragraph 9 of Part 1 of Schedule 7A of the Act.

Non Disclosure of Information

In terms of Standing Order 17 (Disclosure of Information) the information contained within the following reports is confidential information within the meaning of Section 50A of the 1973 Act and shall not be disclosed to any person by any Member or Officer.

12.1 Social Work Complaint Review Committee: Social Work Complaints Review Committee: Complaint by Mrs R and Mrs B (Page 143)

Submit report by the Chief Executive on the findings and recommendations arising from the Social Work Complaints Review Committee meeting held on 4 May 2016 (copy enclosed).

13. Urgent Items

Any other items which the Chair considers to be urgent.

Cabinet

Sederunt: **Elected Members**

Willie Gibson (Chair)
Alan Hill (Vice-Chair)
John Bruce
Marie Burns
Anthea Dickson
Tony Gurney
Ruth Maguire

Chair:

Attending:

Apologies:

Meeting Ended:

Cabinet
26 April 2016

Irvine, 26 April 2016 - At a Meeting of the Cabinet of North Ayrshire Council at 2.30 p.m.

Present

Willie Gibson, John Bruce, Marie Burns, Anthea Dickson, Tony Gurney and Ruth Maguire.

Also Present

(Agenda Items 1-4, inclusive)

In Attendance

E. Murray, Chief Executive; M. Hogg, Head of Finance, E. Gunn-Stewart, Head of Customer and Digital Services and A. Munn, Team Leader (Policies and Procedures) (Finance and Corporate Support); C. Amos, Head of Service (Inclusion) (Education and Youth Employment); K. Yeomans, Executive Director, C. McAuley, Head of Economic Growth, J. Miller, Senior Manager (Planning) and D. Hilditch, Transportation Engineer (Economy and Communities); C. Hatton, Executive Director and S. Kean, Building Services (ICC) (Place); A. Fraser, Head of Democratic Services, A. Todd, Senior Policy and Performance Officer, M. Sugden, Communications Officer (Media and Internal Communications) and A. Little, Committee Services Officer (Chief Executive's Service).

Chair

Councillor Gibson in the Chair.

Apologies for Absence

Alan Hill.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

2. Minutes

The accuracy of the Minutes of the Meeting held on 29 March 2016 was confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Directorate Plans 2016/19

Submitted report by the Chief Executive on the 2016 updates on the 2015/18 Directorate Plans 2016/19 as set out at Appendices 1 - 5 which are closely aligned to the Council Plan and are the main mechanism for reporting progress on the Council Plan throughout the year. The Health and Social Care Partnership's Strategic Plan 2015/18 is currently being refreshed and the revised Strategic Plan will be available in summer 2016.

Members asked questions and were provided with further information in relation to:-

Democratic Services

- costings that were now available for the average hourly rate of the in-house legal team compared to other in-house legal teams per SOLAR benchmarking of £55.18 for 2013/14 and £55.44 for 2014/15;
- information that was now available from the December 2015 survey that 95% of customers were very satisfied or satisfied with Legal services provided; and
- absence rates of 4.5 days lost per employee per annum for 2015/16.

Finance & Corporate Support

- embedding customer delight evidence standards across of Finance and Corporate Support teams which is a new measure to report high levels of customer satisfaction;
- work that is being done in the preparation of a Digital Strategy;
- delivering a channel shift in how the public contact the Council and the streamlining and digitising of back office functions; and
- two senior members of staff that are part of the Scottish Government's Digital Champions Development Programme about the transformational potential of digital tools and technology and two further places that have been secured for Executive Directors on this programme.

Place

- progress that has been made in the Council Housing Building programme, where half of the target of 500 houses has been achieved;
- the Strategic Housing Investment Plan that supports working with Housing Associations; and
- work that will be done in respect of the development of community owned energy.

The Cabinet agreed to (a) approve the five Directorate Plans 2016/17 as set out at Appendices 1 - 5; (b) receive 6-monthly progress reports; and (c) refer the report to the Scrutiny and Petitions Committee for further scrutiny

4. Clyde Marine Planning Partnership

Submitted report by the Executive Director (Economy and Communities) on the new Clyde Marine Planning Partnership (CMPP) for the Clyde Marine Region. The report provided details of the CMPP's remit, governance arrangements and relevance to North Ayrshire, the new statutory responsibilities, the legislative requirements of the Clyde Regional Marine Plan, organisations with a permanent position on the Board and the historic arrangements when North Ayrshire and South Ayrshire Councils shared one single position on the Board.

Members asked questions and were provided with further information in relation to:-

- the group Clydeplan that includes East Dunbartonshire, East Renfrewshire, Glasgow City, Inverclyde, North Lanarkshire, Renfrewshire, South Lanarkshire and West Dunbartonshire Councils;
- that the CMPP meeting in June 2016 would consider the request from North Ayrshire Council for a full permanent position on the Partnership; and
- the pending publication of the sea-level rise report.

The Cabinet agreed (a) to North Ayrshire Council participating in the new Clyde Marine Planning Partnership; and (b) delegate authority to the Executive Director (Economy and Communities) to (i) select Officer representations from Economy and Communities for the Board and Member Group of the Clyde Marine Planning Partnership; (ii) negotiate a full, permanent Board position for the Council; and (iii) that the Chief Executive write to Marine Scotland and the new chair of the CMPP in support of a permanent position for North Ayrshire Council.

5. Strathclyde Partnership for Transport (SPT) Grant Funding

Submitted report by the Executive Director (Economy and Communities) on the offers of grant funding of £480,000 from Strathclyde Partnership for Transport (SPT) for 2016-17. The projects agreed in principle included:- A841 Brodick to Lochranza Ferry link upgrade, Hawkhill Roundabout improvements, Irvine Town Centre Bus Infrastructure Improvements and General Bus Stop Infrastructure Improvements. In addition, SPT are providing £500,000 funding to Caledonian Maritime Assets Ltd for improved bus interchange facilities at the Brodick Ferry Terminal.

Members asked questions and were provided with further information in relation to a report to Cabinet on 24 May 2016 on proposals for the annual funding applications to SPT, including the process and timescales.

The Cabinet agreed (a) to approve the acceptance and expenditure of the grant offers as detailed within the report; and (b) that a list of potential SPT funded projects for 2017-18 be submitted to Cabinet for approval.

6. Audit Scotland Report: An Overview of Local Government in Scotland 2016

Submitted report by the Executive Director (Finance and Corporate Support) on the findings of the recent Audit Scotland report 'An Overview of Local Government in Scotland'. The report highlighted the key messages and issues of the Audit Scotland Report, which was attached as Appendix 1 to the report. Appendix 2 to the report detailed actions points and the relevant work that has been undertaken, or is planned to be undertaken by the Council to address these. A 'self-assessment toolkit for Councillors' was attached at Appendix 3 to the report.

The Cabinet agreed to endorse the findings of the recent Audit Scotland report and the work which has already been done and is planned to be done by the Council in tackling the action points highlighted by Audit Scotland, as detailed in Appendix 2 to the report

7. Clyde Valley Residual Waste Project

Submitted report by the Executive Director (Place) which (a) set out the Clyde Valley Residual Waste Project: and (b) sought authority to enter into a Post Contract Inter Authority Agreement (IAA) with four Partner Councils, which will involve North Lanarkshire Council, as Lead Authority, entering into a Contract (the Project Agreement) with Viridor Clyde Valley Limited (Viridor) for the Treatment of Residual Waste for a 25 year period.

The Cabinet agreed (a) to approve the Final Business Case attached as Appendix A of the confidential papers; (b) to enter in to the Post Contract Inter Authority Agreement for the joint provision of Residual Waste Treatment and Disposal Services on behalf of North Ayrshire Council attached as Appendix B of the confidential papers (c) to authorise the Project Leader to agree such amendments to the draft Project Agreement and the draft Parent Company Guarantee as he considers necessary to achieve Financial Close, including any adjustments to the draft Payment Mechanism for Foreign Exchange as agreed in the Financial Close Protocol and any adjustments required to reflect any post-tender changes in the First Employee List; (d) delegate authority to the Executive Director (Place) to agree such minor amendments to the Post Contract Inter Authority Agreement as may be required and (e) that, subject to the Inter Authority Agreement being executed by the other Partner Councils, the Chief Executive or their authorised delegate, be authorised to execute, [in the presence of a witness], the finalised versions of each of (i) the Project Agreement with [Viridor Clyde Valley Limited]; (ii) the Parent Company Guarantee from Viridor Limited; (iii) the Post Contract Inter Authority Agreement; (iv) a Certificate pursuant to the Local Government (Contracts) Act 1997 in respect of the Project Agreement and (v) any other ancillary documentation reasonably required in relation to the Project.

8. Framework Agreement for the provision of Central Heating / Combined Central Heating and Electrical Rewiring to residential properties

Submitted report by the Executive Director (Finance and Corporate Support) on the result of the tender exercise for the Framework Agreement for Central Heating / Combined Central Heating and Electrical Rewiring.

The Cabinet agreed to (a) approve the award of the framework to five contractors (McTear Contracts Ltd, James Frew Ltd, CCG (Scotland) Ltd, Saltire Facilities Management Ltd and Turner facilities Management Ltd) at a total estimated value of the overall Framework Agreement, including any possible extensions, of £9,031,217.65; and (b) award the first phase of the works to McTear Contracts Ltd.

9. Framework Agreement for the provision of Electrical Rewiring Works to residential properties

Submitted report by the Executive Director (Finance and Corporate Support) on the result of the tender exercise for the Framework Agreement for Electrical Rewiring Works to residential properties.

The Cabinet agreed to (a) approve the award of the framework to five contractors (G.D. Chalmers Ltd, Jordan Electrics Ltd, Maclin Electrics Ltd, McTear Contracts Ltd and Saltire Facilities Management Ltd) at a total estimated value of the overall Framework Agreement, including any possible extensions, of £2,212,671.76; and (b) award the first phase of the works to McTear Contracts Ltd

The meeting ended at 3.30 p.m.

Cabinet
10 May 2016

Irvine, 10 May 2016 - At a Special Meeting of Cabinet of North Ayrshire Council at 2.30 p.m.

Present

Willie Gibson, Alan Hill, John Bruce, Marie Burns, Anthea Dickson and Tony Gurney.

Also Present

E. Murray, Chief Executive; L. Friel, Executive Director (Finance and Corporate Support); C. Hatton, Executive Director, Y. Baulk, Head of Physical Environment and Y. Holland, Project Manager (Place); K. Yeomans, Executive Director, C. McAuley, Head of Service (Economic Growth), M. Strachan, Senior Business Manager and A. Laurenson, Team Manager (Regeneration) (Economy and Communities); I. Colvin, Director (North Ayrshire Health and Social Care Partnership); A. Fraser, Head of Democratic Services, J. Hutcheson, Communications Officer and A. Little, Committee Services Officer (Chief Executive's).

Chair

Councillor Gibson in the Chair.

Apologies for Absence

Ruth Maguire.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

2. Largs Campus DBFM Contract

Submitted report by the Executive Director (Place) which provided details of (a) the development of the proposals for an educational campus adjacent to the Inverclyde National Sports Centre in Largs; (b) the statutory consultation and planning process that has been undertaken; (c) the partial funding via the Scottish Futures Trust (SFT) Schools for the Future Programme; (d) the delivery of the project via Hub South West (HubSW); and (e) the operation and maintenance of the campus that will be progressed via a separate company (DBFM Co) with the Council as a 10% equity stakeholder.

Members asked questions and were provided with further information in relation to a further contribution from the Scottish Government of £½ m towards the project.

That Cabinet, subject to an acceptable offer being received from Hub South West Scotland Limited ("HubSW"/"hubco") which meets the Council's and the SFT's requirements of cost, programme and quality, agreed to (a) enter into the DBFM contract required to progress the Development; (b) the documents required to progress that contract (the "Project Documents" as defined in Appendix 1 to the report) and to perform the contractual obligations in terms of the finalised Project Documents; (c) delegate authority to the Head of Physical Environment to complete the financial close process, negotiate and finalise the terms of the Project Documents and commit the Council to the execution of the Project Documents for the Development; (d) delegate authority to the Head of Democratic Services or any other Proper Officer duly appointed by the Council, to execute the Project Documents; and (e) note that the DBFM agreement and the Funder's Direct Agreement are certified contracts within the meaning of Section 2 of the Local Government (Contracts) Act 1997 (the "1997 Act") and shall meet the certification requirements within section 3 of the 1997 Act and authorise a Proper Officer to execute and issue the certificate in terms of the 1997 Act.

3. North Ayrshire Social Enterprise Strategy 2016 – 19

Submitted report by the Executive Director (Economy and Communities) which set out (a) the newly developed 3 year Social Enterprise Strategy for North Ayrshire (Appendix 1); and (b) proposals for the expenditure over the next 3 years, totalling £242k, from the Social Business Development Fund

Members asked questions and were provided with further information in relation to:-

- the ambitious but realistic 3 year targets that were projected utilising the baseline established by the Scottish Enterprise in Scotland Census for 2015 for North Ayrshire and agreed by the group involved in setting the strategy; and
- the 3 year costs for two full time Social Enterprise Support Model staff.

The Cabinet agreed to (a) approve the Social Enterprise Strategy 2016-19; (b) approve the proposed expenditure of £242,000 as set out in the Partnership Resource Plan; and (c) conditional on NAVT approving a grant for social enterprises, that the £258k balance of the budget would be used to support early stage growth business support activity.

4. Scottish Open Golf 2017

Submitted report by the Executive Director (Economy and Communities) on (a) the support that has been provided to Loch Lomond Golf Club in their bid to host the Scottish Open at Dundonald Links 2017; and (b) further improvements required to the course, its entrance and access to the clubhouse that necessitated urgent approval by the Chief Executive for additional investment of £75,000.

Members asked questions and were provided with further information in relation to Voisins, France who are twinned with Irvine and have experience of hosting golfing events.

The Cabinet agreed to homologate the decision of the Chief Executive in respect of the provision of an additional investment of £75,000 to support the upgrading of Dundonald Links golf course and associated facilities to a standard suitable to host the Scottish Open.

5. Business Support

Submitted report by the Executive Director (Economy and Communities) on (a) the impact and outcomes being achieved through the Council's business support activities; (b) details of a review undertaken on the support offer for businesses since the launch of the Team North Ayrshire (TNA) and further developments required (Appendix 1); and (c) the proposed realignment of grant provision to give focus on International, Innovation, Early Stage Growth activities (Appendix 2).

The Cabinet agreed to (a) note the update provided on business support services; (b) approve the development of new services to support innovation, internationalisation and early stage growth activities, as outlined in Appendix 2 to the report.

6. Quarry Road - Outcome of RCGF Bid and Proposed Development

Submitted report by the Executive Director (Economy and Communities) on (a) the award of funding from the Scottish Government towards the Quarry Road development; (b) the proposed approach to phasing of the development and the area of land within the Common Good proposed for transfer (Appendix 1); and (c) a Supporting Statement and Outline Masterplan (Appendix 2)

Members asked questions and were provided with further information in relation to:-

- the funding commitments and allocations for the development;
- the 3 phases of the development that are not interdependent and were illustrated in Appendix 1 to the report;
- the differing circumstances when assets from a Common Good Fund can be transferred for a nominal sum to the Council and when the value of the asset, as determined by the District Valuer, is paid to the Common Good Fund; and
- discussions that will take place on the best location for a 3G pitch in North Ayrshire.

The Cabinet agreed to (a) note the outcome of the funding award from the Scottish Government; (b) the submission of a planning application for the development; (c) the publication of tender packages for works to deliver a first phase (offices, parking and access); (d) that further development proposals for phase 2, including a report to a future meeting of Cabinet on proposals and funding bids for phase 2 of the development; and (e) the transfer of land within the proposed development site from the Irvine Common Good account to the Council's General Fund Balance Sheet.

7. Exclusion of the Public

The Cabinet resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for the following items of business on the grounds indicated in terms of Paragraph 9 of Part 1 of Schedule 7A of the Act.

7.1 Purchase of Red Cross House, Irvine

Submitted report by the Director (North Ayrshire Health and Social Care Partnership) on the proposal to (a) purchase Red Cross House, Irvine in a partnership arrangement with NHS; and (b) develop the site as a community based rehabilitation resource for people with a range of needs.

It was noted that a business case in respect of the future operation and funding of the site would be brought to Cabinet.

The Cabinet agreed to (a) the purchase of Red Cross House, Irvine and; (b) grant authority to the Chief Executive in consultation with the Chief Officer of the Integration Joint Board to agree the terms of a Partnership Agreement with the NHS and the Council in respect of the funding of the purchase and the funding of the services operated therein.

The meeting ended at 3.50 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

24 May 2016

Cabinet

Title: **Gallowgate Square, Largs**

Purpose: To update the Cabinet on the current position in relation to Gallowgate Square, Largs.

Recommendation: Agree that Cabinet (i) suspend Standing Orders under Standing Order 23.1; and (ii) officers now proceed to take forward the Gallowgate Square development in line with the original decision of the Cabinet.

1. Executive Summary

- 1.1 On the 24 March 2016 the North Coast Area Committee recommended to Council that work to progress the Gallowgate Square element of the Masterplan be suspended pending the outcome of further consideration of the Masterplan priorities. The minute of the Area Committee was submitted to Council on 30 March 2016.
- 1.2 Three Elected Members of the North Coast Area Committee have confirmed that they do not wish to review the Masterplan priorities and, instead, to proceed directly with the Gallowgate Square works.

2. Background

- 2.1 On 26 June 2014, the North Coast Area Committee received and accepted the recommendations to develop a Largs Masterplan. A priority one project to emerge from this work was to upgrade and re-design Gallowgate Square in Largs.
- 2.2 Provision for this project of £440,000 was made from the Town Centre Regeneration Capital budget, as part of the Council's Capital Programme on 15 September 2015, when the Largs Masterplan was endorsed.

- 2.3 Any reconsideration of Masterplan priorities is a matter for Cabinet to determine. Pending Cabinet's decision, the Gallowgate Square development has been suspended, in line with the Area committee's recommendations. However, following discussion at the North Coast Area Committee the Chief Executive agreed to host a meeting to obtain local Member's views on the Gallowgate Square priority and, specifically, whether the use of £440,000 capital funding was the best use of capital funds in Largs at this time. This meeting was scheduled to take place on the 27 April 2016.
- 2.4 The Chief Executive received an email on the 24 April 2016 from three North Coast Area Committee Members advising that they had discussed the matter further, were content that they wanted to proceed with the Gallowgate Square development and accordingly a review of the priorities and a meeting was not required. This effectively means that the majority of the original Area Committee no longer wish to review the Largs Masterplan priorities. In these circumstances the suspension on the works to progress Gallowgate Square can be removed.
- 2.5 As Area Committees have now been disbanded a further meeting of the Area Committee will not take place to regularise this decision in the near future. Accordingly, this report seeks Cabinet approval for officers to proceed with the Gallowgate Square development with immediate effect, and not to review the Masterplan priorities.
- 2.6 As the Area Committee's previous recommendation to suspend the works pending a review was agreed by Council, then any decision to proceed without a review will require suspension of Standing Orders under Standing Order 23.1.

3. Proposals

- 3.1 Cabinet is recommended to (i) suspend Standing Order 23.1 and (ii) confirm that officers now proceed to take forward the Gallowgate Square development in line with the original decision of the Cabinet.

4. Implications

Financial:	The Cabinet approved the allocation of £440,000 for Gallowgate Square on 15 September 2015 from the Town Centre Regeneration budget
Human Resources:	The Regeneration team will progress the work in line with their Regeneration work plan.
Legal:	A contract to progress the design work for Gallowgate Square was put on hold when the North Coast Area Committee recommended a review of the Largs Masterplan and this will now be actively progressed.
Equality:	There are no equality implications arising from this report.
Environmental & Sustainability:	All design work, will be advanced in line with best practice environmental sustainability guidelines.
Key Priorities:	The implementation of the Masterplan will contribute to the key priority contained within the Council Plan of regenerating our towns and increasing employment.
Community Benefits:	There are no community benefit implications arising from this report. Any projects which are implemented would require to consider the Council's policy on community benefit from procurement.

5. Consultation

- 5.1 All four Area Committee members have been advised of the email of the 24 April 2016 and that this report would be submitted to the next available Cabinet meeting.

6. Conclusion

- 6.1 Three North Coast Members have decided that they want to proceed with the Gallowgate Square development.



ELMA MURRAY
Chief Executive

Reference : EM/as

For further information please contact Elma Murray, Chief Executive on ext. 4124

Background Papers

0

NORTH AYRSHIRE COUNCIL

Agenda Item 4

24 May 2016

Cabinet

Title: Queen Elizabeth II Fields in Trust Challenge

Purpose: To review the Queen Elizabeth II Fields in Trust Challenge proposals.

Recommendation: It is recommended that Cabinet a) Reviews the current position in relation to the Queen Elizabeth II Fields in Trust Challenge; and b) Does not proceed to implement the Fields in Trust Challenge.

1. Executive Summary

- 1.1 On 14 December 2010 the Executive of North Ayrshire Council agreed to nominate up to 11 open spaces as, "Queen Elizabeth II Fields in Trust." However, it has not proven possible to conclude a legal agreement to the satisfaction of both the Council and the Fields in Trust (FIT) charity, and Cabinet is requested to consider the preferred future approach.

2. Background

- 2.1 In 2010, the Fields in Trust charity sought proposals from local authorities to nominate Queen Elizabeth II Challenge Fields.
- 2.2 The minute of the meeting states:

"The Executive agreed that the following playing fields and areas of green open space be put forward as submissions for further consideration by Fields in Trust. However, given a reasonable case and a replacement or betterment of current facilities, Fields in Trust may be willing to negotiate a redesignation of a particular field."

2.3 The 11 parks and open spaces nominated were:

- Bowen Craig, Largs
- Dalry Public Park
- Annick Playing Fields, Irvine (4 pitches)
- Kilbirnie Ladeside Park
- Kirkton Glen/Nethermiln, West Kilbride
- Kilwinning Sports Club, Recreation Ground, Pennyburn
- Eglinton Park (Formal Garden)
- Stevenston Shore
- Ormidale Playing Fields, Arran
- Beith's Orr's Trust Public Park
- Spiers Trust Park, Beith.

2.4 This list was subsequently reduced to eight sites. In respect of the benefits of participating in the challenge are that Fields in Trust say they will protect the nominated areas for the benefit of future generations.

2.5 The Council was to erect and maintain signs in each area, and to apply to Fields in Trust if it wished to change the use or ownership of the spaces.

2.6 At the time of the Executive report being agreed, the legal agreement between the Council and FIT had not been concluded.

2.7 Subsequent exchanges revealed that no draft agreement existed and NAC's Legal Services department worked with FIT to attempt to draft such an agreement, which would then have been used by FIT and other Scottish local authorities who had agreed to nominate fields.

2.8 The draft agreement proposed by FIT states:

- *The Council grants to FIT a right to designate the Subjects as a playing field or open space in perpetuity from [the last date of execution of these presents] (“ the dedication date”), only insofar as the Subjects are available for such designation, subject to and without prejudice to the terms of the existing leases between the Council and its tenants listed in Part 3 of the Schedule (“the Leases”)*
- *Not to sell, transfer, further lease, licence or otherwise dispose of or grant any security interest of the whole or any part of the Subjects which could affect the use of the Subjects as a playing field or open space, except with the consent of FIT;*
- *Not to erect on the Subjects or any part of them, any buildings which could affect the use of the Subjects as a playing field or open space except with the consent of FIT;*
- *Not to grant any real burden, servitude or other condition, which could affect the use of the Subjects as a playing field or open space, without the consent of FIT, which consent shall not be unreasonably withheld;*
- *To, so far as consistent with its duties as a local authority, have regard to any advice given by FIT on the management and running of the Subjects; and*
- *To attach or erect as appropriate a plaque or plaques, to be provided by FIT, reflecting FIT's interest in the Subjects to or at the Subjects.*

2.9 Following lengthy negotiations, in circumstances where the agreement would restrict any future use or joint initiatives on such fields, without commensurate benefit, Legal concluded that the proposal did not represent Best Value to the Council. They were unable to agree acceptable terms and their recommendation was that the Council should not enter into the agreement on the terms proposed

2.10 Since the Executive decision in 2010, a number of factors have affected the Council's position in relation to the requirements of the proposed agreement above:

- The enactment of the Community Empowerment Act Scotland (2015) has strengthened the role of community asset transfer and the Council's predisposition to considering community management and ownership of pitches, facilities and open spaces;
- The development of the Council's draft pitches and facilities strategy reviews and proposes approaches to how the Council and the community works together to manage leisure spaces;
- The Council has proposed a review of its play areas.

2.11 The agreement between NAC and FIT has therefore never been concluded and has been the subject of ongoing discussions and correspondence between Fields in Trust and the Council.

3. Proposals

3.1 The Council's Executive Committee agreed around five years ago that up to 11 sites, subsequently reduced to 8, could be explored as potential Fields in Trust sites. Over this period many developments have taken place nationally and across the Council that suggest a review of this position.

3.2 It is proposed that Cabinet reviews the current proposal and, based on legal advice from the Council's Legal Department, and as a result, does not implement the Queen Elizabeth II Fields in Trust Challenge.

4. Implications

Financial:	The current proposal requires erection and maintenance of "Queen Elizabeth II Fields in Trust" signs in all locations.
Human Resources:	None.
Legal:	A number of restrictions would be placed on the Council's ownership and management of the nominated open spaces proposed in the Executive report.
Equality:	None
Environmental & Sustainability:	The agreement proposes the maintenance of parks and open spaces under the auspices of Fields in Trust. However, the Council's open spaces and pitches and facilities policies also prioritise open spaces.

Key Priorities:	The agreement proposes that the Fields in Trust protected spaces contribute to ensuring people are healthy. However, the Council's strategic priorities are focused on stronger, healthier communities, and actions are planned to ensure access to suitable facilities which serve this purpose.
Community Benefits:	None.

5. Consultation

- 5.1 Consultations have taken place with Elected Members, Council officers, KA Leisure, community organisations and sports clubs.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Audrey Sutton, Head of Connected Communities on (01294) 324414.

Background Papers

0

NORTH AYRSHIRE COUNCIL

Agenda Item 5

24 May 2016

Cabinet

Title: **North Ayrshire Landfill Advisory Fund Panel -
Scottish Landfill Communities Fund**

Purpose: To provide an overview of the proposed Terms of Reference for the new North Ayrshire Landfill Advisory Fund Panel.

Recommendation: That Cabinet approves the proposed Terms of Reference for the Panel.

1. Executive Summary

- 1.1 The LandTrust was appointed in November 2015 to administer the Council's Scottish Landfill Communities Fund. On 2 February 2016, Cabinet agreed to the establishment of a new Elected Member/Senior Officer panel (called the 'North Ayrshire Landfill Advisory Fund Panel') to act as a sounding board to inform the LandTrust's decision-making process. Terms of Reference have been developed in conjunction with LandTrust, describing the purpose, structure and responsibilities of the Panel. This report gives an overview of the Terms of Reference.

2. Background

- 2.1 North Ayrshire Council is part of a tax credit scheme enabling it, as a local landfill operator, to contribute funding to projects that create environmental benefits and improve the quality of life for North Ayrshire's communities. Since 1996, the Council has contributed £2.5M of its total Landfill Tax liability toward the UK Landfill Communities Fund (LCF), supporting over 160 community based environmental projects across North Ayrshire ranging from improved public amenities, energy efficiency schemes to reclamation of disused land.

- 2.2 The LCF in Scotland was devolved to the Scottish Parliament in April 2015, changing the way the fund is now administered. It has been replaced by the Scottish Landfill Communities Fund (SLCF). The Scottish Landfill Tax (Administration) Regulations 2015 prohibits landfill operators, including local authorities, from disbursing this new fund to eligible projects. Only not for profit organisations, which have the Scottish Environment Protection Agency's 'Approved Body' status and are independent of local authority control, are permitted to distribute the SLCF to eligible projects. In November 2015, the LandTrust was appointed as the Council's sole approved body on a five year contract. One of Scotland's largest approved bodies, LandTrust has a proven track record working successfully with public and private landfill operators and community groups to secure funding and oversee projects to completion.
- 2.3 Through the tender process to appoint the Approved Body, the Council successfully negotiated a role for Elected Members with the proposed establishment of the North Ayrshire Council Landfill Advisory Fund Panel. This will comprise three Elected Members and two Senior Officers, including Head of Service (Connected Communities) and Manager (Energy & Sustainability). The balance of Member representation is two from the Administration and one from the Labour Group. The Administration will be represented by Cllr Bruce and Cllr McMillan, while the Labour Group has nominated Cllr Reid to sit on the Panel.
- 2.4 The Cabinet remitted the drafting of the Terms of Reference of the Panel, subject to these being reported back to Cabinet at a later date. Appendix 1 provides the proposed Terms of Reference, these can be summarised as follows:
- Purpose: the Panel will provide informative guidance to the Board of LandTrust on which projects should be progressed to a full proposal for Scottish Landfill Communities Funds. It will offer strategic direction in terms of priority areas for funding and receive regular updates on the progress of projects in receipt of the Council's SLCF.
 - Governance: The Chair of the Panel must be an Elected Member, and will be elected by majority vote of Elected Members. No person connected with LandTrust may sit on the Panel - this is to safeguard the LandTrust's independence as the grant award authority. Senior representatives from LandTrust will attend Panel meetings to provide professional advice, provide regular updates on progress of funded projects, and discuss promotional activities linked with the SLCF. A quorum shall comprise two Elected Members, including the Chair, and one Senior Officer.
 - Frequency of meetings: The panel will meet at least twice per calendar year.

2.5. The Terms of Reference have been drafted to reflect that the Panel will have an advisory role but no decision making responsibilities. This balances the need for local accountability with the legislative requirement to maintain LandTrust's independence in the funding decision making process.

2.6 It was originally proposed to hold the first meeting of the Panel in February 2016. However, the meeting has been postponed until the end May of 2016 after the full amount of the Council's landfill fund for 2015/2016 (estimated to be £130K) has been calculated and issued to LandTrust for distribution. This will give LandTrust the full fund against which to consider applications.

3. Proposals

3.1 It is proposed that Cabinet approves the proposed Terms of Reference for the North Ayrshire Landfill Advisory Fund Panel at Appendix 1 to this report.

4. Implications

Financial:	None.
Human Resources:	The Panel meetings will require attendance of Head of Service (Connected Communities) and/or Manager (Energy & Sustainability). Other officers of the Council can be invited to provide specialist input.
Legal:	The Scottish Landfill Tax (Administration) Regulations 2015 prohibits landfill operators, including local authorities, from disbursing this new fund to eligible projects. Only not for profit organisations, which have the Scottish Environment Protection Agency's 'Approved Body' status and are independent of local authority control, are permitted to distribute the SLCF to eligible projects. In November 2015, the Land Trust was appointed as the Council's sole approved body on a five year contract.
Equality:	None.
Environmental & Sustainability:	The SLCF supports local environment improvement schemes that accord with the objectives of this fund. Eligible projects can include reclamation works, projects that reduce or prevent pollution on land, projects that provide or maintain public amenities or parks, delivery of biodiversity for UK species or habitats, and projects to restore or repair a building of architectural interest

Key Priorities:	The SLCF objectives contribute to the implementation of the Council's Single Outcome Agreement (SOA) and, in particular, will assist in addressing the SOA objective of "Building Community Capacity and Community Engagement".
Community Benefits:	None.

5. Consultation

- 5.1 Cabinet has received previous reports on the proposed changes to North Ayrshire's landfill funding. Connected Communities (Economy and Communities), Place and Democratic and Administration (Chief Executive) have been consulted on this report.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Andrew McNair, Planning Officer, Planning Services on 01294 324769

Background Papers

Scottish Landfill Communities Fund, Cabinet Report, 2 February 2016
Review of North Ayrshire Council Grants to Community Organisations, Cabinet Report, 27 October 2015

Terms of Reference for the North Ayrshire Council Landfill Advisory Panel

1. Purpose of the North Ayrshire Council Landfill Advisory Panel

The regulations governing North Ayrshire Council's Scottish Landfill Communities Fund ('the SLCF') require that LandTrust distributes the SLCF to eligible projects in all areas of Scotland.

LandTrust actively seeks to promote the availability of the SLCF across North Ayrshire. The North Ayrshire Council Landfill Advisory Panel ('the Panel') has been established to offer informative guidance, supporting the Board of LandTrust in its funding decision-making process. This process will involve the following steps:

1. Submission of pre-proposal form to LandTrust;
2. The Panel makes recommendations to LandTrust Board in relation to pre-proposals submitted;
3. Submission of full proposal to LandTrust;
4. LandTrust Board makes final decision and awards funding;
5. Formal offer of funding issued by LandTrust; and
6. Project starts.

The Panel will:

- (a) Offer support to the Board of LandTrust as to which projects should be progressed to a full proposal for Scottish Landfill Communities Funds;
- (b) Support the work of LandTrust in grant-making and research;
- (c) Give guidance on promotional activities relating to the SLCF;
- (d) Provide guidance on the strategic direction of the SLCF in terms of priority areas for funding;
- (e) Receive regular updates on the progress of projects in receipt of the SLCF generated at NAC Landfill Operations.

The Board of LandTrust will make the final decision on applications to the SLCF.

2. Terms of Reference

The Terms of References for the Panel are:

- (a) A maximum of three Elected Members and two Senior Officers of North Ayrshire Council may join the panel
- (b) A quorum shall comprise two Elected Members, including the Chair, and one Senior Officer
- (c) Senior Officers will be appointed on the panel by the Chief Executive of North Ayrshire Council
- (d) An Elected Member can be appointed to sit on the Panel, provided the balance of Elected Member representation is maintained at two from the ruling Administration.
- (e) The Chair must be an Elected Member and will be elected by majority vote of Elected Members
- (f) A person connected with LandTrust may not sit on the Panel
- (g) Anyone can leave the Panel at any time by sending their resignation to the Chair
- (h) The Panel will meet at least twice per calendar year.
- (i) The Panel will not have the authority to make decisions on the award of SLCF
- (j) The Panel may invite a relevant Officer of North Ayrshire Council to provide specialist input
- (k) The Chief Executive of LandTrust and/or the Chair of the Board of Directors of LandTrust will be expected to attend meetings of the Panel to:
 - (i) provide professional advice ;
 - (ii) regular updates on progress of projects in receipt of the SLCF;
 - (iii) provide regular financial updates on SLCF generated at NAC Landfill sites (to include levels of funds uncommitted/committed to projects);
 - (iv) discuss promotion of completed projects;
 - (v) discuss prioritising funding criteria.

NORTH AYRSHIRE COUNCIL

Agenda Item 6

24 May 2016

Cabinet

Title: **EU Funding & Poverty Social Inclusion Fund**

Purpose: To update Cabinet on recent approvals of EU funding and the intention to submit an application for funding to the Poverty and Social Inclusion ESF programme.

Recommendation: It is recommended that Cabinet

- Notes the approvals of EU funding received to date
- Approves the submission of a bid to the Poverty and Social Inclusion programme in line with the proposals and funding package outlined
- Delegates authority to the Head of Economic Growth to negotiate the final package of proposals with Scottish Government Structural Funds Division.

1. Executive Summary

- 1.1 This paper updates on progress with receiving finalised approvals for EU programmes which have been subject to delays over the past year. The paper then outlines proposals for a new bid to lever additional EU funding, through the Poverty/Social Inclusion programme. The Council is required to submit a bid by the end of May and may then need to negotiate with Government to get final approval for a package of projects.

2. Background

- 2.1 A paper was previously submitted updating Cabinet on the European structural funding programme 2014-20. The paper highlighted the funding that North Ayrshire Council was responsible for submitting applications for as lead partner as follows:
- Enhanced employability and skills pipeline
 - Youth employment initiative
 - Poverty and social inclusion
 - Business Growth

- 2.2 The report also highlighted the delays, in rolling out the 2014-2020 programme and the effect this had on the Council in receiving approvals for funding applications and the impact this delay was having on putting new programmes and services in place, particularly in relation to employability services.
- 2.3 Since the report, approvals have been received from the Scottish Government for all funding submissions as follows:
- Enhanced employability and skills pipeline – total grant - £2,045,988
 - Youth Employment Initiative - total grant – £2,129,963
 - Business growth - total grant - £360,000 (subject to final paperwork being completed)
- 2.4 North Ayrshire has also been allocated £3M financial inclusion funding through the Lottery and European Social Fund, which does not require match funding. This fund is managed by the Lottery and the Council will bid for this through a competitive tender process undertaken by the Lottery. The invitation to tender for this fund has still to be published. A previous Cabinet paper provided an update on progress on the Council leading a partnership consortium including local third sector organisations in preparing a bid for this fund, aligned with the development of a financial inclusion strategy for North Ayrshire.
- 2.5 This report now details the work underway in preparing an application for grant support to the ESF Poverty and Social Inclusion Fund. The Poverty and Social Inclusion Fund is focussed on providing support for those most disengaged from the labour market and who do not consider employment as a realistic option or may have specific barriers which are preventing them from considering employment or training as an option. It should be noted that this programme will only support post-school activity. Until recently detailed guidance was not available on how this funding could be spent and was open to interpretation.
- 2.6 Discussions have been on going with partners and Council services about how we can work with more individuals and support them to engage with the labour market and from this a series of project proposals have emerged. Initial informal discussions with Government has provided some feedback on those areas of activity which are likely to be eligible and should now form part of a formal North Ayrshire application to Government for these funds to be submitted by the end of May 2016.

- 2.7 The maximum grant available from the Poverty and Social Inclusion ESF programme is - £740,000. The funding package would be as follows -

Total project costs - £1.85M

Maximum ESF grant - £740,000 (at 40% intervention rate)

Council match - £1.11M

It is possible to bid for less than the maximum grant dependent on available match. This programme can run up until December 2018.

- 2.8 The Community Planning Partnership Board recently agreed a new inequalities strategy Fair For All and are considering a restructuring of CPP governance structures to support this. This is designed to provide a more coherent and joined up approach to tackling poverty and inclusion.
- 2.9 In developing a bid for Poverty and Social Inclusion projects, consideration has been taken of other existing funding bids and if successful how these would all be structured to ensure a coordinated approach to delivering effective interventions. Specific account is taken of the Financial Inclusion project bid, the ESF Skills pipeline and the Youth Employment Initiative and ensuring that eligible activity is positioned within the most appropriate funding bid in order that there is maximum drawdown of grant across the funding streams.
- 2.10 The North Ayrshire Council bid to the ESF Poverty/Social Inclusion programme would focus on addressing root causes of poverty and inequality by engaging unemployed residents to begin a journey towards work and out of poverty. It is proposed to seek funding for the following projects through the programme. These fit the criteria of the programme but also enhance mainstream employability and skills activity. It should be noted that Government could still reject some of these proposals or advise that we should fund from another source. However it is felt that the individual projects detailed below fit the basic criteria and could be amended in light of feedback and funding received.

i) Vulnerable Families project

This programme will develop links with health visitors who currently visit all parents including some of the most vulnerable and disadvantaged parents in North Ayrshire. Currently the health visitor visits all parents at regular intervals to offer advice and support in bringing up their children. Health visitors have unique access to all families of young children in North Ayrshire and regularly signpost parents for advice on a range of issues, e.g. benefits advice.

This programme would provide health visitors with specialist employability and skills service that they could refer to and encourage unemployed parents to access. This will provide in depth support to parents keen to return to work. This will help them understand the process of returning to work and develop personal return to work plans and feed parents into the employability pipeline or directly into employment. This service would include a childcare fund which would be used to cover the costs of childcare in the transition to training and/or employment.

ii) Skills for life (vulnerable groups including lone parents)

This will continue successful implementation of a work experience programme within the Council. It will support three cycles of 25 local people who are long term unemployed, have multiple barriers to employment and little or no work experience history. The programme will be delivered in two distinct parts (i) intensive pre-employment support with accredited qualifications (ii) a paid work experience placement in North Ayrshire Council. All candidates on the programme will complete the certificate of work readiness.

iii) Supported employment – job coaches

Job Coaches will support the development of North Ayrshire Council's supported employment offer. The objective is to provide in depth support to Service users and others defined under definition of supported employment; source employment opportunities or work placements, and; provide on-going support when in work placement.

This will allow the Council to maximise supported employment opportunities available through the new Hazeldene Horticulture service, but also work with other social enterprises and private sector employers to increase supported employment opportunities.

iv) Fairbridge model

While North Ayrshire's recent school leavers destination figures showed further progress and placed us 3rd best in Scotland, there remains consistently 4-5% of school leavers who do not achieve a positive destination. The Fairbridge programme will seek to work intensively with some of this cohort. The programme empowers disengaged and marginalised young people through a combination of group activities, opportunities, experiences, and one-to-one support to help them gain the personal, social and life skills needed to stabilise their life circumstances and eventually move into education, employment, training or volunteering.

The programme will work with young people who tend to be looked after, care leavers, offenders and ex-offenders, single parents and young people with disabilities.

v) Volunteering

This is a programme developed in partnership with the Scottish Fire Service, The Ayrshire Community Trust and the North Ayrshire Drugs and Alcohol partnership. This programme provides structured work experience placements through volunteering with the Scottish Fire Service which will also result in accredited qualifications. The ADP will be a key referral source to the programme.

This programme has already started and was to receive mainstream employability pipeline funding but the activity involved and the volunteers targeted, it fits better within the poverty and social inclusion fund.

vi) Consultation and alignment

Economic Growth has consulted over an extended period regarding this funding, particularly with the Health and Social Care Partnership; to understand how this fund can address priorities. Initiatives funded through this programme will support and enhance existing activity. The projects will be supported by existing services available through the employability pipeline; and will also link in with the financial inclusion programme developed for Lottery/ESF funding.

3. Proposals

3.1 It is recommended that Cabinet note the progress in receiving approval for EU programmes which have been subject to delays across Scotland.

3.2 It is recommended that cabinet approve the submission of a bid to the ESF Poverty/Social Inclusion programme in line with the proposals detailed; with the following funding package

Total project costs - £1,525M,

ESF grant - £610,000

Council match funding - £915,000.

The bid as it currently stands would be for less than the maximum amount of grant available but reflects the match required for the identifies projects.

- 3.3 It is recommended that Cabinet agrees that the Head of Economic Growth negotiate a final package of projects with Scottish Government Structural Funds division.

4. Implications

Financial:	<p>The maximum ESF grant available from the poverty/social inclusion programme is £740, 000, however it is possible to bid for less than this amount. In order to maximise the available grant, the council would need to identify £1.1M of match funding.</p> <p>It is proposed that £379,000 is utilised from monies previously allocated to respond to Welfare Reforms, which has been unutilised.</p> <p>It is proposed that £536,000 is utilised from Economic Growth underspends which were assigned as earmarked reserves at period 10. These reserves were earmarked for future ESF match of employability activity, however re-profiling of budgets means the reserves could now be used to match the poverty/social inclusion programme, with no impact on employability grants or activity.</p> <p>This would provide a total of £915,000 match, which would facilitate a bid for £610,000 ESF.</p> <p>If further project proposals come forward and match becomes available, the bid could be increased to maximise the ESF grant available to the area.</p>
Human Resources:	<p>The job coach project would result in two new posts being created.</p> <p>All other proposals would be procured through competitive tender and/or delivered through existing staffing resources.</p>
Legal:	None
Equality:	The proposals will respond directly to the Council's efforts to reduce inequalities through engaging and supporting those most disadvantaged in the labour market towards and into work.
Environmental & Sustainability:	None

Key Priorities:	The proposals address key Council priorities around increasing employment and reducing poverty in the area.
Community Benefits:	None

5. Consultation

- 5.1 There has been on going consultation regarding this funding particularly with the Health and Social Care partnership to understand how this fund can address priorities.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Greig Robson, Senior Manager, Employability & Skills on 01294 324951

Background Papers

0

NORTH AYRSHIRE COUNCIL

Agenda Item 7

24 May 2016

Cabinet

Title:	<p>Community Empowerment Act (2015): North Ayrshire Council consultation responses to:</p> <ol style="list-style-type: none">1. Community Planning: Consultation on draft guidance and regulation;2. Participation Requests: Consultation on draft regulations;3. Asset transfer: Consultation on draft regulations; and4. Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015.
Purpose:	<p>To seek approval for the submission of the consultation responses to Scottish Government.</p>
Recommendation:	<p>That Cabinet approves the consultation responses to the following:</p> <ol style="list-style-type: none">a) Community Planning: Consultation on draft guidance and regulation;b) Participation Requests: Consultation on draft regulations;c) Asset transfer: Consultation on draft regulations; andd) Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015.

1. Executive Summary

- 1.1 Scottish Government has issued, simultaneously, a range of consultations on proposals for statutory guidance and regulations as part of the Community Empowerment Act (Scotland) 2015 in relation to the following:

- Community Planning: Consultation on draft guidance and regulation;
- Participation Requests: Consultation on draft regulations;
- Asset transfer: Consultation on draft regulations; and
- Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015.

1.2 North Ayrshire Council has been recognised as making good progress in Community Planning and related activities, including the development of locality planning, as listed above at 1.1, and now responds positively and constructively to the proposals for regulation as contained in the consultation proposals. North Ayrshire Council's responses are contained in the appendices to this report.

2. Background

2.1 The Bill for the Community Empowerment Act of the Scottish Parliament was passed by the Parliament on 17th June 2015 and received Royal Assent on 24th July 2015. The Act covers a range of themes, listed at 1.1 above, many of which are now the subject of consultation on statutory guidance and regulations.

2.2 Scottish Government regulations will provide more detail about how the legislation will work in practice. Statutory guidance will provide advice about how they should be used by communities and public service authorities. The Scottish Government is now consulting widely on the development of the regulations and statutory guidance.

2.3 North Ayrshire Council has responded extensively to earlier consultation stages and now wishes to respond constructively to the statutory guidance and regulation phase, as contained in the appendices to this report.

2.4 The consultations and responses can be summarised as follows:

2.5 Community Planning: High quality public services which work together and with Scotland's communities are essential to support a fair and prosperous society. Community planning is the means by which people and communities can be placed at the centre of public service delivery and policy making. Community planning is a key driver for public service reform at local level. It brings together local public services and the communities they serve. It provides a focus for joint working, driven by strong shared leadership, directed towards distinctive local circumstances.

2.5.1 This guidance seeks to provide a renewed vision for community planning, which builds on the provisions in the 2015 Act. Community Planning Partnerships and community planning partners should understand how their performance matches these expectations and have a clear understanding of the nature and extent of improvement and support required.

2.5.2 Under the Act, community planning is about how public bodies work together and with the local community to plan for, resource and provide or secure services which improve local outcomes. Tackling inequalities will be a specific focus and Community Planning Partnerships (CPPs) will produce locality plans at a more local level for areas experiencing particular disadvantage. CPPs and their partners must take all reasonable steps to secure the involvement in community planning of any community body which it considers is likely to be able to contribute to it, to the extent that the community body wishes. The guidance seeks to provide additional detail to enable community planning partners and those who wish to participate in community planning to be able to do so.

2.5.4 North Ayrshire Council's response (Appendix 1) welcomes the statutory guidance and legislation while emphasising the following:

- The requirement for the guidance to be clearer and more specific;
- The lack of ambition within the proposals in relation to a number of issues, including locality planning and community capacity building, for those CPPs who wish to deliver the potential inherent in the community planning approach;
- The inability of CPPs to exercise powers except as delegated by partner organisations; and
- The opposition to the prescribed size of localities, based on population size. Such a 'one size fits all' approach is contrary to the principles of community empowerment that decisions should be taken locally, will result in localities which are not locally recognised as communities, and require our CPP to set different localities from those used for Locality Planning.

2.6 **Participation Requests:** Participation requests are a new process which will allow a community body to enter into dialogue with public authorities about local issues and local services on their terms. Where a community body believes it could help to improve an outcome it will be able to request that the public body takes part in a process to improve that outcome. Community bodies might use the Act to discuss with service providers how they could better meet the needs of users, to offer volunteers to support a service or even propose to take over the delivery of the service themselves.

2.6.1 North Ayrshire Council's response (Appendix 2) welcomes the statutory guidance and legislation while emphasising the following:

- The inaccessibility of the concept and language for community organisations;
- The requirement for public bodies to have longer to assess and respond to participation requests, given the complexity and relatively novelty of this approach; and
- The capacity required of public bodies to invite, support and ensure the success of participation requests.

2.7 **Asset Transfer:** Part 5 of the Community Empowerment (Scotland) Act 2015 provides a right for community bodies to request the transfer of land and buildings belonging to public authorities. The Act sets out a framework for the asset transfer scheme and gives the Scottish Ministers powers to make regulations to fill in the detail of the procedures to be followed. This paper seeks views on draft regulations for making and responding to requests, for review or appeal of decisions, and on registers of land. It also provides an indication of guidance and best practice to help relevant authorities develop or update their procedures.

2.7.1 North Ayrshire Council's response (Appendix 3) welcomes the statutory guidance and legislation while emphasising the following:

- The requirement to extend the length of time public bodies have to process a community asset transfer request;
- The need to consider the additional dimension that common good ownership adds to an asset transfer request;
- The proposal that more attention should be given to the governance of the applicant group/organisation and their experience and ability to sustain the project; and
- The intention of North Ayrshire Council to review its existing Community Asset Transfer and Guidance in line with the prospective new regulations.

2.8 **The community right to buy abandoned, neglected or detrimental land:** the consultation seeks comments and feedback on policy proposals relating to certain key aspects of forthcoming secondary legislation for Part 3A of the Land Reform (Scotland) Act 2003, the community right to buy abandoned, neglected or detrimental land.

2.8.1 North Ayrshire Council's response (Appendix 4) welcomes the statutory guidance and legislation while emphasising the following:

- Lack of clarity of intention or extent in many areas of the proposals;
- The importance of existing tenancies in any proposal or process; and
- The anticipated procedure if more than one community group is interested in a piece of land.

3. **Proposals**

3.1 It is proposed that Cabinet approves the following consultation responses:

- 3.1.1 Community Planning: Consultation on draft guidance and regulation;
- 3.1.2 Participation Requests: Consultation on draft regulations;
- 3.1.3 Asset transfer: Consultation on draft regulations; and
- 3.1.4 Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015.

4. Implications

Financial:	As highlighted in previous consultation responses in relation to the Community Empowerment (Scotland) Act 2016, it is not possible to anticipate or quantify the financial implications of the legislation, dependent as it is in many cases on the appetite of both Community Planning Partners and communities to be involved in activity which has hitherto been the preserve of the local authority.
Human Resources:	As highlighted in previous consultation responses in relation to the Community Empowerment (Scotland) Act 2016, it is not possible to anticipate or quantify the implications of the legislation. However, significant implications exist both for the community capacity building requirement and in determining asset transfer and participation request applications.
Legal:	As highlighted in previous consultation responses in relation to the Community Empowerment (Scotland) Act 2016, it is not yet possible to anticipate or quantify the legal implications of the legislation.
Equality:	The proposed legislation enshrines the principle of addressing inequalities and expects this to be the central tenet of the legislation described above.
Environmental & Sustainability:	Environmental improvements may be expected as community groups address issues related to currently abandoned land.
Key Priorities:	The proposals address the CPP's and the Council's strategic priorities.
Community Benefits:	

5. Consultation

- 5.1 North Ayrshire CPP and North Ayrshire Council have engaged and consulted extensively with communities and partners on community planning, locality planning and the additional themes contained within the current report.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Audrey Sutton, Head of Service (Connected Communities) on (01294) 324414.

Background Papers

0



Community Planning under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Guidance and Regulation

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organization? (required)

- ☐ Individual
- ☒ Organisation

What is your name or your organisation's name? (required)

North Avrshire Council

What is your phone number?

01294 324414

What is your address?

Cunninghame House
Irvine

What is your postcode?

KA12 8EE

What is your email?

ASutton@north-avrshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: (required)

- ☒ Publish response with name
- ☐ Publish response only (anonymous)
- ☐ Do not publish response

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?

- ☒ Yes

☐ No

Community Planning under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Guidance

Questions

Q1: The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any others?

Please explain why.

The identification of underpinning principles which build on previous guidance and statements and provide a definitive guide is a helpful approach.

The principles are, on the whole, suitable for effective community planning. However we would make the following observations and comments:

Community participation and co-production

Paragraph 55 deals with the obligation requiring Community Planning Partners to contribute funds, staff and other resources. However it does not say how this can be enforced if a CPP agrees and partners refuse. At present, such CPP agreement would either have to be unanimous (with individual officers exercising their own delegation from their parent body to implement that decision) or a request for funding would have to be submitted to the individual Community Planning Partner (there is no guarantee that it would be paid). Certainly it would not be legally enforceable.

Understanding of local communities' needs, circumstances and opportunities

We agree with paragraphs 70 to 78 on the importance of data as this is a key part of an evidence-based understanding of local communities.

Focus on key priorities Paragraph 107 states that not every single action a CPP takes must demonstratively act to reduce inequality. It also refers to Section 5 of the 2015 Act which provides that a CPP need not comply with the duty to act with the view to reducing inequalities if it considers that it would be inappropriate to do so. It would have been helpful in this section to include further Guidance to assist CPP's to undertake locality planning for all communities, not just those where inequality exists, emphasising that the work that the CPP does in to reduce inequality should sit within the overall duty of the CPP to better align services and resources of public bodies.

Resourcing improvement

Section 119 helpfully recognises the fact that the actions by one partner may have an impact on the work of others. It would have been helpful to have further Guidance which encouraged resource transfer between partners in order to achieve such cross-cutting outcomes.

Effective performance management

Section 122 onwards deals with effective performance management. The Accounts Commission update on Community Planning in March 2016 was very clear that the Scottish Government needed to streamline its national performance management frameworks and create a better balance between short-term measures of individual service performance and the delivery of longer term outcomes through effective partnership working. Paragraph 58 of the Accounts Commission report refers to the extensive effort and focus placed by NHS Boards on meeting nationally imposed targets and standards which were largely input, not outcome based. There is a wider issue of subsidiarity. In order to reap the benefits envisaged by both the Christie Commission and the 2015 Act power needs to be delegated down to the lowest level. Power needs to be delegated by the UK Government to the Scottish Parliament, to Community Planning Partners and the community. The section on performance management does not address the Scottish Government's role in performance management and its impact if imposing a 'one size fits all' solution at the expense of locally agreed outcomes targeted at towards individual community priorities.

Q2: The draft guidance sets out common long-term performance expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting these expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?

The update from the Accounts Commission on Community Planning dated 3 March 2006 provides a useful context for the expectations of this Guidance. In paragraph 11 it stated that:

“A significant area of ambiguity was the extent to which Community Planning should focus on specific local concerns and the weight that CPPs should give to national priorities. There are also differences of opinion about the extent to which Community Planning should focus on prevention and inequalities or whether it should have a broader role in improving and reforming mainstream public services. This has important implications for the level and range of resources that CPP’s see as falling under their influence, which in turn influences the scope and potential impact of Community Planning in the local area. Our recommendation has not yet been addressed and the issues we identified at the time still continue. The Scottish Government anticipates taking this recommendation forward through the publication of Draft Guidance on the Community Empowerment Act. This Guidance will supersede the Statement of Ambition and reflect current thinking on Scottish Government expectations of Community Planning”.

“The Guidance also presents an opportunity for the Scottish Government to set out how Community Planning sits within the broader agenda of public service reform and how its theory of change for Community Planning will deliver improvements.”

The starting point for the Guidance should be the recommendations of the Christie Commission. This recognised the following needs:-

- For public bodies to work together to target services and resources towards the needs and priorities of individual communities
- To raise the capacity and empower communities in order that they can support or deliver the priorities of their communities
- A focus on outcomes not inputs
- Focus on early intervention and prevention, reflecting the need to deal with failure demand.

LOIPs

Paragraph 136 - It would have been useful to have had some consultation on national outcomes to inform this consultation paper.

Paragraph 145 – what happens if every Community Planning Partner does not agree the content of the LOIP. Does this mean that all have a right of veto?

Q3: The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality plan(s). CPPs must from time to time review their LOIP and locality plan(s) under review, and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise their plans after a specific period of time in every case? If so, what should that specific period be?

Yes ☒ No ☐

Please explain why.

CPPs need flexibility to devise LOIPs over appropriate periods to deliver corresponding outcomes. If CPPs are acting consistently with the principles outlined in the guidance this will lead them to review their LOIP and locality plans in response to local changes, national policies etc.

Q4: What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans?

4 months ☐ 6 months ☐ Other ☒

If other please provide timescale. Please explain why.

It is unlikely to be possible for CPPs to evidence the outcomes within the suggested timescales. Process and improvements in relation to approach could be proposed within a shorter timescale.

Paragraph 144 - Based on the experience of North Ayrshire, through our recent extensive consultation on locality planning, those CPP's which are less well advanced will face significant challenges in having in place by October 2017 a LOIP which is the result of genuine community participation, let alone co-production.

Q5. Do you have any other comments about the draft Guidance?

We have four main themes to explore in relation to the Guidance:

1. The guidance pulls together themes and principles from previous guidance, the Statement of Ambition, correspondence from the National Community Planning Group etc. It is helpful for this to be within one document as a single source of reference for CPPs.
2. Given the likely longevity of this Guidance, it should aim to empower and support those CPPs who wish to take Community and Locality Planning to a higher level. It should not be focussed on ensuring minimum standards or operational detail. The Integration of Health and Social Care was a good example of something which accommodated both of these aims. It focuses on the role of the CPP in dealing with inequalities, and while we support this unreservedly, the Guidance fails to mention the other roles of the CPP in aligning service delivery and resources, engaging with and empowering communities to deliver outcomes which are targeted towards the priorities of all communities. As this Guidance will replace the previous Community Planning Guidance and the Statement of Ambition it is important that the wider roles of CPP's are included in the Guidance.
3. There is insufficient linkage in the Guidance between locality planning for inequality groups and locality planning for the integration of Health and Social Care. There is an opportunity to link this to locality planning for all communities which has not been taken.
4. Paragraph 152 refers to the fact that CPP can publish a locality plan for any locality within their area, no further Guidance is given. This would have been a useful point at which to encourage CPP's to engage in wider locality planning for all communities, enabling CPP and community services and resources to be aligned towards the needs of all communities, not just those where inequality exists.

Q6. We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?

Paragraph 158 – the requirement for a maximum number of residents in any locality, whether 10,000 or 30,000 is counterproductive. Localities should represent local community identity not a one size fits all, artificial number. The difficulty of the Local Government Boundary Commission in Scotland in trying to align numbers with natural communities will simply be repeated if a number is imposed. Nor are our current boundaries a particularly good reflection of communities.

Paragraph 161 is good.

Q7: The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority electoral ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning? What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?

The whole point of Community Planning is that it should attempt to achieve outcomes targeted to the priorities of individual communities. It should be left to CPPs, in consultation with the community, to agree the size of localities

Q8: Do you have any other comments about the draft Regulation?

Paragraph 162 – this should be deleted as it strays into operational guidance. It should be left to the Improvement Service and Audit Scotland to advise on an audit the effectiveness of plans. 10 year outcomes are notoriously difficult to precisely identify and there is a danger that these become a wishlist.

At present a Local Authority is still required to have Scheme of De-centralisation in terms of Section 23 of the Local Government etc (Scotland) Act 1994. It is clear from the Draft Guidance relating to this section that it was essentially an earlier version of localism or the Community Empowerment Act. While this provision is now effectively superseded by the 2015 Act, this Section still remains in force. Accordingly it would be useful for the guidance to set out that any de-centralisation scheme prepared under Section 23 should align with the LOIP.

Q9: Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?

Authorities which are further ahead in Community Planning, such as North Ayrshire, have developed a locality approach which will align CPP and community resources to deliver outcomes targeted towards all communities in the area. This Guidance proceeds on an assumption that there will be a single locality outcome improvement plan (presumably replacing the SOA) and there will thereafter only be a locality approach for areas of inequality. A locality approach is equally important for all communities. Accordingly the Guidance, while addressing inequality and the terms of the 2015 Act, should contain Guidance on the wider roles of the CPP and encourage a wider locality approach for all communities.

The section on governance does not address the key issue that CPP's exist as an independent body and have no specific powers delegated to them by any organisations.

Paragraph 171 – this refers to the fact that the regulation solely focusses on population numbers as the sole basis for determining a locality. This is extremely unhelpful. North Ayrshire has significantly developed “Areas of Family Resilience Profiles” based on physical, geographical and demographic information, and this has been the subject of debate and consultation with communities. The resultant

localities are based on this intelligence, both for Community Locality Planning and for the HSCPs. Participatory budgeting, local action planning, charrettes and the Place Standard are all being used to further develop a sense of place and the capacity of communities to address the challenges facing them.



Consultation on the Draft Participation Request (Procedure)(Scotland) Regulations 2016

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organization?

- ☐ Individual
- ☒ Organisation

Full name or organisation's name

North Avrshire Council

Phone number

01294 324414

Address

Cunninghame House
Irvine

Postcode

KA12 8EE

Email

ASutton@north-avrshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☒ Publish response with name
- ☐ Publish response only (anonymous)
- ☐ Do not publish response

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?

- ☒ Yes
- ☐ No

Participation Requests under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

Questionnaire

Q1: Should the use of a statutory form be required in the regulations?

Yes ☒ No ☐

Please give reasons for your response.

Use of a statutory form will ensure that relevant details are provided without the public service body having to go back to the community body for clarification.

This approach would ensure consistency and fairness regarding the information provided and will assist in assessing the requests. Any template would have to be self-explanatory to ensure community groups were not disadvantaged: clear, easy to read, no jargon with a useful guide to explain its completion.

A statutory template would ensure both consistency and fairness. If the template was only included in guidance which was not statutory, then there would remain the possibility that a group would choose not to use it.

Q2: Should it be possible for a community body to put in a participation request without using a form?

Yes ☒ No ☐

Please give reasons for your response.

If a statutory template was introduced then all requests without exception should be made using the form. (The form would have to be made accessible in various formats (e.g. large font) for those that require it) and particular thought would have to be given to provision of support to complete the form if required by specific groups.

Consideration will have to be given to how public bodies provide support for completion of participation requests, and whether they can provide the resources for this.

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

The form should focus more specifically on how supporting evidence can be provided and how improvements can be demonstrated.

The explanatory notes could be made much clearer for the variety of community bodies which might be using it, as they are currently very convoluted.

Examples of rewording could be:

1. State which public service/ services to which this application relates.
2. What outcome currently results from these service(s)?
3. Why does the community body believe it should participate in the outcome improvement process?
4. Outline the knowledge, expertise and experience the community body has in relation to the outcome specified in paragraph 3.
5. Explain the improvement in the outcome in para.3 which the community body anticipates may arise from its participation in an outcome improvement process.

Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond?

Yes ☐ No ☒

If not, please suggest an alternative timescale and explain reasons for the change.

14 days is an unrealistically short time to provide anything other than an acknowledgement or holding response.

Participation requests may require a variety of actions and responses from the public service authorities and some of these may be untested by the public body and therefore may need to be explored or developed.

If elected member or board involvement is required, as may often be the case, committee or reporting cycles, including the preparation of reports, will dictate the ability of public bodies to respond.

Therefore, unless decision making regarding participation requests is delegated to officers, which may not be appropriate or feasible, fourteen days is inadequate.

Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?

The guidelines state that the importance of the promotion of the new rights for communities is a key factor for the success of the Act in practice. Despite this, the Act merely states that the regulations “may” specify the ways in which authorities must publicise the use of participation requests. It is considered that in every case, promotion should be undertaken prominently and with user friendly language, bearing in mind that the intention is to encourage community bodies to participate.

The use of social media and the array of other communication methods currently used in Public Bodies should be utilised. Staff should be ‘trained’ to promote this right in their work with communities/service users.

All publicity should be in plain English/user friendly as detailed above.

The local TSI will be an important communication and promotion channel, to ensure the third sector are aware of the opportunity.

Each local area will have meaningful ways of engaging its own communities and these should be exploited.

Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?

Ideally, there should be advice available from an individual or team within the public body that has the relevant skills and knowledge of the legislation and processes.

If language, literacy, digital literacy or any other disability is an issue support should be available.

Additionally, signposting to other relevant assistance should also be available (for example a list of relevant contacts such as: local authority departments; legal advice; funding advice etc).

However, the resourcing of this support will require consideration, and this may affect the time it takes for the public body to respond as meaningfully as it would wish.

Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.

Community bodies vary greatly in their constitutions, expertise and experience. Some may be ongoing bodies, others may come together simply because of a shared wish to be involved in a particular topic. Each public service authority should nominate a designated, trained, official from whom community bodies can obtain support and assistance as needed. The definition of which bodies may need support should not be drawn too tightly, and should be inclusive rather than exclusive.

Groups who traditionally experience social exclusion, particularly those who from Equality groups are likely to require additional support. Any publicity must take these needs into account to prevent further marginalisation/exclusion.

Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time?

Yes ☐ No ☒

If not, how long should the period for making a decision be? Please give reasons for your response.

In view of the comments made earlier about meeting cycles, it is suggested that 45 days might be more appropriate. However, as the guidelines indicate, this question applies to making a decision about acceptance or rejection of an application, not about its determination. In the light of this, the decision could be delegated to an officer of the public body, with a presumption of approval rather than rejection, thus reducing the time required to respond.

Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.

It should include the decision and the reason(s) for the decision, including any evidence that was considered. It might also include a contact for further information or assistance.

Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.

Given that the primary objective is to enable a wide range of community bodies to start participating in this new process, the process itself should be kept as simple as possible. In this context, the application form should contain all the required information and no additional information should be required in order to determine the acceptability of an application.

The information suggested appears to be adequate. However, the final point: *How the outcome improvement process will operate* - is vague and perhaps needs to be re-worded as follows: *'What each of the parties involved will do to effect improvement.'*

No further information should need to be published beyond that already specified in the consultation guidelines.

Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.

This seems to be clear and adequate.

There should normally be no need for further information to be published beyond that outlined in the consultation guidelines.

Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.

The extent of information outlined in the consultation guidelines should be sufficient in the majority of cases.

However, further information could be required in relation to the evidence that shows the improvement- i.e. how we know there has been improvement. This would ensure accountability and transparency and could include which PIs have been used to measure the outcomes.

In addition, if the process is to include a right of appeal by community bodies against either matters of substance or issues of the process itself, that right of appeal should be included in the report

Q13: : Do you have any other comments on the draft Participation Request (Procedure)(Scotland) Regulations 2016?

The Act and the Regulations give powers to community bodies and emphasise that their participation is key to the success of the legislation. The Act is, understandably, couched in legal terms. To a large extent, the consultation draft questionnaire is also full of difficult terminology. It is suggested that, if the primary objective is to encourage participation, then the enormous diversity of community bodies needs to be recognised, and the guidelines, forms etc, need to be “customer facing” documents, drafted in user friendly language at a level that the least experienced community body is able to understand.



Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation? (required)

- ☐ Individual
- ☒ Organisation

What is your name or your organisation's name? (required)

North Avrshire Council

What is your phone number?

01294 324414

What is your address?

Cunninghame House
Irvine

What is your postcode?

KA12 8EE

What is your email?

ASutton@north-avrshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: (required)

- ☒ Publish response with name
- ☐ Publish response only (anonymous)
- ☐ Do not publish response

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 the Scottish Government to contact you again in relation to this consultation exercise?

- ☒ Yes
- ☐ No

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

Questionnaire

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes ☒ No ☐

If not, please explain what you would change and why.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

Land and/or property which is owned by local authorities but which is leased out to third parties.

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

The register should publish the details in a format which facilitates ease of searching and to convey the minimum amount of information to facilitate ease of understanding and reading to identify property. The register should publish the details in a format which facilitates ease of searching and to convey the minimum amount of information to facilitate ease of understanding and reading to identify property.

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

They should be able to ask what support will be available from the public body during the asset transfer process e.g. funding or officer support.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?

Yes ☒ No ☐

If not, please explain what you would change and why.

Yes, they are reasonable and are in line with what we currently have in our policy/guidance, which we are currently updating in line with Community Empowerment Act. This may need further revisions dependent on final guidance following consultation phase A.

Q6: Is there any other information that should be required to make a valid request?

We currently also ask about the governance of the group/organisation e.g. how many people do they have on committee, how long have they been in existence i.e. more than just are they constituted? We also ask do they have previous experience of managing/owning an asset and, if they require assistance with a business plan.

This additional information provides a better understanding of the needs and strengths of the applicant organisation.

Q7: Do you have any comments on the proposals for acknowledgement of requests?

This is to be welcomed as it gives a definite date for the start of the 6 month timescale for processing applications.

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

We question whether it is necessary to place notice of prospective asset transfer on the site. Should it not be enough just to place information on agreed e.g. web page? Financial and resource implications could be considerable.

Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes ☐ No ☒

If not, how long should the period for making a decision be?

No. This length of time is not reasonable, particularly when dealing with a large number of complex asset transfer requests. This is particularly the case as local authority resources are at a premium.

We suggest a minimum of 9 months, with a preference for 12 months. This gives both parties time to fully prepare and does not prevent straightforward transfers going through more quickly.

Where a common good title is involved and court authority for the transfer is required, a longer period may need to be agreed with the community transfer body.

Q10: Do you agree with the proposals for additional information to be included in a decision notice?

Yes ☒ No ☐

If not, please explain what you would change and why.

Yes, this seems reasonable.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?

Yes ☒ No ☐

If not, how do you think these reviews should be carried out?

Yes, we agree with this proposal. It may be helpful to include an independent body such as DTAS/COSS to participate in this review.

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?

Yes ☒ No ☐

If not, how long should the period for making a decision be?

Yes, this seems reasonable, as most information will be available already but allows both parties enough time to gather additional information if required.

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

One issue where there is a lack of clarity is in relation to schools and school estate – can these be subject to community asset transfers?

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?

Yes ☒ No ☐

If not, how do you think these reviews should be carried out?

It would be sensible to appoint a single person to consider appeals where a contract has not been concluded. This would be in accordance with the public Inquiry procedure and it would be difficult to see how the appeals could otherwise be heard.

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded?

Yes ☒ No ☐

Please explain your reasons.

The appeals procedure gives the Scottish Ministers the power to obtain all documentation available to both parties in connection with the application for transfer. If all of the documentation is potentially subject to publication that might prejudice free and open negotiation between parties during the application for transfer to avoid the possibility of publication. As a result, the process might be more difficult and applications may be more difficult to determine.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded?

Yes ☒ No ☐

Please explain your reasons.

Yes, we agree that there should be no third party representations - very much for the same reason as above. Third parties should not be allowed to become involved in negotiations between two parties as this might make applications more difficult to determine.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

No further comment

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

No further comment

**Consultation on secondary
legislation proposals relating to
Part 3A of the Land Reform
(Scotland) Act 2003 – the
community right to buy abandoned,
neglected or detrimental land as
introduced by the Community
Empowerment (Scotland) Act 2015**

2015
March 2016

αβχδεφγηι

φκλμνοπθρ
στ

Contents

Introduction	3
How to respond to this consultation	4
Detailed policy proposals :	
1. Section 97C(4) –Matters Ministers must have regard to when considering whether land is eligible land	7
2. Section 97C(5)(b) – Land pertaining to land on which there is a building or structure which is a person’s home	9
3. Section 97C(5)(f) – Other descriptions or classes of land which is not eligible land	10
4. Section 97C(6)(b) – Descriptions or classes of occupancy or possession which are, or will be treated as, a tenancy of a person’s home	11
5. Section 97H(6) – Proposed description of prescribed regulators	13
6. Section 97N(1) and 97N(3) – prohibitions on the transfer or dealing with land, and suspension of rights to the land	17
7. Section 97J(7) – circumstances in which a Part 3A community body can apply for the cost of ballot expenses to be reimbursed by Ministers	22
8. Section 97T(4) – entitlement to compensation	24

INTRODUCTION

This consultation seeks comments and feedback on policy proposals for some of the key aspects of the secondary legislation relating to the new Part 3A of the Land Reform (Scotland) Act 2003 (the “2003 Act”), the community right to buy abandoned, neglected or detrimental land. The new provisions in Part 3A of the 2003 Act were introduced by Part 4 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”). Any references in this consultation to the 2003 Act are to the 2003 Act as amended by the 2015 Act.

Part 3A of the 2003 Act

Part 3A of the 2003 Act gives community bodies the right, in certain circumstances, to buy land without a willing seller, when the land is wholly or mainly abandoned or neglected, or the use or management of the land is causing harm to the environmental wellbeing of the local community.

Before submitting the right to buy application the community body must fulfil certain criteria, for example:

- the community body must have tried to purchase the land,
- if the use or management of the land is causing harm to the environmental wellbeing of the local community, the community body must have approached all relevant regulators and asked that they take steps to reduce or remove the harm being caused to the community,
- the purchase of the land must be in the public interest, and
- the purchase of the land must be compatible with furthering the achievement of sustainable development of the land.

Proposals

The proposals contained in this consultation paper discuss:

- Matters which Ministers are required to have regard to when deciding whether land is eligible land for the purposes of Part 3A of the 2003 Act, that is land which is eligible for purchase by the Part 3A community body;
- Land pertaining to land on which there is a building or structure which is a person’s home. Such land will also form part of the person’s home so will not be eligible land;
- Other forms of land which is not eligible land;
- What forms of occupancy or possession of a home are, or are to be treated as, a tenancy of that home. Land on which there is such a home which is occupied under the terms of a tenancy is eligible land. Proposals discuss various forms of housing tenancy, and what land occupied under the terms of such a tenancy is eligible land;
- A description of prescribed regulators that a Part 3A community body will be required to approach, where relevant, to request that the regulators take action to mitigate the harm being caused to the environmental wellbeing of the community;
- What prohibitions or suspensions of rights will be placed on the transfer or dealing of land following receipt of a Part 3A application;
- The circumstances in which the Part 3A community body can apply for the cost of the ballot to be reimbursed by Ministers;

- The procedure by which any person, other than the applying Part 3A community body, may apply for compensation in respect of a loss or expense incurred as a result of a Part 3A application.

Responding to this Consultation

We are inviting responses to this consultation by 20 June 2016.

Please respond to this consultation online at <https://consult.scotland.gov.uk/community-land-team/abandoned-land>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

Community Land Team

Agriculture, Food and Rural Communities Directorate

D Spur

Saughton House

Edinburgh

EH11 3XD

Or by email to : crtb@scotland.gsi.gov.uk

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached to the end of this document as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the Community Land Team at the address above.

Scottish Government consultation process

Consultation is an essential part the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
☒ Organisation

Full name or organisation's name

North Ayrshire Council

Phone number

Address

01294 324414

Cunninghame House
Irvine

Postcode

KA12 8EE

Email

ASutton@north-ayrshire.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☒ Publish response with name
☐ Publish response only (anonymous)
☐ Do not publish response

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?

- ☒ Yes
☐ No

DETAILED POLICY PROPOSALS

1. Section 97C(4) – Prescribe eligible land for the purposes of Part 3A – land which is eligible for purchase by a Part 3A community body

Background

1.1 When deciding whether land is eligible to be bought by a Part 3A 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,¹ Ministers are required to have regard to prescribed matters.²

Proposals

1.2 The following table lists the prescribed matters to which we consider Ministers should have regard when deciding whether land is eligible land, in other words whether it is (i) abandoned or neglected land, or, (ii) land where the use or management of it is causing harm to the environmental wellbeing of the relevant community.

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 ³
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

¹ As per Part 3A of the Land Reform (Scotland) Act 2003 (the “2003 Act”), as introduced by Part 4 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”).

² See section 97C(4) of Part 3A of the 2003 Act.

³ Environmental harm” has the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014. “Environmental harm” therefore means: (a) harm to the health of human beings or other living organisms, (b) harm to the quality of the environment, including (i) harm to the quality of the environment as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems, (c) offence to the senses of human beings, (d) damage to property, or (e) impairment of, or interference with, amenities or other legitimate uses of the environment

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 ⁴
whether any building or structure on the land is a listed building
whether any building or structure on the land is a scheduled monument

Question 1

Do you agree with the above matters? Yes ☒ No ☐

If not, please explain

The current legislation for action on wasteland has long been held to be ineffective in tackling these issues.

S179 of the TCP Act 1997 enables the local authority to serve notice on land adversely affecting amenity or neighbourhood. However in practice, it is light as any failure requires referral to PF who has not supported action in the past. We suggest that previous actions by the local authority should be a consideration in the determination.

Whilst the preceding table appears to pay cognisance to relevant factors, it is not clear how decisions will be taken to ensure a consistent approach across the country. For example, when the term 'to what extent' is used - it is not clear when the balance of evidence will be considered appropriate. It would appear that the test for eligible land is subjective.

Are there any matters you believe should be added? If so, please give details.

Some clarity around the more ambiguous terms, e.g. 'to what extent' and 'length of time'. This would offer more clarity to the reader as to what will be considered, and what won't.

We propose including a requirement for the landowner to present an assessment of viability, which may be the reason for continued non-use of the land in question.

A "special site" is defined as a "special site" for the purposes of section 78C(1) of the Environmental Protection Act 1990, which is an area of land that the local authority has decided should be a designated as a special site because it is contaminated land⁴

Are there any matters you believe should be removed? If so, please give details.

The inclusion of Listed Buildings is of interest but our preference would be for more effective enforcement legislation to compel owners to maintain these buildings.

2. Section 97C(5) – Land pertaining to land on which there is a building or structure which is a person’s “home”

Background

2.1 Section 97C(5)(a) of the 2003 Act provides that land which is eligible for purchase by a Part 3A 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.

2.2 Land pertaining to land which is to be treated as a person’s home will not be eligible land which can be bought by Part 3A community bodies, unless that home is occupied by an individual under the terms of a tenancy.

2.3 The following proposals seek to describe the land that we propose should be treated as land pertaining to a building or structure which is a person’s home for the purposes of section 97C(5)(b) of the 2003 Act.

Proposals

2.4 We consider 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.

We propose that land within the curtilage of a home should be land pertaining to a home, along with the following categories of land:

Land which is used for access to the home
Land which is used for storage of personal possessions for the maintenance and upkeep of the house and any vehicles
Land which is used for space to store fuel and other necessities to provide subsistence for the house
Land which is used for space to generate heat and warmth for the home
Land which is used for space to grow food and provide other subsistence
Land which is used for activities pertaining to maintaining the home
Land which is used for space in an outbuilding for business use.
Land which is used for space to enjoy the house and personal space around the house so as to allow privacy within the house

Land which is within the curtilage of a home may include land on which there is a garage, shed, sunhouse, outhouse, greenhouse, lean-to, or outdoor toilet.

Question 2

Do you agree that the above types of land should be land pertaining to land that is a person’s home? Yes ☒ No ☐

If not, please explain

A general point in relation to this section is that the narrative relating to the act (para 2.1 to 2.2) appears to accept that an individual's home would be exempt - unless that individual is a tenant (this may be more a wording issue, than reflect the spirit of this act). However, it appears to be out of step with national ambitions to strengthen the private sector and offer more security of tenure within that sector. We suggest that paragraphs 2.1 to 2.2 are very difficult to follow, and would benefit from some rewording.

We also suggest that this section may be open to misinterpretation without further clarity. The amount of land required for storage of fuel / possessions may be considerable.

Are there any types of land that you believe should be added? If so, please give details.

'Home' requires further definition.

Does it include flats? And if the 'home' is attached to other property, is the whole property exempt, e.g. flats above a shop?

Are there any types of land that you believe should be removed? If so, please give details.

Clarity on garden grounds is required - what is the situation on properties with very large, unmaintained gardens?

3. Section 97C(5)(f) – Descriptions or classes of land which is not eligible for purchase by a Part 3A community body

Background

3.1 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.

Are there any descriptions or classes of land that you believe should not be eligible for purchase by a Part 3A community body? If so, please give details.

Some thought should be given to protecting land which provides a stable, affordable home for a tenant.

Furthermore, how the act pertains to land owned on Housing Revenue Accounts requires further explanation. What mechanisms are in place should HRA land be purchased for a use which doesn't meet wider strategic objectives, or if the purchased land is subsequently not maintained by the community purchasers.

In addition, the following should be considered further:

- Land with servicing provisions
- Land with HSE safeguarding zones
- Land which a community group could not reasonably maintain any relevant burdens
- Land subject to proposals by a public body and/or CPO procedures.

4. Section 97C(6)(b) – Descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy – land which will be eligible for purchase by a Part 3A community body

Background

4.1 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.

Proposals

4.2 Land on which there is a building or structure which is occupied by a person under a tenancy will be an exception to the exclusion of an individual's home from eligible land.

4.3 Ministers have the power under section 97C(6)(b) of the 2003 Act to set out descriptions or classes of occupancy or possession which are, or are to be treated as, tenancies for the purposes of section 97C(5)(a). The exception to the exclusion of homes from the definition of eligible land covers all tenancies (including common law and statutory tenancies), regardless of whether they are set out in such regulations. However, we are considering using the power in section 97C(6)(a) to clarify that the classes of occupancy or possession listed in the table below are those which we consider are, or should be treated as, tenancies for the purposes of section 97C(5)(a) of Part 3A of the 2003 Act.

4.4

Table 1

Classes of occupancy or possession treated as a tenancy	Class of occupancy or possession features
Tied accommodation	By “Tied” accommodation we mean accommodation provided with a person’s job, under a service occupancy agreement. This generally means where accommodation is provided by an employer in return or part return for working.
License agreement	Nearly all arrangements in the private rented sector are “tenancies”, however some landlords provide written agreements that are called “licence agreements” because they believe that a “licence” gives tenants fewer rights. We wish to make clear that if an arrangement is, in fact a tenancy, even if it is called a licence agreement it will still be treated as a tenancy for the purposes of section 97C(5)(a) of the 2003 Act.
University student, hospital staff accommodation etc.	By this we mean that the accommodation is occupied in connection with a particular employment or course of education, and is occupied by the occupier’s employer or the education establishment providing the occupier with education. .
Night-by-night / temporary accommodation or tenancy on a temporary basis for homeless persons	By this we mean where a person occupies a room in a hostel, hotel, night shelter etc on a nightly basis.
Life-rent	By life-rent we mean where a person has the right to receive for life the benefits of the property, and to live in the property for life.

Question 3

Do you agree with the above 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? Yes ☒ No ☐

If not, please explain

There are other tenancy types (e. g. social rented housing, armed forces tenancies) which are not listed. This may be because they are exempt, but it is not clear from the narrative if this is indeed the case. Furthermore, some of the classes which are excluded are concerning (e.g. should tied accommodation be lost, there is the potential for a negative impact on employer's ability to secure labour in remote areas). The narrative notes that 'life-rent' is a right of residency - excluding this from the exemptions would impinge of an individual's 'right' to enjoy that home.

Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy, that you believe should be added? If so, please give details.

As above

Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy that you believe should be removed? If so, please give details.

We believe tenancies should be removed, and allowed the same exemption status as other homes. The private sector plays an important role within local housing systems, and allowing land to be purchased for community ownership could jeopardise this. Furthermore, it is not clear whether the tenant is to be evicted upon purchase of ground, or the community will become the landlord - and if the second is envisaged, it is not clear how the responsibilities of the landlord will be discharged.

5. Section 97H(6) – List of prescribed regulators

Background

5.1 Section 97H(5)(b) of the 2003 Act requires a Part 3A community body to make a request to all relevant regulators. The regulators listed below include bodies that are authorised to invoke legislation, regulatory rules etc, or to take action that could, or might reasonably be expected to, remedy or mitigate the harm that the use or management of the land which is the subject of the Part 3A application is causing to the environmental wellbeing of the relevant community.

5.2 Section 97H(6) gives Ministers the power to prescribe in regulations what description of person, body or office-holder is a regulator for the purposes of Part 3A of the 2003 Act.

Proposals

5.3 We propose that a regulator is a person, body or office-holder having the power to carry out “regulatory functions”. The term “regulatory functions” is defined in section 97H(6)(d).

To paraphrase, it means

- (a) functions conferred by or under any enactment
 - (i) imposing requirements, restrictions or conditions in relation to an activity,
 - (ii) setting standards or outcomes in relation to an activity or
 - (iii) giving guidance in relation to an activity or
- (b) functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity.

The following table provides examples of what we might consider to be regulators.

Regulator	Regulator information	Regulator website
Cairngorms National Park Authority	Ensures that the unique aspects of the Cairngorms National Park - the natural environment, the cultural heritage, the local communities - are cared for, sustained and enhanced	http://cairngorms.co.uk/park-authority/
Civilian Aviation Authority	independent specialist aviation regulator and provider of air traffic services, and regulates bodies including air operators and aerodromes.	http://www.caa.co.uk/default.aspx?catid=2345

Food Standards Scotland	Ensures that information and advice on food safety and standards, nutrition and labelling is independent, consistent, evidence-based and consumer-focused. Primary concern is consumer protection – making sure that food is safe to eat, ensuring consumers know what they are eating and improving nutrition. Vision is to deliver a food and drink environment in Scotland that benefits, protects and is trusted by consumers.	http://www.foodstandards.gov.scot/about-us
Health and Safety Executive	Provides a regulatory framework for work place health and safety in Great Britain.	http://www.hse.gov.uk/aboutus/index.htm
Historic Scotland	Safeguards the nation's historic environment and promotes its understanding and enjoyment	http://www.historic-scotland.gov.uk/index/about.htm
Local Authority - General licensing	Responsible for a range of licensing regimes as well as alcohol and gambling, including the licensing of taxis, house-to-house collections, sex establishments, Sunday trading, charity collections, scrap metal dealers and pavement cafes.	Refer to website of relevant local authority
Local Authority - Housing	Responsible for enforcing regulations concerning housing including provisions for area improvement, responsibilities of landlords, compulsory purchase, housing in multiple occupation and licensing of housing	Refer to website of relevant local authority
Local Authority - Planning	Responsible for regulating in relation to planning controls.	Refer to website of relevant local authority
Local Authority - Road traffic	Some responsibility for regulating the control of overloaded and inappropriately loaded vehicles.	Refer to website of relevant local authority
Loch Lomond and Trossachs National Park	Ensures the natural heritage, land and water resources are sustainably managed and protected. Establish and promote the National Park as one of Scotland's premiere sustainable tourism destinations. Enable and promote sustainable development that supports and enhances local distinctiveness and sense of place. Encourage enterprise and innovation and improve the quality of life for the local communities.	http://www.lochlomond-trossachs.org/looking-after/what-we-do/menu-id-433.html
Marine Scotland	Manages Scotland's seas for prosperity and environmental sustainability, working closely with key delivery partners Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).	http://www.gov.scot/About/People/Directorates/marinescotland
Ofcom (communications providers)	Is the communications regulator. We regulate the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate.	http://www.ofcom.org.uk/about/

Ofgem (gas and electricity providers)	Protects the interests of existing and future electricity and gas consumers.	https://www.ofgem.gov.uk/about-us/who-we-are
Office for Nuclear Regulation	Responsible for regulation of nuclear safety and security across the UK	http://www.onr.org.uk/about.htm
Office of Rail and Road	Is the safety and economic regulator for Britain's railways. Ensures that the network operates safely, reliably and provides value for taxpayers and customers.	http://orr.gov.uk/about-orr
Scottish Environment Protection Agency	Protects the environment and human health, including environmental regulation, monitoring and reporting on the state of the environment, and resolving environmental harms.	http://www.sepa.org.uk/about-us/
Scottish Housing Regulator	Regulate to protect the interests of tenants, homeless people and others who use social landlords' services	https://www.scottishhousingregulator.gov.uk/
Scottish Natural Heritage	Promotes care for and improvement of the natural heritage; help people enjoy the natural heritage responsibly; enables greater understanding and awareness of the natural heritage; and promote its sustainable use, now and for future generations.	http://www.snh.gov.uk/about-snh/
Scottish Police Authority	Responsible for maintaining policing, promoting policing principles and continuous improvement of policing, and to hold the Chief Constable to account	http://www.spa.police.uk/about-us/
Scottish Water	Provision of safe drinking water and removal of waste water	http://www.scottishwater.co.uk/about-us
Transport Scotland	National transport agency for Scotland, delivering the Scottish Government's vision for transport.	http://www.transportscotland.gov.uk/

Question 4

Do you agree that a regulator should be described as a person, body or office-holder that has the power to carry out regulatory functions? Yes ☒ No ☐

If not, please explain

Are there any persons, bodies or office-holders that you believe should be included in the definition of regulator, but are not listed above? If so, please give details.

No further comment

Are there any persons, bodies or office-holders that you believe should not be included in the definition of regulator? If so, please give details.

No

6. Section 97N(1)&(3): Prohibitions on sale or transfer of land; suspension of rights

Background

6.1 Section 97N(1) of the 2003 Act gives Ministers the power to, by way of regulations, make provision for or in connection with prohibiting certain persons from transferring or otherwise dealing with land which is the subject of the Part 3A application once that application has been registered, and the period of time for which the transfer or dealings in that land is prohibited.

6.2 Section 97N(2) of the 2003 Act sets out what Ministers may include in such regulations. One such power allows Ministers to set out the transfers or dealings in relation to the land which are not prohibited by the regulations set out in section 97N(1).

6.3 Section 97N(3) of the 2003 Act gives Ministers the power to, by way of regulations, make provision for or in connection with suspending rights in or over land which is the subject of a Part 3A application.

Proposals

6.4 We have considered what may be included in regulations made under sections 97N(1) and 97N(3), as set out below:

Section 97N(1) and 97N(3) – Date of prohibition or suspension of rights

Date prohibition or suspension of right applied

6.5 Following receipt of a valid application, we consider that the prohibition or suspension of rights will come into operation from the date on which the owner or, as the case may be, the creditor in a standard security with the right to sell the land⁵, receives the notice of prohibition. The prohibition notice will accompany the notice(s) sent under section 97G(9)(a)(i) or (iii) of the 2003 Act.

Question 5

Do you think the proposed dates are appropriate? Yes ☒ No ☐

If not, please explain

⁵ A creditor in a standard security with the right to sell land has the meaning given in section 97Z(1) of the 2003 Act, that is, a creditor who has a right under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (the “1970 Act”), or a warrant granted under section 24(1) of the 1970 Act.

The supporting narratives states "the prohibition....will come into operation from the date on which the owner...receives the prohibition notice. This would seem to be self-explanatory, and as such the dates seems reasonable. However, clarity is required as to how the matter will be dealt with where the sale or transfer of land is already in progress, but no binding contracts are yet in place.

Date prohibition or suspension of rights lifted

6.6 We consider that the prohibition or suspension of rights should be lifted on the following dates, as appropriate in the circumstances :

- The date Ministers send notice under section 97M(1) of the 2003 Act declining to consent to an application;
- The date on which the Sheriff issues a decision in an appeal under section 97V(1), (4) or (5) if the Sheriff finds in favour of the pursuer;
- The date Ministers send, in accordance with section 97P(3) of the 2003 Act, acknowledgement of receipt of a notice from a Part 3A community body made under section 97P(2) of the 2003 Act;
- The date the application is treated as withdrawn under section 97R(5) of the 2003 Act as a result of the consideration remaining unpaid after the date on which it is to be paid;
- The date a community body completes transfer of the land under section 97R of the 2003 Act.

Question 6

Do you think the proposed dates are appropriate? Yes ☒ No ☐

If not, please explain

Further clarity is required:

"In terms of the date the application is treated as withdrawn under S97r(5)....as a result of the consideration remaining unpaid after the date on which it is to be paid" - more detail is needed to clarify to the reader when this would actually be (i.e. would it be immediately following a missed deadline?).

Section 97N(1) and 97N(3) – Persons subject to prohibition

6.7 We consider that the following persons should be subject to the prohibition of the sale or transfer of land and suspension of rights under sections 97N(1) or 97N(3) of the 2003 Act. These are :

- Landowner
- Creditor in standard security with the right to sell the land

Question 7

Do you agree with proposals? Yes ☒ No ☐

If not, please explain

Section 97N(1) – Prohibition of transfer of land

6.8 The following sets out what will be prohibited:

- We consider that the landowner and creditor in a standard security will be prohibited only from completing the transfer of land.

Section 97N(2) regulations made under section 97N(1) – Transfers or dealings not subject to these regulations

6.9 We consider that a prohibition should not apply in the following circumstances:

- a transfer to implement or in pursuance of an order of court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or a decree in an action for the division and sale of land);
- a transfer between spouses or civil partners in pursuance of a written arrangement between them entered into at any time after they have ceased living together;
- a transfer to a statutory undertaker for the purposes of carrying on their undertaking;
- a transfer implementing the compulsory acquisition of the land under an enactment;
- a transfer by agreement of land which would have been acquired compulsorily under an enactment if an agreement had not been made;
- a transfer of land in pursuance of missives concluded for the sale of the land prior to the date the owner was notified of the Part 3A application.
- a transfer vesting the land in a person for the purpose of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; or
- a transfer of land in consequence of (1) the assumption or resignation or death of one or more of the partners in a firm, or, (2) the assumption or resignation or death of one or more of the trustees of a trust.

We also consider that the landowner or creditor may, if they wish and at their own risk, take steps short of transfer, subject to the suspension of rights provided by section 97N(3) below.

Question 8

Do you agree with the above list of transfers or dealings?

Yes ☒ No ☐

If not, please explain

The list of transfers is acceptable but if the transfer goes ahead it would have to be on the basis that the sale contained conditions that the land be upgraded or improved within a certain period of time as the reason for the transfer. Transfer which does not include improvement of the land would not be allowed.

Are there any that you believe should be added? If so, please give details.

Property held in trust could be a problem and that should be included.

Are there any that you believe should be removed? If so, please give details.

All of the rights should be suspended if there are safeguards in place for the holders of the rights.

Section 97N(3) – Suspension of rights over the land

6.10 We consider that the following rights, if they were to be exercised, may prevent a Part 3A application from being properly considered. Therefore we are considering whether to suspend some or all of these rights whilst a Part 3A application is being considered by Ministers. Any suspension of rights will be lifted on a date as listed under *section 97N(1) and 97N(3) date of prohibition and suspension of rights* above:

- Pre-emption rights, except those arising from option agreements, which allow a party to purchase property if the landowner sells that property;
- Redemption rights and reversion rights which give another party the right to take back property from the owner at any time, not just when the landowner sells the property;
- Rights deriving from any option to purchase which apply where parties have agreed that land may be sold by the owner to a prospective purchaser, either at some point in the future or only if certain circumstances apply (e.g. obtaining planning permission);
- Any right of pre-emption granted under Part 2 of the 2003 Act;
- An asset transfer request made under Part 5 of the 2015 Act.

Question 9

The above section sets out proposals surrounding the rights which are to be suspended when a valid application is made under Part 3A.

Do you agree with these proposals? Yes ☒ No ☐

If not, please explain

All of these rights would require to be suspended if a successful application was to proceed. There needs to be more clarity however that there will be safeguards for both those applying for the asset transfer and the holders of the rights. The Community body making the application would require to demonstrate that they had consulted with the holder of the rights or if that had not been possible to demonstrate that they had made efforts to do so. More clarity required here.

An options agreement can be relatively easy to secure. This could be abused to prevent a transfer unless more clearly defined.

Are there any other rights that you believe should be suspended? If so, please give details.

The terminology within this section suggests that a legal input may be required.

Are there any of these rights that you believe should not be suspended? If so, please give details.

Audrey: The terminology within this section suggests that a legal input may be required.

7. Section 97J(7) – Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed

Background

7.1 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.

7.2 It was not considered appropriate for Ministers to meet the cost of the ballot at the outset of the Part 3A community right to buy process, however we consider that, in certain circumstances, the community body should be reimbursed the cost of the ballot when an application for reimbursement of the cost is received by Ministers upon completion of the Part 3A right to buy process. The proposals below outline the circumstances in which Part 3A community bodies should be able to seek reimbursement of the ballot costs.

Proposals

7.3 We are considering whether Part 3A community bodies may apply for reimbursement of the cost of conducting the ballot in some or all of the following circumstances:

- The Part 3A application has been consented to by Scottish Ministers;
- The land has been transferred to the Part 3A community body;
- The ballot for which reimbursement costs are claimed from Scottish Ministers by the Part 3A community body must have been conducted in accordance with the ballot provisions contained within section 97J of Part 3A of the 2003 Act, and the ballot provisions that are prescribed under section 97J(2);
- The community must have approved the Part 3A community body's proposal to buy the land in accordance with section 97J(1) of the 2003 Act by way of the ballot for which the reimbursement of expenses are claimed.

Question 10

Do you agree with these proposals? Yes ☒ No ☐

If not, please explain

Are there any other circumstances under which you believe a community body should be able to apply for reimbursement? If so, please give details.

No

7.4 We consider that the following procedures should be followed when applying for reimbursement of the full cost of conducting the ballot:

- The application for reimbursement of ballot costs, in the form of a letter from the community body, must be fully vouched. If a third party or contractor has been used for any part of the ballot process, that third party contractor's original invoice and proof of full payment to the third party or contractor by the community body must be provided with the application for reimbursement of costs sent to Ministers;
- The application for reimbursement of ballot costs must be made to Scottish Ministers within 2 months following the date of transfer of the land to the community body;
- Any appeal of the ministerial decision should be made to the Lands Tribunal within 21 days of receiving that decision.

Question 11

Do you agree with these proposals? Yes ☒ No ☐

If not, please explain

8. Section 97T(4) – entitlement to compensation

Background

8.1 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 Part 3A community body (if the application was consented to) or Scottish Ministers (if the application was refused).

8.2 Those circumstances set out in section 97T(1) are that the loss or expense has been incurred as a result of:

- (i) the person complying with the requirements of Part 3A following receipt of an application made under Part 3A of the 2003 Act by a community body,
- (ii) a Part 3A community body withdrawing its application or failing to complete the purchase of the land after confirming its intention to complete the purchase, or
- (iii) the failure of the Part 3A community body which made the application to complete the purchase of the land.

8.3 Where the parties to a compensation application are unable to agree whether compensation is payable, or the amount of compensation payable, either party may refer the question to the Lands Tribunal for Scotland.

Proposals

8.4 We consider that the following procedures should apply in order for an application for compensation to be made :

- The claim for compensation is to be made within 90 days of: (i) the final settlement date for the purchase of the land by the Part 3A community body, (ii) the date the Part 3A community body withdraw their application, or (iii) the date Ministers rejected the Part 3A community right to buy application, as is applicable in the circumstances;
- The claim for compensation is to be sent to the Part 3A community body's address as noted on the application, if the compensation is payable by the Part 3A community body;

- The claim for compensation is to be sent to Scottish Ministers if the compensation is to be paid by Ministers;
- The claim for compensation must be fully vouched and be accompanied by all original invoice(s) in respect of the fees, costs or expenses for which compensation is claimed, together with a clear explanation and complete breakdown of the compensation which is sought. Sufficient information must be provided to determine whether or not the amount is relevant to the claim being made, and that it is within the correct timescales;
- Ministers or the community body, as appropriate, will have 40 days to consider the application for compensation and determine the amount payable.

Question 12

Do you agree with these proposals? Yes ☒ No ☐

If not, please explain

Again, the following issues are not clear from the narrative:

- Will the owner be recompensed for any costs incurred as a part of the sale/transfer of will this be offset against the sale proceeds in the first instance?
- What process will be adopted if more than one community group are interested in the same site for different purposes?

NORTH AYRSHIRE COUNCIL

Agenda Item 8

24 May 2016

Cabinet

Title:	Community Asset Transfer Applications a) Coastwatch Scotland b) North Ayrshire Staff Association c) Irvine Judo Club d) Ayrshire Communities Education and Sport e) ANCHO
Purpose:	To progress a number of current applications within the terms of the Council's Community Asset Transfer arrangements.
Recommendation:	That Cabinet: a) Approves the transfer, subject to the satisfactory conclusion of negotiations by Officers at Stage 4 of the North Ayrshire Council Community Asset Transfer process (to agree the terms and conditions of lease, purchase or transfer of ownership of the properties and associated grounds) in respect of: i) Coastwatch Scotland; ii) North Ayrshire Staff Association; iii) Irvine Judo Club; iv) Ayrshire Communities Education and Sport; and b) Agrees to a pilot a partnership arrangement with ANCHO at Redburn Community Centre.

1. Executive Summary

- 1.1 North Ayrshire Council has developed an approach to community asset transfer in line with the ongoing guidance and forthcoming regulations within the Community Empowerment Act (Scotland) 2015.

This process continues to be reviewed and improved in line with emerging thinking and advice from Scottish Government and national advisory bodies.

- 1.2 This report proposes that Cabinet agrees to the transfer of the properties and associated grounds, as recommended within the report, subject to the satisfactory conclusion by Officers of Stage 4 of the North Ayrshire Council asset transfer process to finalise and agree the terms and conditions of lease, purchase or transfer of ownership.

2. Background

- 2.1 Community asset transfer provides an opportunity for people to be involved in developing and providing opportunities or services for their local communities. It may also allow groups to develop commercial ventures which will support community benefit. Asset transfer may also mean that public assets get used more frequently and more effectively. Community-led ownership may also allow additional opportunities for groups to secure extra funding or resources and is concurrent with Government policy as aligned to the Community Empowerment (Scotland) Act 2015.
- 2.2 Where the Council transfers assets to community-based groups it will continue to promote public value and each application has been evaluated in terms of its ability to contribute to the following:
 - Community empowerment;
 - Local community benefit;
 - Building the capacity of, and encouraging a sustainable voluntary and community sector;
 - Economic development and economic well-being;
 - Social enterprise and social well-being;
 - Environmental improvement and environmental well-being;
 - Improvements to public services; and
 - Value for money.

- 2.3 Any applicant seeking to take on a Council asset must be able to:
- Provide a well-prepared and sustainable business proposal;
 - Demonstrate a clear community/social demand for the proposed activity to be delivered from the asset;
 - Demonstrate that they have the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience;
 - Show they have good governance and robust financial systems in place along with all necessary policies expected of an organisation such as training plans, health and safety policies, comply with relevant equalities legislation, etc;
 - Show how their proposal contributes to the achievement of the Council's outcomes; and
 - Prove that the proposed project will not duplicate activities, services or facilities already provided in the local community.
- 2.4 Stages 1-3 of the Community Asset Transfer process currently provides the opportunity for officers and community organisations to exchange information, assess the evidence against the above criteria, prepare a rigorous assessment of the application, which is summarised for each application in Appendix 1, and formalise the community asset transfer application.
- 2.5 The current Community Asset Transfer process requires that North Ayrshire Council Cabinet approval is required at Stage 4 of the process, should the officer recommendation be that the application be progressed.
- 2.6 At this stage, the Community Asset Transfer Officer Group will continue to manage the transfer of the asset. Officers from Property Management and Investment (P.M.I.) and Legal will work with the applicant to agree the detailed terms of transfer. Terms and conditions will be agreed for acceptable use of the asset. Each party's responsibilities will be clarified by either lease agreement or conditions of sale and heads of terms agreed. At any stage in the process, an organisation can cancel a transfer if their circumstances change and they no longer wish to pursue the transfer. At any stage in the process, the Council can cancel the transfer where suitable justification exists, subject to a right of appeal by the applicant group or organisation.

- 2.7 Following the recent meeting of the Community Asset Transfer Officer Group and taking into account the business plans, papers, policies and information submitted and reviewed, a number of Community Asset Transfer applications recommendations are made to Cabinet as detailed in Appendix 1.
- 2.8 Each application was considered following receipt of the information required to review each application in terms of the essential criteria at paras 2.2 and 2.3.

3. Proposals

- 3.1 It is proposed that the recommendations contained within Appendix 1 in relation to the community asset transfer applications pertaining to Coastwatch Scotland; North Ayrshire Staff Association; Irvine Judo Club; Ayrshire Communities Education and Sport; and partnership arrangements with ANCHO are approved by Cabinet, subject to the successful conclusion at Stage 4 of the process to agree detailed terms and conditions (as discussed at 2.5 above).
- 3.2 In relation to those applicants recommended to proceed to Stage 4 of the Community Asset Transfer Policy, the terms of transfer and use will now be finally agreed, subject to Cabinet approval, then the transfer can progress to conclusion. If the property is to be sold, transferred on a long lease or ownership given at less than market value, it will be necessary to comply with the terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010. These regulations permit a disposal at less than the best price achievable where either (a) the property is valued at less than £10,000, or (b) the Council has compared the financial cost of transfer against the community benefits and determined that the transfer is reasonable and promotes either economic development or regeneration, health, social well-being or environmental well-being. This will be progressed by the Community Asset Transfer Officer Group and will be the subject of a final report to Cabinet to approve the transfers.

4. Implications

Financial:	There will be additional income to the Council as a result of the asset transfers. Current information indicates that this will be in the region of £7,000 to £9,000 with the ACES lease yet to be determined. There will also be a reduction in property running costs of approximately £13,500 with the ACES application yet to be finalised. This transfer could generate further savings on grounds maintenance and this is currently being quantified.
Human Resources:	The Community Asset Transfer Officer Group and related staff continue to support the Community Asset Transfer process.
Legal:	It will be necessary to comply with the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 for all property transferred at less than market value. In the case of the toilets at Irvine Beach Park which are within the ownership of the Common Good it will be necessary to meet additional legal requirements if a long lease or disposal are required.
Equality:	The ability of community organisations to assume responsibility for local assets will improve access to buildings and services for local communities.
Environmental & Sustainability:	Sustainability issues in relation to buildings will be taken into consideration as part of the lease negotiations.
Key Priorities:	Recent legislation (The Community Empowerment (Scotland) Act 2015) and national policy has developed to support the ownership and/or management of assets by communities, community asset transfer encourages communities to take direct control of local assets, with the potential to improve the asset, build sustainability and improve community resilience. This will develop stronger communities .
Community Benefits:	The proposal helps build community empowerment, brings into use properties which are vacant or under used and promotes a sense of civic pride and responsibility.

5. Consultation

- 5.1 The applications have been assessed and progressed by a range of officers within the North Ayrshire Council Community Asset Transfer group. Consultation with local community groups, organisations and residents has been undertaken by applicants to meet the Council's requirement for community engagement and empowerment.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference :

For further information please contact Audrey Sutton, Head of Service (Connected Communities) on (01294) 324414.

Background Papers

0

Appendix 1: Community Asset Transfer Applications May 2016

North Ayrshire Council Community Transfer Applications and Recommendations

May 2016

Appendix 1: Community Asset Transfer Applications May 2016

Organisation and Application	Added Value	Financial Implications	Recommendation
<p>Coastwatch Scotland Irvine</p> <p>Application:</p> <ul style="list-style-type: none"> • Irvine Pilot House: 20 or 25 year lease, subject to negotiation; and • Toilet and office accommodation at the Beach Park Irvine: ownership. <p>The group will continue to provide access to the toilet accommodation for tourists and residents and use the additional accommodation to undertake partnership work with the Council and other partners in terms of their core safety remit.</p> <p>The land upon which the toilet and office property has been built is in the ownership of the Council as Trustees for the Common Good and to comply with various legislative requirements the Council will require to advertise its intention to dispose of the building and land and consult on that recommendation. If there are no objections the Council would be able proceed with the disposal.</p> <p>Were there to be any objections noted, then it would be necessary to seek the authority of the court to dispose of the toilet and office accommodation.</p>	<p>Volunteers undergo a training syllabus to become 'Watch-keepers' to enable them to monitor and provide safety advice, provide information on tides, weather, sea state, navigation into the harbour and water depth.</p> <p>It is anticipated that the Pilot House will eventually be manned most days of the year. CWS, by keeping a watching brief and logging all activities, can alert the emergency services to any incidents. It is also anticipated that manning the tower with trained volunteers will act as a deterrent so crime in the area will be reduced; particularly vandalism and poaching.</p> <p>CWS will refurbish the Pilot House Building and operate the Beach Toilets.</p> <p>Organisations such as RSPB, Wildlife Trust, St. Andrews Ambulance and NAC Rangers Service will be partner organisations.</p> <p>CWS will work with other local</p>	<ul style="list-style-type: none"> • Value of lease: £1 • Value of asset: £1 • Current running costs: £10,000 • Link to Common Good: Yes, the toilets are owned by the Common Good. 	<p>1) Approve the transfer of the Pilot House with land, on lease terms as agreed. Both parties to pay their own legal costs.</p> <p>2) Agree transfer of ownership in relation to the toilets, subject to the related procedures.</p> <p>3) Agree approval of a Temporary Occupation License to Coastwatch (Scotland) Irvine for the toilet and office accommodation, to enable the toilets to be maintained for use until the terms of transfer of the building and land have been determined.</p>

Appendix 1: Community Asset Transfer Applications May 2016

<p>Outcomes:</p> <p>The group will continue to develop proposals and funding bids to restore the Pilot House to public use, as a coastal education and environmental centre.</p> <p>The group will continue to provide access to the toilet accommodation for tourists and residents and use the additional accommodation to undertake partnership work with the Council and other partners in terms of their core safety remit.</p> <p>Assessment:</p> <p>The organisation has demonstrated the following potential benefits within their application:</p> <ul style="list-style-type: none"> • Local community benefit; • Building the capacity of, and encouraging a sustainable voluntary and community sector; • Economic development and economic well-being • Social well-being; • Environmental improvement and environmental well-being; • Improvements to public services. 	<p>organisations to complement existing and planned projects such as Irvine Marymass, Forth Port parade, the Harbourside development and Maritime Museum.</p>		
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>The organisation has evidenced:</p> <ul style="list-style-type: none"> • Clear community/social demand for the proposed activity to be delivered from the asset; • That the group has the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience; • That they have good governance and robust financial systems in place along with all necessary policies expected of an organisation such as training plans, health and safety policies and comply with relevant equalities legislation • They have shown how their proposal contributes to the achievement of the Council's outcomes; and • They have shown that the proposed project will not duplicate activities, services or facilities already provided in the local community. <p>Dependencies:</p> <p>The land upon which the toilet and office property has been built is in the ownership of the Common Good Trustees and to comply with various Acts in force, the Council will require to advertise its intention to dispose of the building and land and consult on that recommendation. If there are no objections Council Officers will explore</p>			
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>whether the Keeper of the Registers of Scotland would register a disposition or lease to Coastwatch without restriction or whether they would insist upon a court decree. Were there to be any objections noted, then a court decree would be required.</p> <p>Background information:</p> <p>Coastwatch Scotland (CWS) was set up in 2006 as an independent non-governmental, volunteer coastal monitoring, and safety organisation ran entirely by volunteers. The current Irvine Unit was founded in 2012.</p> <p>CWS Irvine is run entirely by volunteers who have an interest in and concern for safety of life at sea and on the coast. Volunteers give up a few hours each week to learn how to keep a visual watch on coastal waters, beaches and harbours, and keep a listening watch on the international distress frequency (channel 16 VHF) in support of search and rescue operations.</p> <p>The training syllabus consists of subjects including visual and radio watch keeping, incident reporting, ship recognition and the understanding of</p>			
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>charts.</p> <p>CWS Irvine will also monitor wildlife and will report any problems to the relevant organisations.</p> <p>CWS Irvine has achieved charitable status: Charity No.SCO44309. The Irvine unit operates as a stand-alone unit whilst collaborating with the other Coastwatch branches throughout Scotland, sharing best practice principles and sector intelligence.</p>			
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

Organisation and Application	Added Value	Financial Implications	Recommendation
<p>North Ayrshire Staff Association</p> <p>Application:</p> <ul style="list-style-type: none"> • Littlestone Hall: 10 year lease <p>Outcomes:</p> <p>North Ayrshire Staff Association (N.A.S.A.) provide a range of leisure, sports and recreational opportunities for their members.</p> <p>Assessment:</p> <p>North Ayrshire Staff Association known as "NASA" was formed in April 1998 to enable employees of North Ayrshire Council and their guests to socialise out-with their normal working environment.</p> <p>NASA is run voluntarily by a Committee consisting of</p> <p>Office Bearers and Staff Representatives and is fully governed by a constitution with the main objectives on</p> <p>formation of the Association being:-</p> <ul style="list-style-type: none"> • To provide occasions on which members can meet socially outside the working environment. • To organise sporting events between 	<ul style="list-style-type: none"> • The identified property at Littlestone is centrally located for members within North Ayrshire with excellent transport links. • This, combined with the property being on ground level, would enable all members to have an equal opportunity to participate regardless of their physical ability. • It offers a morale boost for all members (NAC Employees) through well run, affordable, social events/activities. 	<ul style="list-style-type: none"> • Value of lease: £5,000 p.a. • Value of asset: £58,000 • Current running costs: c.£610 • Link to Common Good: No 	<ol style="list-style-type: none"> 1) Note that NASA have been offered a 10 year lease (terms agreed) including an annual purchase option. Both parties to pay their own legal costs. 2) Note that a condition of lease will be a requirement for NASA to engage with the local community and seek where practicable to let the property for community use to enhance community benefit. 3) Note that a condition of lease will be that the property be available for use as a Polling station.

Appendix 1: Community Asset Transfer Applications May 2016

<p>members and against other organisations.</p> <ul style="list-style-type: none"> • To raise money towards the cost of organising and holding events. • To raise money for charity. • To enable the community to make use of the property when vacant to meet local need and aspiration. <p>NASA does not aim to run at a profit and any surplus is put back into subsidising events for all and providing donations to local charities.</p> <p>The organisation has evidenced:</p> <ul style="list-style-type: none"> • A well-prepared and sustainable business proposal; • A clear community/social demand for the proposed activity to be delivered from the asset; • Good governance and robust financial systems in place along with all necessary policies expected of an organisation such as training plans, health and safety policies, and comply with relevant equalities legislation. <p>Background information:</p> <p>NASA currently lease a property at Perceton House, Irvine, but are required to find a suitable alternative property</p>			
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

from which to operate following the sale of Perceton House, Irvine.			
Organisation and Application	Added Value	Financial Implications	Recommendation
<p>Irvine Judo Club</p> <p>Application:</p> <ul style="list-style-type: none"> • Parterre Hall: 20 or 25 year lease, subject to negotiation <p>Outcomes:</p> <p>The group has entered into negotiation with sportscotland regarding an upgrade of the property to improve insulation, reconfigure the internal layout and create a gym. The group has a very good record of attracting members, developing pathways for young people, and engaging with the wider community.</p> <p>Assessment:</p> <p>The organisation has demonstrated the following potential benefits within their application:</p> <ul style="list-style-type: none"> • Building the capacity of, and encouraging a sustainable voluntary and community sector; • Community empowerment; 	<p>The aims and objectives of Irvine Judo Club are to encourage its members:</p> <ul style="list-style-type: none"> • to be self -confident Individuals in their community • to be healthy, both mentally and physically and • to provide access to inexpensive sport and martial art to its members. <p>The long term aims of the Club will be to set up a permanent residence In Irvine and to increase its membership. The Club also aims to keep the costs of membership to one of the least expensive in the area, to increase its coaching and training time by taking ownership / lease of the Parterre hall and to refurbish the building into a purpose built training facility.</p> <p>The Club plans to create a permanent matted sprung floor area to provide protective matting / padding to the internal face of the walls. They also plan to transform the present male and female toilets</p>	<ul style="list-style-type: none"> • Value of lease: £2,000 to £4,000 p.a. • Value of asset: c. £35,000 • Current running costs: £2,930 • Link to Common Good: No 	<p>1) Approve a 20 or 25 lease of the Parterre Hall, parking area and ground to the rear, subject to negotiation (terms to be agreed). Both parties to pay their own legal costs.</p> <p>2) Special conditions apply regarding access to the boiler which is located within the Parterre hall and in relation to shared service costs.</p>

Appendix 1: Community Asset Transfer Applications May 2016

<ul style="list-style-type: none"> • Local community benefit; • Improvements to public services; and • Value for money. <p>The organisation has evidenced:</p> <ul style="list-style-type: none"> • A well-prepared and sustainable business proposal; • A clear community/social demand for the proposed activity to be delivered from the asset; • Good governance and robust financial systems in place along with all necessary policies expected of an organisation such as training plans, health and safety policies, and comply with relevant equalities legislation • That the proposal contributes to the achievement of the Council's outcomes; and • That the proposed project will not duplicate activities, services or facilities already provided in the local community. <p>Dependencies:</p> <p>The group are also seeking assistance to separate and meter services separately.</p>	<p>into changing and shower areas. Other proposals and plans would be to convert the office areas to the rear into fitness / weight rooms.</p> <p>By remaining one of the least expensive martial arts in the area, the club will be able to increase its membership and hope to encourage people from low income backgrounds to join the club.</p> <p>Having ownership/lease of the hall would enable the club to build a purpose built facility which would allow the members to train more often and create a centre of sporting excellence in the Irvine area in the near future. They are in discussion with Sport Scotland about improvements to the property</p> <p>The permanent mat area would also allow the club to share with other potential partners, Including Karate, Wrestling, and Gymnastics.</p> <p>Income will be generated through shared use, sponsorship and fund raising.</p>		
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>Background information:</p> <p>Irvine Judo Club was founded in the mid Sixties; the Club has moved between various locations throughout Irvine and is presently operating in the Parterre hall in Irvine.</p> <p>Irvine Judo Club has grown in this time into a nationally respected Judo Club, through its hard work in the community it is based in and through the successful Judoka (Players) it has produced.</p> <p>To date the Club has produced British and Scottish champions in both mainstream and special needs judo, and has had players represent Great Britain and Scotland at various International levels.</p>			
Organisation and Application	Added Value	Financial Implications	Recommendation
<p>Ayrshire Communities Education and Sport</p> <p>Application</p> <ul style="list-style-type: none"> • McGavin Park: 20 or 25 year lease, subject to negotiation. 	<p>Projects undertaken and funded by Big Lottery and others include:</p> <ul style="list-style-type: none"> • Summer Club • Community Garden Project • Silver Citizens Lunch Club • Youth Zone • Unemployed & Welfare Advice • Bike Track • Looking Good 4 U 	<ul style="list-style-type: none"> • Value of lease: £ to be negotiated • Value of asset: c. £1 • Current running costs: Grounds Maintenance only; costs to be determined • Link to Common Good: No 	<p>1) Approve 20 or 25 year lease, subject to negotiation, to include a community engagement process to provide evidence that the group have engaged fully with the wider Kilwinning community, prior to their application progressing to Stage 4.</p>

Appendix 1: Community Asset Transfer Applications May 2016

<p>Outcomes:</p> <p>The current application will bring back into use unused parts of the public park and will improve access to physical activity in the immediate area and in the wider Kilwinning locality.</p> <p>Assessment:</p> <p>The application for Community Asset Transfer submitted by A.C.E.S. requires to be progressed to Stage 4 to enable the group to meet the conditions of a forthcoming Big Lottery application.</p> <p>The organisation is currently in receipt of a recent investment of £150,000 to deliver community activity in Woodwynd, Kilwinning, and they have a good record of providing sports, youth diversionary and community support activity in the area.</p> <p>The organisation has demonstrated the following potential benefits within their application:</p> <ul style="list-style-type: none"> • Building the capacity of, and encouraging a sustainable voluntary and community sector; • Community empowerment; • Local community benefit; • Improvements to public services; and 	<ul style="list-style-type: none"> • Woodwynd Community Centre • Summer Stuff and Nonsense • USA Cultural visit. <p>ACES new venture will engage the wider Kilwinning Community in a joint approach to the regeneration of McGavin Park, with significant added value for the local community.</p> <p>A planned refurbishment of existing changing rooms, football park, archery area (for the Ancient Society of Kilwinning Archers) and new area for families to enjoy picnics and purchase refreshments are all included in the planned development.</p> <p>Talks with major funders are taking place and ACES have a track record of achievement in the planning and implementation of funded projects.</p>		
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<ul style="list-style-type: none"> • Value for money. <p>The organisation has evidenced:</p> <ul style="list-style-type: none"> • That they have the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience; • That they have good governance and robust financial systems in place along with all necessary policies expected of an organisation such as training plans, health and safety policies and comply with relevant equalities legislation. • How their proposal contributes to the achievement of the Council's outcomes; and • That the proposed project will not duplicate activities, services or facilities already provided in the local community. <p>Background information:</p> <p>In October 2005 local residents of the Woodwynd area of Kilwinning recognised their community was subject to high levels of unemployment, petty crime and anti-social behaviour.</p>			
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>Seeing beyond these issues, this group of people met to discuss how they could start to make a difference. It was suggested the ultimate uniting factor of all ages within their community was Education and Sports – and ACES was born.</p> <p>ACES was registered as a Scottish Charity in September 2006 with the mission statement to “Helping Stars Reach Their Potential.” The board of trustees recognised the potential that existed within their community, and set about developing a plan to see it flourish.</p> <p>ACES took on its first paid employee, the Community Development Officer in 2010 and they managed the project for the next three years thanks to Children in Need and the Robertson Trust.</p> <p>ACES have undertaken various projects to help establish a relationship with local residents by setting up and running a regular pattern of groups and clubs which are beneficial to the local residents. ACES have developed a core group of volunteers to help assist with</p>			
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

<p>the Summer club for school holidays.</p> <p>The main aims are as follows :</p> <ul style="list-style-type: none"> • Tackle juvenile crime, and anti-social behaviour by offering activities for young people and youths • Liaise with community services i.e. Police and Fire and Rescue to engage with the youngsters of the area. • Bring in further education to benefit unemployed and offer job search and c.v. writing facilities, establish a trainee programme to maintain the local area surrounding the Woodwynd park. • Raise awareness to eco issues and encourage recycling, and re-generation in the area. • Consult with local Council to raise the quality of life for residents. • Continue existing fundraising to ensure the stability of the project. • Compile evaluation of project and generate further partnerships with other groups such as housing association to improve housing stock and facilities in the area. 			
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

Organisation and Application	Added Value	Financial Implications	Recommendation
<p>ANCHO</p> <p>• Redburn Community Centre: community activity pilot.</p> <p>Application:</p> <p>Officers have been working with ANCHO in relation to the community asset transfer of Redburn Community Centre.</p> <p>Assessment:</p> <p>It is proposed that a pilot scheme be negotiated with ANCHO to gauge the added benefit that might derive for the Redburn neighbourhood by the delivery of a number of innovative community projects by ANCHO from the centre.</p> <p>As a first step, a youth arts programme will be run from the Community Centre in partnership with the community and the Council, and a partnership review will take place at that stage.</p>		N/A at this stage.	<p>1. Approve the development of a pilot partnership programme with ANCHO to assess added value in terms of the social, educational and health and well - being of the neighbourhood and to bring a future report to Cabinet later in 2016 to propose future partnership arrangements.</p>

Appendix 1: Community Asset Transfer Applications May 2016

<p>Background:</p> <p>ANCHO has an interest in the Redburn Community Centre for a number of reasons, not least its location within the heart of their housing stock. ANCHO see themselves as a community anchor organisation within the Redburn area, one of the most deprived in North Ayrshire.</p> <p>ANCHO want to be able to expand the scope of the work that they do for the local community whilst at the same time bringing their core services closer to those that they work with.</p> <p>ANCHO feel that the Redburn Community Centre is easily accessible for all of their customers, with good transport links nearby, and that the facilities the centre already offer can be enhanced by their input, both in terms of a long-term secure use for the building, and also in terms of the potential for grant finance that they can bring to expand the Redburn Community Centre and its facilities.</p>			
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Appendix 1: Community Asset Transfer Applications May 2016

ANCHO staff are highly experienced in financial management and have a proven track record of successful funding applications.			
-------------------------------------------------------------------------------------------------------------------------------	--	--	--

NORTH Ayrshire Council

Agenda Item 9

24 May 2016

Cabinet

Title: **Procurement Reform Scotland Act 2014 & Public Procurement (Scotland) Regulations 2015**

Purpose: To advise Cabinet on the actions required to comply with changes to the Public Procurement rules as result of the Procurement Reform Scotland Act 2014 and Public Procurement (Scotland) Regulations 2015.

Recommendation: Cabinet is asked to endorse the key actions outlined in sections 3.1 and 3.2 which require to be implemented to comply with the Procurement Reform Scotland Act 2014 and Public Procurement (Scotland) Regulations 2015.

1. Executive Summary

- 1.1 The Procurement Reform Scotland Act 2014 and Public Procurement (Scotland) Regulations 2015 came into effect on 18th April 2016.
- 1.2 The Procurement Reform Scotland Act 2014 introduces a number of general duties on contracting authorities regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement processes. The Act aims to increase transparency around procurement procedures and the award of public contracts, and allow easier access to these contracts for SMEs.
- 1.3 The Public Procurement (Scotland) Regulations 2015 aim to ensure that public purchases are made in a transparent and fair manner. This is to increase the efficiency of public spending facilitating, in particular, the participation of SMEs, third sector bodies and supported businesses, enabling a contracting authority to make better use of public procurement in support of common societal goals.
- 1.4 The Act and Regulations introduce a number of new duties and will require changes to processes, as outlined in sections 3.1 and 3.2.

2. Background

- 2.1 The Procurement Reform Scotland Act 2014 applies to contracts which have an estimated value equal to or greater than £2 million for public works contracts and £50,000 for other public contracts. These are referred to as “regulated” procurements.
- 2.2 The Regulations apply to contracts which have an estimated value equal to or greater than £4,104,394 for public works contracts, £164,176 for supplies & services and £589,147 for Health & Social Services. These are referred to as “OJEU” procurements.
- 2.3 The Act and Regulations results in a number of additional duties for the Council in relation to both “Regulated” and “OJEU” procurement exercises most notably (effective from 18th April 2016 unless otherwise indicated):
 - preparation and publication of a Procurement Strategy by 31st December 2016.
 - publication of an annual report on its regulated procurement activities after the end of each financial year commencing April 2018;
 - retention and maintenance of a register of all the contracts the contracting authority has entered into as a result of regulated procurements (the Council's existing contract register complies with this duty);
 - compliance with the "sustainable procurement duty" by considering improvement of the economic, social and environmental well being of its area; facilitating the involvement of SMEs, third sector bodies and supported bodies; and promoting innovation, before undertaking a regulated procurement exercise commencing 1st June 2016 (the Council currently complies with the first two parts of this duty);
 - consideration of whether to impose community benefit requirements in carrying out a regulated procurement for a contract with an estimated value of equal to or greater than £4 million commencing 1st June 2016 (the Council's existing Community Benefits in Procurement Policy complies with this duty);

- notification to unsuccessful participants before submission of tenders of the reasons why they have been excluded from regulated procurements which do not fall within the scope of the OJEU thresholds;
- the use of a European Single Procurement Document (ESPD) replacing the existing Pre Qualification Questionnaire;
- an emphasis on value for money being a result of an appropriate balance between cost, quality and sustainability. In line with the consultation feedback, the Scottish Government has therefore decided to make it clear in law that contracts should not be awarded on the sole basis of lowest price or lowest cost; and
- consider dividing its requirements into smaller lots, which might encourage smaller businesses to bid. Where the Council decides not to do this, it must explain why it has not done so. Whilst the Council currently considers dividing requirements into smaller lots it must now publish in the contract Notice the reason why it not using lots.

2.4 The Act and Regulations result in a number of process changes in relation to both “Regulated” and “OJEU” procurement exercises most notably:

- a new additional procedure of "Competitive with Negotiation" has been introduced. Under this new process the Council can issue a request for proposals (RFP) to tenderers who have responded to an advert and meet the minimum requirements. The RFP details the scope, specifications, and terms and conditions of the proposed contract and the criteria for evaluating the bids. Separate negotiations are then carried out with each bidder whose bid falls within the preset competitive range. The process concludes with the award of contract to the bidder who offers most advantageous price, quality, and service combination
- the Competitive Dialogue procedure will now allow bidders to optimise their bids rather than just clarify and fine-tune, so this procedure will now be on a more commercial basis and provide greater scope for negotiation.

- minimum time limits for procurement exercises have been reduced, meaning that contracts can be put in place more quickly subject to the complexity of the requirement.
- minimum levels of annual turnover which a contracting authority can require a business to have in order to bid will now be limited to no more than two times the value of the contract, apart from in exceptional circumstances. This will have the effect of making it easier for smaller businesses to bid for public work.
- a new ground for exclusion which deals with breaches of social, environmental and employment law obligations.
- the definition of supported business contained within the Regulations has been changed to "an economic operator whose main aim is the social and professional integration of disabled or disadvantaged persons and where at least 30% of the employees of the economic operator are disabled or disadvantaged persons" (awaiting further definition from the Scottish Government).
- for Health and Social Services a 'light-touch' regime has replaced the former Part A and Part B arrangements for the procurement for health or social care services. Under these arrangements, the main EU rules, as described in The Public Contract (Scotland) Regulations 2015 apply only to health and social care contracts which are worth at least £589,147 over the life of that contract. Contracts below that threshold, but which are worth at least £50,000 are regulated by the Act.

3. Proposals

3.1 To comply with the additional duties listed in paragraph 2.3 requires the following actions (an action plan is included as Appendix 1)+:

- develop, agree and publish a new Procurement Strategy involving consultation and engagement with relevant internal and external stakeholders to be published by 31st December 2016.
- develop and publish an annual report on regulated contracts by April 2017 (nb statutory duty is April 2018).
- amend the existing Contract Strategy document with regards to the "sustainable procurement duty".

- the de-briefing process for regulated contracts requires to be amended to notify applicants who fail to make tender lists;
- the majority of Council Services award contracts on the basis of Cost & Quality. The main Service which utilises lowest cost as an award criteria is Property Management & Investment. The Corporate Procurement Unit will meet with PMI to ensure that contracts are no longer awarded on the basis of lowest cost; and

3.2 In terms of the additional processes listed in paragraph 2.4 action is required as follows:

- amendment of the Council's Standing Orders Relating to Contracts and Contract Procedure Rules and Regulations to include the additional duties and processes.
- amendment of the Contract Strategy template to consider the new processes at pre- tender stage.

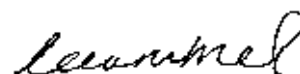
3.3 As the Scottish Government "Guidance under the Procurement Reform (Scotland) Act 2014" was not published until March 2016 and to enable further time to evaluate the full implications of the Act and Regulations it is anticipated that amendment of the Standing Orders shall commence after further discussion between Corporate Procurement and the Head of Service (Democratic and Administration).

4. Implications

Financial:	None
Human Resources:	None
Legal:	In order to comply with the statutory changes resulting from the Act and Regulation the Council's Standing Orders Relating to Contracts and Contract Procedure Rules will require to be amended.
Equality:	As per Environmental & Sustainability
Environmental & Sustainability:	The Act includes a sustainable procurement duty which requires that before the Council buys anything, it must consider how it can improve the social, environmental and economic well-being of North Ayrshire, with a particular focus on reducing inequality.
Key Priorities:	This contributes to the Council Plan Strategic Priority 1: Growing our economy, increasing employment and regenerating towns and Council Plan Strategic Priority 5: Protecting and enhancing the environment for future generations.
Community Benefits:	The Council has an existing Community Benefits in Procurement Policy which exceeds the duties contained within the Act and Regulation.

5. Consultation

- 5.1 The Scottish Government issued a consultation paper during February 2015 on changes to the Public Procurement Rules in Scotland and the Council provided a response to this.



LAURA FRIEL
Executive Director (Finance and Corporate Support)

Reference :

For further information please contact Alistair Munn, Team Leader Policies and Procedures on 01294 324592

Background Papers

N/A

Appendix 1 - Procurement Reform Scotland Act 2014 & Public Procurement (Scotland) Regulations 2015 - Actions

<u>New Public Procurement Regime</u>	<u>Impact</u>	<u>Current Status/Action</u>
Requirement to publish a Procurement Strategy	<p>The Procurement Strategy requires to be clear how procurement will contribute to carrying out its functions, how it will deliver value for money and how it will contribute to meeting the general duties in the Act including:</p> <ul style="list-style-type: none"> • treating relevant economic operators equally and without discrimination. • acting in a transparent and proportionate manner. • the sustainable procurement duty • promoting the Health and Safety at Work etc. Act 1974 and any provision made under that Act • the procurement of fairly and ethically traded goods and services • its approach to regulated procurements involving the provision of food to (i) improve the health, wellbeing and education of communities in the authority's area, and (ii) promote the highest standards of animal welfare <p>The above notes the additional information required for NAC's Procurement Strategy.</p>	<p>The current Procurement Strategy expired 31/3/16 however this has been deferred to 31/12/16 pending the new procurement legislation.</p> <p>Consultation will take place with stakeholders by Aug'16. Endorsement will be sought from Cabinet in Nov'16 and then published Dec'16.</p> <p>Thereafter the Procurement Strategy will be reviewed annually.</p>

<u>New Public Procurement Regime</u>	<u>Impact</u>	<u>Current Status/Action</u>
Requirement to publish an Annual Procurement Report for Regulated Contracts	<p>The Council will require to publish an annual procurement report which includes a summary of :</p> <ul style="list-style-type: none"> • regulated procurements that have been completed during the year covered by the report. • a review of whether those procurements complied with the Councils procurement strategy. • how the Council intends to ensure that future regulated procurements do comply • any community benefit requirements imposed as part of a regulated procurement. • steps taken to facilitate the involvement of supported businesses in regulated procurements. • regulated procurements the Council expects to commence in the next two financial years. <p>The annual procurement report must also address all of the matters contained in the Councils Procurement Strategy.</p>	<p>The first published Annual Procurement Report will be published in Apr'17 to cover the period 1st Jan'17 to 31st Mar'17.</p> <p>Thereafter annual reports shall be published in the April of each year.</p>

<u>New Public Procurement Regime</u>	<u>Impact</u>	<u>Current Status/Action</u>
Contract Award Criteria	The Scottish Model of Procurement places an emphasis on value for money being a result of an appropriate balance between cost, quality and sustainability. In line with the consultation feedback, the Scottish Government has therefore decided to make it clear in law that contracts should never be awarded on the sole basis of lowest price or lowest cost.	PMI currently use lowest cost on a frequent basis to award contracts. PMI will require to include quality criteria in all contracts for works >£100k and supplies/services > £50k which are advertised from May'16.
Supported Businesses	The Council will still be able to reserve contracts to supported businesses. However, under the new rules, the Council will be able to reserve contracts to Supported Businesses or supported employment programmes whose main aim is the social and professional integration of disabled or disadvantaged persons, and where at least 30 per cent of the employees are disabled or disadvantaged persons.	All Council Services require to review potential services that can be reserved for Supported Businesses. Procurement are awaiting further guidance from the Scottish Government in relation to the definition of supported business before advising Services.
Sustainable Procurement Duty	The Council now has a duty to consider how procurement can: <ul style="list-style-type: none"> • improve social, economic and environmental wellbeing of authority / area; • facilitate the involvement of SMEs (not more than 250 employees), third sector bodies and supported businesses in the process; and • promote innovation. 	The Council currently meets first two duties. Procurement are currently reviewing how innovation can be promoted at the pre-tender stage in time for 1 st June'16.

Community Benefits	<p>The Council now has a duty to consider Community Benefits for Regulated procurements and a requirement to include Community Benefits in contracts >£4m.</p> <p>Where the contract value is >£4m the Council must either state in the Contract Notice what the requirements are or the reasons for not requiring Community Benefits.</p>	<p>The Council has an existing Community Benefits in Procurement Policy which exceeds the new rules .</p> <p>Procurement are currently collecting data from suppliers to enhance the monitoring process and improve the reporting of Community Benefits. .</p>
Council's Standing Orders Relating to Contracts and Contract Procedure Rules and Regulations	<p>Corporate Procurement and the Head of Service (Democratic and Administration) require to discuss and agree required amendments to the Standing Orders to ensure that the statutory duties already implemented and/or planned and the new available processes are included in the Standing Orders .</p>	<p>As the Scottish Government "Guidance under the Procurement Reform (Scotland) Act 2014" was not published until March 2016 and to enable further time to evaluate the full implications of the Act and Regulations it is anticipated that amendment of the Standing Orders shall commence after further discussion between Corporate Procurement and the Head of Service (Democratic and Administration).</p>

NORTH AYRSHIRE COUNCIL

Agenda Item 11

24 May 2016

Cabinet

Title:	Authority to invite tenders for the Framework for Construction Design and Management (CDM) Services.
Purpose:	To request approval from Cabinet to invite tenders for the Framework for Construction Design and Management (CDM) Services.
Recommendation:	That the Cabinet agrees to invite tenders for the Framework for Construction Design and Management (CDM) Services.

1. Executive Summary

- 1.1 It is a requirement of the Standing Orders Relating to Contracts that all tender requirements over the EU procurement threshold receive approval from Cabinet prior to being advertised.
- 1.2 To comply with the Construction Design and Management (CDM) Regulations and the Council's Standing Orders Relating to Contracts there is a requirement to procure a new Framework for Construction Design and Management (CDM) Services.

2. Background

- 2.1 The Construction (Design & Management) Regulations 2015 (CDM 2015) came into affect on 6th April 2015, replacing CDM 2007 Regulations. This defined the new duty holder responsibilities for everyone involved in a construction project, including the Council's duty as a Commercial Client. The Construction (Design and Management) Regulations 2015 are intended to protect the health and safety of people working in construction and others affected by the works.

- 2.2 There was a 6 month allowance within the new Regulations to bring project arrangements in line with the new legislation. Sub lot 2 which covered CDM Services within the Framework Agreement for Provision of Surveying Services was terminated in December 2015. An interim quick quote was put in place in January 2016 which had a maximum commission value of £50,000.
- 2.3 The value of commissions against the quick quote is now reaching £50,000 and in order to comply with the Council's Standing Orders Relating to Contracts and the Public Contracts (Scotland) Regulations 2015, a formal tender exercise must be undertaken to procure for a service which complies with the new legal requirements.
- 2.4 The proposed Framework will be for a maximum period of 4 years.

3. Proposals

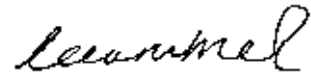
- 3.1 The Cabinet gives approval to proceed with a formal tender exercise for these services.

4. Implications

Financial:	The expected spend for this service is anticipated to be in excess of the OJEU threshold for supplies & services which is £164,176. Although no centralised budget exists for CDM services, any CDM requirement will be included within the total budget of any associated works. Budgets will be verified prior to the commencement of any individual tendering activity.
Human Resources:	None
Legal:	The Council is bound by the Public Contracts (Scotland) Regulations 2015
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	This contributes to the Council Plan Strategic Priority 1: Growing our economy, increasing employment and regenerating towns and Council Plan Strategic Priority 5: Protecting and enhancing the environment for future generations.
Community Benefits:	Community Benefits will be sought during the tender process in accordance with the Council's Community Benefits in Procurement Policy.

5. Consultation

- 5.1 Consultation has taken place between Corporate Procurement and Property Management and Investment staff.



LAURA FRIEL
Executive Director (Finance and Corporate Support)

Reference : CPU/HT

For further information please contact Hazel Templeton, Acting Category Manager on 01294 324547.

Background Papers

None