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East Lothian Council

Additional information:

Response submitted to Scottish Government by officers, dealing mostly with the practicalities of the draft Community Empowerment (Scotland) Bill but drawing on an earlier response on the Bill's principles (Mem. Lib. ref 245/12).

Authorised By	Angela Leitch
Designation	Chief Executive
Date	24 January 2014

For Office Use Only:	
Library Reference	14/14
Date Received	24/01/14
Bulletin	Jan14

Consultation on the Community Empowerment (Scotland) Bill



RESPONDENT INFORMATION FORM

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

1. Name/Organisation

Organisation Name

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) 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?

Please tick as appropriate

Yes

No

3. Please indicate which category best describes you or your organisation (Tick one only). If you are a representative or umbrella body, please tick the category you represent.

Community organisation	<input type="checkbox"/>
Third sector / equality organisation	<input type="checkbox"/>
Private sector organisation	<input type="checkbox"/>
Representative body for professionals	<input type="checkbox"/>
Local government	<input checked="" type="checkbox"/>
Community Planning Partnership	<input type="checkbox"/>
Public Body, including Executive Agencies, NDPBs, NHS etc	<input type="checkbox"/>
Academic or Research Institute	<input type="checkbox"/>
Individual	<input type="checkbox"/>
Other – please state...	<input type="checkbox"/>

Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 3 - Proposals with draft legislation

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

3.1 Community Right to Request Rights in Relation to Property

Please read Part 1 of the draft Bill (Annex C pages 1 to 9) before you answer these questions:

- Q1 Do you agree with the definition of community body at section 1?
Yes No

Do you have any changes to suggest?

Community bodies should be defined in such a way that any asset transfer should benefit the widest set of community interests possible and allow for equality of access by members of the community and efficiency of use of the asset.

- Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?
Yes No

What other bodies should be added, or removed?

- Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

To balance the needs of all parties, normally six months should be the timescale - provided that an extension beyond six months can be granted in exceptional circumstances.

Presumably an authority's future plans for an asset would be relevant. Are authorities to be allowed to take account of their aspirations for assets or do they need to be at a more advanced stage in their planning? If they have to identify money from budgets for these plans, get planning permission, etc this could all take some time.

Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

Yes No

Are there other appeal or review procedures that you feel would be more appropriate?

Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

Any route of appeal should not be to Scottish Ministers or to their officials as this would be another example of the centralising of power. If there is to be a route of appeal relating to decisions made by the Scottish Ministers or by local authorities, it should focus on whether the correct procedures were applied in the decision-making process, rather than on the merits of the decision itself. Such appeals or reviews should be detached from the political process.

There should be provision to avoid the expense that would be occasioned by unwarranted appeals, perhaps by the application of a deposit for the appellant party.

We are concerned at the prospect of appeals over non-determination and suggest it should be recognised that local authorities may have other options for an asset that may depend on processes outwith their control.

Q6 Do you have any other comments about the wording of the draft provisions?

1. As the Council expressed in its response to the previous consultation, it already involves communities in the management of local assets. Officers are uncertain as to how the pull away from localism apparent in the draft Bill will deliver better outcomes for communities.
2. The proposed arrangements will necessitate new bureaucratic processes which will place pressure on resources and make it harder for Councils to deliver their business.
3. If Ministers decide to go ahead with these provisions, we strongly advocate that they should expressly allow for some assets to be exempted from transfer requests. Greater recognition needs to be taken of the interplay between the draft provisions and community planning. Officers are concerned that requests to use individual assets could cut across over-arching community planning strategies. In addition, there are sometimes sound strategic financial reasons for retaining an asset for a length of time, relating more to the development of a whole area than to the straight value of the building. Sometimes commercial confidentiality is appropriate. This practical

concern and responsibility for local areas may be a unique characteristic of local authorities among the public bodies listed in the act, but it is very important and needs to be provided for.

4. We consider there is a lack of focus on equalities in the provision. We feel that the draft Bill could focus more expressly on reducing inequalities through the provisions.
5. Paragraph 3(4) of the draft Bill deals with the content of an asset transfer request by a community body. We suggest that these provisions should also include a requirement for a business/ financial plan that sets out:
 - (i) how the community body will finance the purchase or rent of the asset,
 - (ii) how they will finance the maintenance of the asset
 - (iii) how they will ensure equality of access (including for vulnerable groups) and the most efficient use of the asset.
6. More recognition is needed in the draft Bill of the financial position of the relevant authority. Asset management is part of local authority finance and at any stage a local authority might be exploring or developing other disposal options without having produced anything as formal as a “proposal” as defined in the draft Bill.
7. The provisions are not strong on support for communities who are unable to comply with processes or unable to raise finance.
8. It is not clear as to why “assets” in the Bill are defined only as land.
9. It might be useful to have provision for the treatment of Common Good assets in respect of transfer requests, especially in cases where such assets cannot be alienated without the consent of the courts or Act of Parliament.

Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

Savings may include savings to public authorities from maintenance costs of under-used assets.

Other advantages may include benefits to communities from fuller use of public assets.

Costs to local authorities would obviously include the cost of processing increased numbers of requests.

Community capacity-building and community engagement will be central to the success of achieving the Bill's aims. Currently we can access funding

from Education Scotland via our Community Learning and Development partnership. However we expect to have to provide increased support for community capacity building, which needs to be designed to assist communities to develop their skills, confidence, organisation and influence to ensure they can participate fully where that is their wish. We anticipate that some communities will need more support in this regard than others, so that all are able to reach the stage where they can access the opportunities likely to be afforded by the legislation.

3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

Please read Part 2 of the draft Bill (Annex C pages 9 to 14) before you answer these questions:

Q8 Do you agree with the definition of community body at section 11?
Yes No

Do you have any changes to suggest?

See Q12 below.

Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)?

Yes No

What other bodies should be added, or removed?

See Q12 below.

Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover?

Yes No

Is there anything you would add or remove?

See Q12 below.

Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request?

Yes No

Are there any other criteria that should be considered?

See Q12 below.

Q12 Do you have any other comments about the wording of the draft provisions?

1. While we are persuaded of the need to foster positive relationships between community bodies and the public sector, and also persuaded of the value in involving service users in service design, we are not convinced that the case has been made for the specific provisions in the draft Bill.
2. Definitions are lacking – for example:
 - “outcome” as opposed to “output” – how will this relate e.g. to library opening hours?);
 - does the terminology ‘participate in’ include the intention that community bodies will be able to deliver services? What else does it include?
 - are all services to be included in this process? Including services where the outcomes are specified by legislation/ government? Education? Adult wellbeing?
3. Very few council services are delivered at a Community Council level so it is difficult to assess outcome at that level.
4. Definition of ‘Outcome improvement process’ is vague.
5. Potential for multiple outcome improvement processes to be set up in response to demands from community bodies
6. How exactly is the quality improvement process to work in accordance with these provisions?
7. Para 18 suggests that if there is no Quality Improvement Process in place then following a request the local authority **must** establish an

improvement process for the outcome requested. The need to respond to a request to establish a Quality Improvement Process might conflict with already established priorities for improvement that have been identified through mechanisms such as Self-evaluation, Inspection reports and Best Value reviews.

8. It would be helpful instead to have in the Bill a clear description of the role of communities in community planning. Very few outcomes can be attributed to just one service, either within a local authority or among the local authority and its partners within an area - which is one of the reasons for the community planning arrangement we currently have).
9. Any arrangement where a community body delivered services themselves would need to take place on the basis of a contractual agreement between the body and the Council. This could cover issues like training, liability, insurance, etc – all of which would protect service users and of course the Council. However, negotiating these contracts and putting in place the appropriate professional support and insurance cover will all have significant cost and resource implications for the community bodies involved and may make this aspiration a non-starter for most groups. Whilst Scottish Ministers may urge Councils to adopt a facilitating approach to these arrangements, legal and insurance advice is likely to be such that we will need to treat community groups like any other contractor. There may also be procurement issues if, for example, there are commercial operators who can also provide the service concerned and the Council chooses an untested community group over a proven commercial provider.

Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

Substantial staff resources would be required to follow the process outlined in the draft Bill as it is assumed this is over and above the engagement, consultation etc already undertaken by local authorities.

3.3 Increasing Transparency about Common Good

Please read Part 3 of the draft Bill (Annex C pages 14 to 16) before you answer this question:

Q14 Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal?

Yes No

What other measures would help to achieve that?

The Government has taken a decision not to include a definition of 'common good' in the legislation. However, they want local authorities to consult with, and take account of the views of, community councils and other community bodies about which properties should be included on the register of common good properties. Without a definition against which to test these views, it is unclear how the local authority is to reach a decision on whether or not they are valid.

3.4 Defective and Dangerous Buildings – Recovery of Expenses

Please read Part 4 of the draft Bill (Annex C pages 17 to 19) before you answer these questions:

Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?

Yes No

Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?

Yes No

Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 4 - Detailed Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

9.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

Yes No

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

The Council has given this view in response to a previous Scottish Government consultation on the Community Empowerment and Renewal Bill.

Q18 Do you think that Ministers should have the power to extend “registrable” land” to cover land that is currently not included as “registrable land”?

Yes No

What other land should also be considered as being “registrable”?

It may be the case that the suggested exclusions are too narrow. It might be worthwhile to consider whether widening the exclusions would make the administration of the scheme more efficient.

Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances?

Yes No

What should these circumstances be?

Abandoned or “orphaned” open spaces could become useful amenity land for communities. However there should be expectation and provision for voluntary negotiation first.

Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

The definition should relate to a combination of:

- timescale the space had been out of use;
- the condition of the land;
- the lack of any other use for the land.

Development planning is an issue – experience in East Lothian is that sites can be designated for housing and then left vacant for a long time. Community “right to buy” might be a deterrent to this.

Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?

Yes No

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate?

Yes No

If not, what should that information include?

Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act?

Yes No

Do you have any other suggestions?

Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy?

Yes No

If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

Yes No

Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its "community", and that (3) granting it is in the public interest?

Yes No

Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

To balance the needs of all parties, normally six months should be the length - provided that an extension beyond six months can be granted in exceptional circumstances.

Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

Probably. Ballot provisions are very stringent at present for communities.

Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs.?

Yes No

If you disagree, please provide your reasons.

This would provide for consistency and transparency across the board.

Q30 Should Scottish Ministers notify the ballot result to the landowner?

Yes No

Please explain your reasons.

In the interests of transparency.

Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community?

Yes No

Please give reasons for your view.

That would be helpful and would provide for consistency.

Q32 Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Q33 Are there any other ways that a “community” could be defined?

Communities of interest.

Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

Yes No

Q35 Do you agree that SCIOs should be able to apply under the provisions?

Yes No

Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

Q37 Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?

Yes No

Q38 Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body?

Yes No

If you disagree, please give your reasons for your decision.

Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?

Yes No

Please explain your reasons.

Q41 Do you think that there should there be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?

Yes No

Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?

Yes No

If yes, please explain how secured community support should be measured

Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?

Yes No

Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy "application" which Ministers would then take into account in considering their right to buy "application"?

Yes No

Please explain your reasons.

Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

Yes No

Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

Yes No

Please explain your answer.

Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes No

Please explain your answer.

Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes No

Q49 Do you agree that where a landowner makes an "exempt" transfer, this should be notified to Scottish Ministers?

Yes No

If you disagree, please provide reasons for your decision.

Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes No

Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes No

How do you think that monitoring should be undertaken and what information should Ministers seek?

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes No

4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes??

We already have a Community Planning Partnership in East Lothian.

East Lothian Council does not support the creation of new and unnecessary duties for local authorities, which are themselves elected bodies.

Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

See answer to Q 48 above.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

Yes No

What other changes may be required to make this more effective?

It is already a duty to prepare a community plan. These proposals represent a more detailed definition which could be dealt with through guidance (which would be the Council's preference) or regulations rather than through primary legislation.

Also, the legislative provisions would cover public bodies but presumably the same strictures could not/ would not be applied to community and business

sector groups.

- Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

Yes No

What else might be required?

As a local authority, we have had to comment recently on the growing dichotomy between community planning and localism on the one hand, and the priorities and accountability of national agencies (such as Police Scotland, Scottish Enterprise and Scottish Natural Heritage), which have national boards and national plans, on the other.

- Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

Regarding the proposals in the consultation paper, it might be difficult for bodies such as Police Scotland or Scottish Enterprise to field non-executives for the Community Planning Partnerships of all 32 local authorities.

- Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

Other bodies would include:

Police Scotland
Scottish Fire and Rescue Service
Creative Scotland

- Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

Local authorities should have the lead role as they have the local democratic mandate – but the Community Planning Partnership could decide to share the lead role.

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

Q60 What other legislative changes are needed to strengthen community planning?

4.3 Allotments

Q61 Do you agree with the proposed definition of an allotment site and allotment plot?

Yes No

How else would you suggest they be defined?

Any buildings included must be directly related to the running of an allotment or group of allotments.

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

Emphasis should be placed on use rather than size, to avoid being too prescriptive.

Also, stating a top size figure may generate unrealistic expectation with applicants and place too much burden on local authorities. An allotment plot should be fit for purpose and meet the needs of the individual to which it is allocated.

Including the phrase 'families' creates a likelihood of 'hereditary plots' being created whereby they transfer through distant family links rather than transfer back to the local authority to re-let to the next person on the waiting list.

Local authorities need to be able to determine lease arrangements according to local needs so the lease arrangements shouldn't be enshrined in legislation but left to the local authority to determine.

Q63 Do you agree with the proposed duty to provide allotments?

Yes No

Are there any changes you would make?

Decisions on the provision of allotments should be for the judgement of local authorities, balanced with other priorities within their area. Different council areas have different pressures on land supply, and land values vary considerably from place to place.

However the following points in this section are based on the possibility that Ministers decide to retain provisions in the Bill.

There needs to be clarity of trigger points applied, perhaps based on a percentage of the population expressing an interest so provision is consistent across the country.

Lists should also be considered on a more discrete community / cluster basis rather than local authority wide or there is a risk of provision requiring allocated holders to travel vast distances.

15 people in even the smallest local authority is less than 0.01% of the population and the average costs to set up a new site would work out in excess of £2k per head. The population-wide subsidy of that 15 seems excessive.

Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?

Yes No

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

The emphasis needs to be on local authorities evidencing that they have strived to meet local needs according to local circumstances rather than have specific triggers applied.

Q65 Do you agree with the proposed list of local authority duties and powers? Yes No

Would you make any changes to the list?

Given that this is a 'Community Empowerment Bill', should the development onus not be placed on the community with local authorities empowered to encourage and support allotment association development?

What onus is to be placed on new build housing developers to meet the likely demand the increased housing will bring to a local authority area?

Available land must have a realistic development cost attached to it.

4.a) Would be part of evidencing that local authorities have taken reasonable steps to meet demand so this is duplication of duties

5. Should include reference to being actively used and properly maintained

6. b) Should include reference to being let at standard published hire rates

7. Not appropriate given the effort put into preparing a plot unless a minimum timescale is applied in the case of traditional allotments and on termination of availability of the temporary site, an alternative of equal quality and size must be available

10 b) Needs to take account of the level of services / investment in the site and the relationship to other locally available leisure activity charges.

Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?

Legislation

Determined by local authority

... with perhaps national best practice guidance.

Q67 Are there any other areas you feel should apply to private allotments?

The availability of private sites within a given cluster needs to be taken into consideration when applying any requirement on local authorities to meet demand.

Q68 Do you agree that surplus produce may be sold?

Yes No

If you disagree, what are your reasons?

This would need adequate regard paid to the need to safeguard the food chain, given the variability of possible growing methods and site conditions.

Some thought is required as to the level of associated public sector activity and cost, and how these costs are to be met.

Q69 Do you agree with the proposed list of subjects to be governed by Regulations?

Yes No

Would you make any changes to the lists?

List should make reference to vehicle movements and access in relation to allotment holders.

Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 5 – Wider Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

5.1 Scotland Performs – embedding the outcomes approach in legislation.

Q70 We invite your views on the proposal to include in the Bill a provision that places a duty on Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly progress towards these outcomes.

This seems reasonable given the Single Outcome Agreement to which local authorities and partners are working.

5.2 Subsidiarity and local decision-making

Q71 Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?

The Council has commented in response to the Commission on Strengthening Local Democracy on a tendency of central government to favour centralisation of services rather than decentralisation.

Examples include: police, fire and rescue, colleges, proposals in the Public Bodies (Joint Working)(Scotland) Bill to give Scottish Ministers the power to prescribe local authority functions to be included in Health and Social Care integration.

Central government should avoid a unified approach to meeting the needs of our diverse communities.

Please see attached copy of the Council's response to the Commission.

Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 6: Assessing Impact

Please read the draft Bill provisions and detailed policy proposals before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

Equality

Q72 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” under the Equality Act 2010.

In general the draft Bill does not emphasise the promotion of equality and good community relations. It would be helpful to strengthen the overall focus of the bill and the guidance could set out how to best support this.

The Public Sector Equality Duties place a statutory obligation on public sector bodies to promote the involvement in public life of those with protected characteristics that are underrepresented. They also strongly emphasise the role of public sector bodies in promoting and fostering good relations and equal opportunities. Much of this work is done through the utilisation of public assets and spaces e.g. community events and activities by community groups, help and support to establish groups to support vulnerable or isolated groups etc. The same duty does not apply to independent community groups or communities of interest e.g. charities. Therefore care would need to be taken to ensure that community assets continue to deliver positive outcomes for equality groups and the same opportunities to promote and foster good relations and equal opportunities.

Q73 What differences might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?

Some communities – probably those generally more advantaged - will be better set up than others to access the opportunities provided for in this Bill.

Much will depend on the active promotion of the Bill to communities and the support provided to them to navigate the processes e.g. in taking on assets. This goes beyond capacity building programmes. Where will this support come from at a time of diminishing budgets both for the public and third sector?

If communities of interest and registered charities are included in community bodies, potentially there may be more opportunities for advantaged communities (e.g. private schools as registered charities) to benefit from assets which are currently in public ownership and utilised by more disadvantaged communities.

Business and Regulation

Q74 Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Officers consider that it is premature to include in the Bill a power for councils to set up their own localised business rates relief scheme. Business rates are not a local tax and we consider the issue of non-domestic rates needs to be dealt with holistically and not piecemeal.

Environmental

Q75 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.



COMMISSION ON STRENGTHENING LOCAL DEMOCRACY

Local People. Local Power. Local Purpose.

WE'VE GOT SOME QUESTIONS...

HELP US UNDERSTAND WHAT STRONG LOCAL DEMOCRACY MEANS TO YOU

We are an independent Commission that has been set up to look at what democracy in Scotland might look like, whatever the result of the referendum in 2014. The Commission is chaired by Councillor David O'Neill, President of the Convention of Scottish Local Authorities, and we have set out its main tasks at the end of this document.

Our starting point is that we believe that local services and local accountability matter. That is why we want to begin our work by hearing your views and suggestions about what happens now, and what the future might be.

This is only our first step in listening to you. Any information that you give us now will help start the debate, but we also want this to be an ongoing conversation. Over the next few months we will be setting up different ways in which you can meet us or tell us what you think. A good way to find out about these is by signing up to our newsletter at www.localdemocracy.info and by following @localcommission on Twitter.

How to Respond

We will use the information that you give us to develop our work and explore new ideas, and so what you tell us now is really important. For that reason, we want to hear from you as quickly as possible. We are keen to hear your views by **29 November 2013**, or **sooner if you can**. However, please let us know if you need more time.

You can complete and return this form electronically to:

commission@localdemocracy.info

You can also respond online via our website:

<http://www.localdemocracy.info/call-for-evidence/>

Alternatively you can post a copy of this form to:

The Commission on Strengthening Local Democracy
Verity House
19 Haymarket Yards
Edinburgh, EH12 5BH

If you are responding as an individual we would be grateful if you could also provide some other information when you give us your views. This will help us develop an overall picture of the information we have. This is optional and any information that you provide will be used anonymously and will remain strictly confidential.

If you have any queries please contact us using the above details or call us on 0131 474 9200

Respondent Information

To help us make the most of your response, please tell us about yourself and how you want us to use the information you provide. There are some questions marked * and these must be answered by all respondents, unless you are directed past this question.

Name of Organisation (if appropriate)	<i>East Lothian Council</i>		
Forename	<i>Paolo</i>		
Surname	<i>Vestri</i>		
Address	<i>John Muir House Haddington</i>		
Postcode	<i>EH41 3HA</i>		
Telephone	<i>01620 827320</i>		
Email	<i>pvestri@eastlothian.gov.uk</i>		
Twitter name if applicable			
* I am responding as:	<input type="checkbox"/> An individual <input checked="" type="checkbox"/> An organisation/group		
Do you consider yourself or your organisation as from or representing?	<input type="checkbox"/> a rural area <input type="checkbox"/> an urban area <input checked="" type="checkbox"/> an area with both urban and rural parts <input type="checkbox"/> don't know / not applicable		
Would you be happy to be approached by the Commission for further discussion about your submission?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If you are responding as an individual:			
* Do you agree to your response being made available to the public on the Commission's web site?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
* If you have agreed to your response being made available to the public, please tell us if we may also make your name and address available. (Please select one option only)			
<input type="checkbox"/> Yes, make my response, name and address all available <input type="checkbox"/> Yes, make my response available, but not my name and address <input type="checkbox"/> Yes, make my response and name available, but not my address			
<i>If you are responding as an individual we would be grateful if you could also provide some additional information. This is absolutely optional but it will help us get an overall picture of the information we receive. You can download this sheet here and send it to us at the same time as you return this form.</i>			
If you are responding as a group or organisation:			
* The name and address of your organisation will be made public on the Commission's web site. Are you content for your response to also be made available?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Which of the following best describes your organisation? (Please select one option only)			
<input type="checkbox"/> Community Group <input type="checkbox"/> A business <input checked="" type="checkbox"/> Local Authority <input type="checkbox"/> A government department or agency <input type="checkbox"/> Other public sector organisation <input type="checkbox"/> A social enterprise <input type="checkbox"/> Third Sector organisation <input type="checkbox"/> Other (please specify) <input type="checkbox"/> Professional body			
Short description of the main purpose of your organisation:			

Tell us what you think

We have not provided a long list of questions to answer, but we do want to hear what you have to say about some themes. Please respond to as few or as many as you wish. However, it would be helpful to keep your overall response to eight pages or less.

Please provide evidence or examples in support of what you say. This will help us understand and explore your ideas further.

General Statement

This response is based on the fact that Local Democracy as delivered through Local Government has served Scotland very well over the last 150 years.

The value of local democracy stems from the fact that it provides for the dispersal of power and brings the reality of government closer to the people. The term 'local government' is used rather than local administration for a number of positive reasons:

- The members of a local authority are democratically elected and are accountable to their electorate, not to central government
- Local government has tax raising powers; powers which are shared only with central government
- Councils are responsible for the provision of a wide range of services which are delivered in ways which meet the needs of the locality
- Councillors are seen to be leaders in their communities.

Local Government has been at the centre of delivering the services that have provided significant improvements in the quality of life of our citizens since the Victorian era including free universal education, removal of slums from our cities and creation of public social housing, water and sewerage facilities and vast improvements in public health, libraries, public parks, museums, social services for the elderly and most vulnerable in society and police and fire and rescue services. Local Government has been instrumental in protecting communities against the worst excesses of economic downturns including the Great Depression of the 1930's and the current recession.

That is not to say that everything that local government does, or has attempted to do, has been successful and that mistakes have not been made. However, if there was an exercise in evaluating the impact of Scottish local government over the last 150 years then the positives would far outweigh the negatives.

Diversity is the key to local democracy. Government should be grounded in a sense of people and place which recognises and builds on the strengths of our different communities.

In the same way that the Scottish Parliament embodies the principle that there should be Scottish solutions to Scottish problems then local authorities encapsulate that principle at a more local level. Each area has different problems, different priorities and different ways of addressing and tackling those problems and priorities. Local priorities and local outcomes reflecting local needs. There cannot and should not be a unified approach to meeting the needs of our diverse communities. In short, 'no one size fits all'.

It is clear that, while some aspects of the relationship between local and central government have improved since the establishment of the Scottish Parliament, local government has deep-seated problems that will not be solved merely by having better relations with central government. The introduction of the duty of Best Value, the legislative framework behind Community Planning and the power of general competence have not provided the level of local government autonomy that the MacIntosh Commission suggested they would. Institutionalised under-funding and the loss of fiscal autonomy, increasing interference from the centre and the growth of nationally imposed policy initiatives are just some of the factors that erode the autonomy of local government.

1. Local Decision Making: Do you think that decisions about local issues and services are made locally enough in Scotland at the moment?

Local democracy has been weakened by the tendency of central government to favour centralisation rather than decentralisation. Central government views local government as its agent to fulfil its aims and objectives and carry out its policies.

Examples of the centralising tendency include:

- the transfer of water and sewerage services to a national organisation
- the loss of control over colleges which has been followed more recently by the amalgamation of colleges into regional or super colleges
- the loss of control over setting the Business Rate
- the creation of a national police force and a national fire and rescue service governed by a national Boards appointed by Scottish Ministers
- the proposal in the Public Bodies (Joint Working) (Scotland) Bill to give Scottish Ministers the power (by regulation) to prescribe local authority functions to be included in Health and Social Care integration.

All these changes have been imposed, or at least driven, by the centre rather than coming from below.

The nationalisation of important decisions about local services goes against the desire to develop a more holistic and unified approach to meeting the challenges faced by our communities

There are several recent very clear examples of how centralisation can lead to national considerations over-riding local interests. The recent flawed consultation on the police counter service and the decision to stop police traffic warden services show that the nationalised services can act against the wishes of democratically elected local authorities and local communities.

The decision by the Scottish Fire and Rescue Board to close the national training college in Gullane without any prior consultation with East Lothian Council or the local community shows that major decisions affecting local communities can be taken without any local consultation or input.

The rationalisation of property assets by the Scottish Government, Police Scotland and the Scottish Fire and Rescue services can take important community assets from our towns, contributing to weakening local economies and undermining attempts to regenerate town centres.

East Lothian Council has not received adequate answers to questions it has raised about the decision to close Haddington Court by the Scottish Courts Service. The decision to close the Court was driven by the imperative to make financial savings for the Scottish Government and would not have been made if local interests and partnerships had been fully taken into account.

The court closure and closure and removal of traffic wardens are also examples of cost shunting from the centre to local government.

2. Local Accountability: How important do you think it is for locally elected people to be responsible for decisions about local issues and services?

Local accountability should sit at the heart of our democracy. Two issues need to be considered – fiscal accountability and subsidiarity.

Local accountability has been weakened over the last three decades by the continuing erosion of local government's fiscal autonomy which has significantly reduced the ability of Councils to raise income to meet local needs.

The Council Tax freeze has only been partly financed by subvention from the Scottish Government as it has not been increased to take account of inflation or the increase in the Council Tax roll. East Lothian Council has lost over £300,000 due to the Council Tax freeze compensation not being uprated.

The Audit Scotland report, *'Charging for Services: are you getting it right?'* (October 2013) showed that local authorities now only have control over around 7% of their total income – the income they raise from fees, charges and rents.

Local accountability will only be restored if local government regains control over a greater proportion of its income and expenditure. Unless local government regains control over how much of its income it can raise it will become an administrative tool of central government

However, the debate around local government finance has to be more radical or imaginative than merely arguing for or against increasing Council Tax.

Schemes such as the Business Rates Incentivisation and the proposals being developed by Glasgow City Council and others around the City Deal (a welfare expenditure reduction incentivisation scheme) are worthy of exploring further. Incentivising councils to achieve key outcomes – supporting business growth and reducing the cost of welfare benefits – by using the income or savings generated rather than passing them on to central government.

Subsidiarity – a matter ought to be handled by the smallest, lowest, or least centralised authority capable of addressing that matter effectively – is the principle that sits behind the devolution of power to the Scottish Parliament and also is central to the argument in favour of Scottish independence.

However, as was outlined above (section 1) the creation of the Scottish Parliament has exacerbated rather than reduced the tendency of central government to nationalise services and powers. Ministers are taking more powers to the centre rather than allowing decisions to be made at the lowest and most level. The principle of subsidiarity is key to the relationship between central and local government irrespective of the outcome of the referendum. This principle could be written into Scottish legislation now and need not wait until/ if there is a new Scottish constitutional settlement following the referendum.

Following the principle of subsidiarity local authorities should consider how to devolve power further to local communities. East Lothian Council has a good record of supporting and encouraging Community Councils, including devolving some funding for community priorities. The Council has recently adopted a framework for establishing six Area Partnerships with the intention of devolving decision-making and budgets to them (see report on Area Partnerships at: <http://www.eastlothian.gov.uk/meetings/meeting/5372/cabinet>)

3. Local Priorities: How well do you think that national and local government take account of communities' local priorities at the moment?

The Scottish Government set out the National Objectives and national performance framework without prior consultation with local authorities or local communities. The national objectives are broad enough to accommodate local priorities that are determined through the Community Planning process but the lack of consultation and engagement reflected a 'top down' centralist approach which does not necessarily take account of local priorities.

As was outlined above (section 1) the centralisation of key services such as police and fire and rescue can lead to national priorities over-riding local priorities and needs.

Another example of where national priorities can act against local interests is in relation to procurement. Procurement is an important tool that can allow local authorities to support local businesses, local jobs and the local economy. However, the trend towards national procurement, which has been extended further through the creation of the national police force and national fire and rescue service has weakened councils' ability to use procurement to support local priorities.

The evidence from East Lothian Council's most recent residents' survey (2011) is that by and large the Council does respond to and take account of the community's priorities. For example, the survey showed:

- 71% of respondents agreed that the Council gives residents good value for money and 77% agreed that the Council does the best with the money available
- 79% of respondents agreed that the Council provides high quality services
- Over 9 out of 10 respondents said they were very (57%) or fairly (36%) satisfied with the way the Council is running the area.

4. Strengthening Local Democracy: What do you think should be done to strengthen local democratic decision making in Scotland?

Restore a greater measure of financial autonomy to local government and adhere to the principle of subsidiarity.

Beyond that simple answer lies a whole range of difficult issues that need to be addressed. Principle amongst these is the issues of what type of local governance system do we want.

It is worth reflecting on the fact that Scotland has fewer local authorities and fewer locally elected representatives than just about any other country in Europe.

If we accept that people and place should be at the centre of any system of government and that subsidiarity is a key principle then we should accept that diversity in structures and processes should overcome the innate desire of central governments for symmetry. Any changes in structure and governance arrangements will need to take account of the differences in the demography and communities of Scotland. A 'one size fits all' approach is not appropriate or desirable.

We are aware that there is increasing pressure on local authorities to develop shared services with neighbouring local authorities. This pressure will inevitably lead to calls for another review of the structure of local government and the number of local authorities.

East Lothian Council was successful in the early 1990's in arguing against merging East Lothian with parts of a neighbouring authority area and we are confident that there continues to be a strong case for a stand alone East Lothian Council.

However, there has been no fundamental study of local governance structures in Scotland since the Wheatley Royal Commission (1969) that led to the local government reorganisation that created the Regional and District Councils in 1975. Every reorganisation or change that has taken place since then has been piecemeal and has not looked at the public sector as a whole. This has led to a fragmented, fragmenting and fractured governance structure. The vast effort that is being put into

developing an effective Community Planning framework and creating an integrated health and social care service is a result of this piecemeal approach.

The recent Agreement and Guidance on Joint Resourcing is the latest attempt to make sense of the confused and confusing public sector landscape; imposing piecemeal solutions to the fundamental problem caused by the lack of a coherent local governance structure.

Therefore there is a strong case for a fundamental review of the governance of all public services. The debate should not be about the number of local authorities but about the responsibilities and structure of all public services and public bodies to ensure that people and place are at the heart of local governance and local democracy.

The review should consider the balance of service provision and accountability between local, regional and national levels and between democratically elected local government, non-elected public bodies and national government.

Who controls education is a key issue that needs to be considered as part of the comprehensive review of governance. There has been an increasingly centralised approach to education from the setting of pupil-teacher ratios and the number of school teachers, pay and conditions for teachers through to the national curriculum and how it is delivered. What role should councils play in education?

Any review of the governance of education would need to consider not only the role of councils in school based education but also the role of the further education sector and the relationship between schools and colleges. How can the transition between school based education and vocational training and preparing young people for employment be better managed? Which level of government is best placed to provide leadership and meet local priorities?

5. Scotland's Future: Has there been enough discussion about local democracy in the debate about Scotland's future?

The responses to the four questions above are not predicated on the debate around the Independence Referendum. Concerns about the erosion of fiscal accountability, the requirement to put the principle of subsidiarity into practice and the need for a comprehensive and fundamental review of governance structures are current and immediate. They need to be acted on irrespective of the result of the referendum.

6. Obstacles and Challenges: Do you have any concerns about strengthening local democratic decision making in Scotland?

No. The value of local democracy stems from the fact that it provides for the dispersal of power and brings the reality of government closer to the people. The term 'local government' is used rather than local administration for a number of positive reasons:

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7. We would like to keep the conversation going with you. Can you tell us about any events, networks or other ways in which we could help achieve this? Is there anything that we can do to support you?

N/A

Thank you for your submission. If you have any queries about the Call for Evidence please contact us at:

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