Introduction

The Fife Partnership is the community planning partnership for Fife. It provides strategic leadership, overseeing partnership activity to support the delivery of its agreed vision and outcomes, as set out in Fife’s community plan and single outcome agreement.

Response to call for evidence – Community Empowerment (Scotland Bill)

To what extent do you consider the Bill will empower communities (please give reasons for your answer)?

What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

Summary answer to the above questions:

Many communities will have the skills, knowledge, experience and confidence to advance, and benefit from, the greater opportunities to own, manage, and deliver services the Bill affords.

However some communities and groups still struggle and will require additional support, for instance in areas that may be new to them, such as:

• becoming a trust;
• managing staff;
• contracts and tendering;
• business planning and financial planning.
This will require targeted resourcing by CPPs and an acknowledgement of suppressed aspirations and a lack of confidence in some communities, generally those in the most disadvantaged areas. The gap between communities that have the skills, knowledge and experience required to take advantage of the provisions in the Bill and those that do not may serve to increase inequalities.

It is implicit in the process that a degree of power and responsibility will be devolved from public services to local groups and communities. Communities, in particular some rural communities, may feel inhibited by top-down agendas, competitive bidding processes, pump priming and short term funding, which may have the effect of reducing community confidence and deter people from becoming involved. Inherent within this is the need for a culture change within large centralised organisations. A culture of working with, rather than doing to, along with genuine partnership is required. Empowering communities can enable communities to become more resilient, while at the same time relieving some of the burdens on public services, including local authorities.

In rural areas community members and voluntary and community groups often have a substantial role in service provision. In some areas they deliver key services, such as lunch clubs and activities that address inequality and exclusion. Policy measures often fail to impact effectively on those who are excluded. Many centralised agencies have not embraced community representation, community membership, engagement and consultation. It is to be hoped, therefore, that the preparation of a clear plan for place will strengthen local community planning and acknowledge the different areas, both urban and rural.

Feedback on Part 2 – Community Planning

Para 4 (a) Persons listed in Schedule 1 must participate in community planning

Evidence: We consider that listed partners should participate as appropriate – this will not necessarily involve full membership of the CPP Board. It may be more appropriate for some partners to become involved as members of thematic partnerships.

Para 5(c) CPPs must take reasonable steps to secure the participation of community bodies and enable community bodies to participate in community planning

- Evidence: Fife Community Planning Partnership is supportive of any measures to promote effective community engagement in community planning. In Fife, this is being achieved by promoting community engagement in local community planning. This is being supported through the Partnerships involvement as one of four What Works Scotland case study areas.

Local Outcomes
Para 3 (a) & (b)

- **Evidence**: Consultation with community bodies and other persons is common practice in Fife and this requirement is welcomed.

- **Evidence**: Rural Proofing
  
  As part of the duties of CPP, of planning and the achievement of local outcomes there should be a requirement to undertake *rural proofing* audits especially in a mixed urban/rural local authority area.

  Rural proofing is part of the policy making process and should be used to scrutinise proposed policies. It should ensure fair and equitable treatment of rural communities and ensure that a policy does not directly or indirectly have a detrimental impact on rural dwellers and rural communities.

  The process should also involve monitoring the implementation of the policy to ensure that this is achieved.

  This *rural proofing* should be included in the local outcomes improvement plan.

  It may be that the *national outcomes* to be developed by Ministers should also require to be rurally proofed and adjusted, if required, to ensure equality and fairness for rural communities.

6. LOCAL OUTCOMES IMPROVEMENT PLAN: REVIEW

Para 2 (a) & (b) CPPs must from time to time review and revise plans

- **Evidence**: This is common practice in Fife where there is generally a 3-yearly review of the plan

7. LOCAL OUTCOMES IMPROVEMENT PLAN: PROGRESS REPORT

Para 1 CPPs must prepare an annual progress report

- **Evidence**: This is common practice in Fife.

8. GOVERNANCE
Paras 1 & 2 Partners named in subsection (2) must facilitate community planning and take reasonable steps to ensure the CPP carries out its functions efficiently and effectively

- **Evidence:** Fife CPP considers that the boards of management of regional colleges should also be included in this list.

9. COMMUNITY PLANNING PARTNERS: DUTIES

Para 3 Each CP partner must, in relation to a CPP, contribute such funds, staff and other resources as the CPP considers appropriate:

(a) With a view to improving, or contributing to an improvement in, the achievement of each local outcome; and

(b) For the purpose of securing the participation of community bodies in community planning.

- **Evidence:** This provision should help to encourage community planning partners to commit resources to the delivery of community plan outcomes. However, it is difficult to see how this provision will be effectively enforced.

10. GUIDANCE

Paras 1 & 2 Each CPP and CP partner must comply with any guidance issued with the Scottish Ministers

- **Evidence:** This is common practice in Fife. However, there are occasions when detail contained in guidance from Scottish Ministers may be inappropriate for particular local circumstances. National guidance should not stifle innovation and local flexibility.

Feedback on Part 3: Participation Request

Section 14 defines a “community-controlled body” – as a corporate body or unincorporated, but it must have a written constitution

**Evidence:** Unincorporated associations are not recognised as entities separate from their members. Consequently, such organisations cannot carry out acts, such as entering into contracts, owning property or engaging employees. The lack of legal personality can also give rise to unforeseen repercussions for members (even within an umbrella body) in civil or criminal liability. For example, it is possible that, under the current law, a member of an unincorporated association could, by virtue of that membership alone, find himself or herself personally liable to a third party injured at an event hosted or organised by the association.
We would therefore suggest that all community controlled bodies require to incorporated and liability limited

Feedback on Part 4: Community Right to buy
General Comment:

We would make some minor points in the proposed arrangements in order to alleviate some of the burdens on communities.

- Groups wishing to undertake Community Right to Buy only have access to the edited register whereby up to 30% of the electorate may not be included. This makes the initial 50% threshold difficult to achieve.
- We welcome the continuation of the Scottish Land Fund or similar to help ensure that communities have the necessary resources in place.
- Could re-registration be streamlined or the registration period increased?
- We welcome the inclusion of urban areas. However in an area that is more densely populated areas, there may be some competition with different groups registering fan interest in the same asset. Ministers would make that decision. However would there be a right to appeal?

FEEDBACK ON PART 6: COMMON GOOD

Part 6 of the Bill, which deals with common good property, in many ways reflects what should be good practice amongst local authorities. It requires local authorities to establish and maintain common good registers, to consult on those registers, and to consider any representations made by members of the public.

So far as disposal is concerned, again it is current good practice that, before common good property is disposed of, consultation takes place with at least the Community Council. Legislation now proposes to extend this to “any community body that is known by the Authority to have an interest in the property”. Again, that seems to be perfectly sensible.

So far as the existing provisions are concerned, the only comment might be in relation to proposed section 65 (1) (b), which applies the requirement for consultation on any change of use to common good property. Whilst that might seem a reasonable suggestion, it does mean that local authorities will have to consult with community councils and community bodies, for example, where there is a request by an existing tenant for a change of the user clause in their lease. The consultation process, whilst not long, may have an impact on a commercial business – and may well be in respect of a common good property which has been leased out for some time.

Of more concern are the areas which the current provisions do not cover in respect of common good.
The first of these in is relation to appropriation of inalienable common good land for another Local Authority purpose. This issue was discussed in the case of Portobello Park Action Group, Petitioners [2012] CSIH 69 where it was held, correctly, that the current legislation does not allow local authorities to appropriate such land for other uses – in this case a school. The net effect of that was to force the City of Edinburgh Council to put private legislation through Parliament to enable the development of a school which a large sector of the community wishes to see happen.

This case has now been bolstered by the recent decision of East Renfrewshire Council, Petitioners [2014] CSOH 129; in that case, East Renfrewshire, faced with a similar proposal to develop a school on inalienable common good land, chose to characterise the arrangement they had for the new school's development with Scottish Futures Trust as a disposal rather than an appropriation for the purposes of the Act. However, following previous case law, it was held that this too was not an option open to local authorities.

The net effect of these two cases is that local authorities are not able to appropriate inalienable common good land for other public purposes. It seems counterintuitive that they can, on the other hand, dispose of such land with the court’s consent for commercial purposes such as a supermarket. It would in fact be a relatively simple amendment to the existing section 75 (2) of the Local Government (Scotland) 1973 to enable a similar assessment to be made by a court as to whether, taking into account all the circumstances, an appropriation of common good land was the correct way forward for a community, in the same way that the court currently assesses whether a disposal to a third party would be the correct way forward.

A suggested minor amendment to existing sections 75 (2) and (3) is appended for information.

Also of concern in this context is the division of common good land into alienable and inalienable common good land. The determination of whether common good land can be safely disposed of or appropriated without court consent is a matter of interpretation of facts and circumstances, but also interpretation of case law, many of the cases dating back to the 19th or early 20th century.

There is an opportunity in the current legislation to provide more certainty for local authorities and communities alike as to what common good property needs consent for disposal, and what does not. This could be provided by a requirement on local authorities to maintain, in their register, separate lists of what they consider to be alienable and inalienable common good property; to do this, it would be extremely helpful to have a statutory definition inserted. Again, this would not in itself be overly difficult. It would be a case of codifying the existing case law and ensuring that the definition was as clear as possible.

Such definitions could be added to the end of existing draft section 67.

Tim Kendrick
Appendix 1

Suggested amendments to s.75(2) and (3) of the Local Government (Scotland) Act 1973

75 (2) Where a local authority desire to appropriate or dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to appropriate or dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to appropriate or dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to appropriate or dispose of the land accordingly.
(3) The Court of Session or sheriff acting under subsection (2) above may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be appropriated or disposed of other land to be used for the same purpose for which the former land was used.