

Public Document Pack

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

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26 November 2013

SUPPLEMENTARY PACK 1

ARGYLL AND BUTE COUNCIL - COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD on THURSDAY, 28 NOVEMBER 2013 at 11:00 AM

I enclose herewith item 12 (Castle Toward) which was marked copy to follow and additional item 31 (Parliamentary Commission report on School Closures) which was not included on the Agenda for the above Meeting.

Douglas Hendry
Executive Director – Customer Services

ITEM TO FOLLOW / ADDITIONAL ITEM

- 12. CASTLE TOWARD - APPLICATION FOR COMMUNITY BUYOUT**
Report by Executive Director of Community Services (Pages 1 - 4)
- 31. PARLIAMENTARY COMMISSION REPORT ON SCHOOL CLOSURES**
Report by Executive Director of Community Services (Pages 5 - 16)

ARGYLL AND BUTE COUNCIL

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ARGYLL AND BUTE COUNCIL**28 NOVEMBER 2013****COMMUNITY SERVICES**

Castle Toward – Application for Community Buyout

1. SUMMARY

- 1.1 This report provides an update on the progress made by the South Cowal Community Development Company in relation to a potential buyout of the Council's property at Castle Toward in terms of the Land Reform (Scotland) Act 2003 and the support provided by council officers to the Company to prepare their application.

2. RECOMMENDATION

- 2.1 It is recommended that the Council:
- a) note the progress made by the South Cowal Development Company with support from Council Officers in preparing their application for a community buyout of Castle Toward in terms of the Land Reform (Scotland) Act, 2003.
 - b) note the anticipated submission of the application prior to 30 November 2013
 - c) confirm the instruction to the Executive Director of Community Services to progress with the marketing of the property if the application for a community buyout is not lodged with the Scottish Government by 30 November 2013

3. BACKGROUND AND DETAIL

- 3.1 At the meeting of 27 June 2013 the Council confirmed the previously made delegation to the Executive Director of Community Services to deal with all matters related to the possible disposal of Castle Toward, through the marketing of the property on the open market. At Council meeting on 26 September 2013, the Council were subsequently advised that, following a tender exercise, it had a compliant tender for these services awaiting acceptance. The Council was further advised of contact from the South Cowal Development Company who intimated its interest in preparing an application for a community buyout of Castle Toward in terms of the Land Reform (Scotland) Act, 2003. The Company had made a request to the Council that it delay any plans to market the property until such time as the Company had

sufficient time to explore the potential registration of a community interest and/or buyout option.

- 3.2 Following consideration of this request and noting the information provided by the Executive Director of Community Services on his meeting with the Company, the Council considered the implications associated with the request and agreed:

“that the Executive Director - Community Services implement his delegation on 1 December 2013 subject to there being no known impediment at that time”.

- 3.3 The Executive Director of Community Services has maintained contact with the Company with offers of assistance and assisted with the provision of the following support:

- Advice on the application process and requirements
- Copies of title plans
- Planning and listed building advice
- Valuation information from previous marketing exercise
- Contact advice re the joint valuation board for electoral roll purposes

- 3.4 Additionally, the Company have received support from other agencies and interests including HIE.

- 3.5 Critically at the time of writing the Company advise that they are on schedule to submit their application prior to the 30 November 2013 deadline. Once an application is lodged with the Scottish Government, the Council is effectively prohibited from progressing the sale of the property on the open market until the community buyout process detailed in the paper to council in September 2013 is exhausted. In preparing for their submission, the Company have advised of the following progress:

- Community survey completed which has demonstrated in excess of the required 10% of community support.
- Appointment of new Company Directors and increasing membership of the company to in excess of 100 members
- Meetings with HIE and the Scottish Government Land Unit regarding feasibility study funding
- Preparation of 1st draft application to the land Unit for comment

- Commencement on the preparation of initial business plan

3.6 If the Company submits its application within the 30 November 2013 deadline process, the application will follow the process summarised in the September 2013 council paper. If they do not meet the deadline but still intend pursuing an application after the council has commenced the marketing process, this would be regarded a “late application” in terms of the Scottish Government procedures. The implications of a late application are as noted in the September 2013 paper.

4. CONCLUSION

4.1 In line with the Council decision at its meeting of 26 September 2013, the Executive Director has not accepted the tender for the marketing of Castle Toward. The South Cowal Development Company has been provided with support to prepare its application for a community buyout of Castle Toward in terms of the Land Reform Scotland Act 2003. Contact has been maintained with the Company in the intervening period and at the time of writing the Company has indicated it is on schedule to submit its application prior to the 30 November 2013.

5. IMPLICATIONS

5.1	Policy	The decision to defer the exercise of the delegation to market the property is in accordance with the previous decision of the Council.
5.2	Financial	There are financial consequences associated with the length of time taken to dispose of the property.
5.3	Legal	Note the legal implications arising from the Land Reform Scotland Act 2003.
5.4	HR	None at this time.
5.5	Equalities	None at this time.
5.6	Risk	There are significant financial, reputational and local economic risks associated with the disposal of the property.
5.7	Customer Service	None at this time.

Cleland Sneddon
Executive Director of Community Services

25 November 2013

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ARGYLL AND BUTE COUNCIL**28 NOVEMBER 2013****COMMUNITY SERVICES**

**Parliamentary Committee for Education and Culture
Written Submission – School Closures**

1. SUMMARY

- 1.1 The Council has received a request from the Parliamentary Committee for Education and Culture to provide a written submission on the topic of school closures in the light of the report of the Commission for Rural Education and the recent communication from the Scottish Government regarding the legislative amendments to the Schools (Consultation) (Scotland) Act 2010. The comments pick up the themes in the published responses to the consultation the Scottish Government undertook on amendments to the legislation, the Scottish Government's response to those responses and to the position of COSLA on certain points.

2. RECOMMENDATION

- 2.1 It is recommended that the Council:
- a) agree the content of the written submission attached as appendix 1be submitted to the Parliamentary Committee for Education and Culture immediately following this meeting.
 - b) note the Council's Executive Director of Community Services has been invited to attend the Parliamentary Committee meeting on Tuesday 3rd December 2013 to provide oral evidence.

3. BACKGROUND AND DETAIL

- 3.1 The Council has received a request from the Parliamentary Committee for Education and Culture to provide a written submission on the topic of school closures in the light of the report of the Commission for Rural Education and the recent communication from the Scottish Government regarding the legislative amendments to the Schools (Consultation) (Scotland) Act 2010. The submission was requested at relatively short notice by Tuesday 26th November 2013 for the committee meeting on the 3rd December 2013 however the Council has advised the Committee that the submission required to await the outcome of the Council meeting of 28th November 2013. The draft

written submission is enclosed with this report at appendix 1 for council consideration.

3.2 The comments pick up the themes in the published responses to the consultation the Scottish Government undertook on amendments to the legislation, the Scottish Government's response to those responses and to the position of COSLA on certain points. The Scottish Government publications may be accessed at <http://news.scotland.gov.uk/News/Changes-to-law-on-school-closures-645.aspx>

3.3 The Council's Executive Director of Community Services have been invited to attend the Parliamentary Committee meeting on Tuesday 3rd December 2013 to provide oral evidence on the subject.

4. CONCLUSION

4.1 The Council has been invited by the Parliamentary Committee for Education and Culture to provide a written submission on the topic of school closures. .

5. IMPLICATIONS

5.1	Policy	The Scottish Government is preparing amendments to the legislation underpinning schools consultation.
5.2	Financial	None.
5.3	Legal	None.
5.4	HR	None
5.5	Equalities	None
5.6	Risk	None.
5.7	Customer Service	None

Cleland Sneddon
Executive Director of Community Services

20 November 2013

Appendix 1

Education and Culture Committee of the Scottish Parliament

Meeting of Tuesday 3 December 2013

Written Submission – Argyll and Bute Council on School Closures

1. Introduction

- 1.1 Argyll and Bute Council welcomes the opportunity to submit evidence to the Education and Culture Parliamentary Committee on the topic of school closures. It is the intention of this submission to be constructive rather than focusing solely on our experience of the implementation of the Act prior to the establishment of the Commission for Rural Education. Suffice to say, in common with many other authorities, the process of consideration and consultation on school closures was not a positive one. The process produced a very adversarial context which was stressful for communities, elected members and officers charged with taking forward policy decisions. The focus on process as a means to effectively block proposals generated a concentration on minor detail and some relationships became strained and at times unpleasant.
- 1.2 The Council welcomed the establishment of the Commission on the terms reported by COSLA as negotiated with the Scottish Government. The Council further welcomes the 38 recommendations made by the Commission under the chairmanship of Sheriff David Sutherland. As recently indicated by COSLA the understanding of the Council was that local government and the Scottish Government had entered a joint agreement to accept in full the recommendations of the Commission and urges the Cabinet Secretary to provide this confirmation, specifically in relation to recommendation 20 (educational benefit).

2. Background Context

- 2.1 In 2010 Argyll and Bute Council undertook a consultation exercise around each of its four administrative areas on the future of education services and sought feedback on priorities and proposals for the investment of resources. A consistent theme from the feedback received in each area was a view that resources were being stretched unsustainably across too many school establishments to the detriment of the quality of education of all pupils. At that time the Council was operating 80 primary schools, 10 secondary school and 1 learning centre for children with additional support needs (in 4 locations the primary and secondary schools are combined in joint campus arrangements). From that feedback the Council undertook a review of its school estate and

identified an initial long list of 26 primary schools it wished to conduct an informal consultation on with communities to explore school mergers.

- 2.2 Following a further review of the proposals this long list was reduced to a short list of 12 proposed school mergers on which the Council proposed to conduct a statutory consultation in terms of the Schools Consultation (Scotland) Act 2010. The consultation commenced on 3rd May 2011 with an intended end date of 30th June 2011 and the programme of public meetings for each school commenced in May 2011. The programme was ceased following the Council's consideration of the request from the Cabinet Secretary for Education and Lifelong Learning for a moratorium on school closures and the establishment of the Commission for Rural Education.
- 2.3 In 1975 the primary population was 8,093 pupils which had reduced to 7,809 by 1996 before dropping to 6,048 pupils by 2010. This represents a consistent decline over 35 years of around 25%. The population was projected to decrease by a further 14% by 2020. During the period from 1975 - 1990, the number of primary schools reduced from 94 to 80. By 2010, the Council had 20 primary schools with less than 20 pupils, 9 of which had less than 10 pupils enrolled.
- 2.4 The cost per pupil figures (based on 2010/11 budget establishment – calculated by simple division by the number of pupils) ranged widely from around £3,000 per pupil to over £30,000 per pupil in certain locations.
- 2.5 The Council assessed each property using the criteria identified in the CIPFA "A Guide to Asset Management and Capital Planning in Local Authorities" (Cost per pupil; Occupancy levels; Sufficiency; Condition; Energy Use per pupil) to produce building efficiency scores. This information helped inform the consideration of the school estate and supported more local assessment such as the education case for proposals, the proximity of neighbouring schools, capacity calculations, road conditions/ transport times, roll projections, placing request patterns, collaborative working opportunities, financial impact, impact on communities, population projections/ birth rates etc. In relation to capacity calculations, the Council used an inherited model from Strathclyde Regional which combined a square meterage allowance per pupil and a ratio of classroom to non classroom teaching spaces. Research indicated that around two thirds of authorities applied a capacity model that was a variation on these core elements.
- 2.6 The Council and the wider Argyll and Bute Community Planning Partnership's focus is on growing the population of the authority area and is clearly founded on the development of the local economy to achieve the key outcomes in the area's Single Outcome Agreement. The recognition of the importance of sustaining and growing our rural communities is a key element of the Economic

Development Action Plan. Equally however we are aware of long term demographic changes (population size and composition) in a number of our communities and that a re-alignment of services including education services may be necessary.

3. Observations on the Commission's Recommendations

3.1 Presumption Against Closure

Clarity in respect of the presumption against closure is helpful as its terms were unclear in the existing legislation and will help manage expectations. It is of note however that some respondents to the Scottish Government's recent consultation on amendments to the legislation chose to view this clarification as a means to appeal any such decisions. The legislation should facilitate a level playing field to consider all factors associated with a merger proposal but should in itself not be seen primarily as the means to challenge proposals. Specifically the legislation should not enable every proposal to be called in as a matter of routine – in such case the process would be equally flawed as it will amount to a Scottish Government determination on local issues and render Council decisions irrelevant.

We note the Scottish Government's intention to amend the legislation to clarify the presumption against closure. We welcome the intent to ensure an appropriate consideration of the "matters of special regard" whilst not articulating the presumption in such a way as to "stifle legitimate changes to schools that become necessary over time".

3.2 Education Benefit

As highlighted earlier, the Commission's recommendation 20 is a key consideration of its overall findings and we would urge the Scottish Government to accept this point. The assessment of a proposal should be to ensure no overall detriment to the education of pupils is realised – the current requirement to demonstrate additional benefit has been divisive as authorities seek to magnify relatively small impacts which attracts challenge from opponents. Often the assessment of benefit is based on professional opinion and therefore to some measure subjective – in our case this led to an exchange of background research reports and opinion that was neither conclusive nor productive in moving forward. Ultimately it boiled down to professional opinion not accepted by opponents on one hand and counter evidence not accepted by the authority's education professionals as relevant on another. The process is time consuming and adversarial and has the potential to worsen relationships with local communities. The subjective nature, albeit professionally based, of the assessment applies equally to the role of Education Scotland.

3.3 Education Scotland Role

Following on from the issue highlighted above, an enhanced role for Education Scotland is to be welcomed. There are benefits for both local authorities and also for communities in the earlier and continuous engagement of Education Scotland. The guidance and input at an early stage should ensure that local authorities frame well presented and robust proposals, that the process of engaging with communities is carried out to best effect and ultimately should lead to a lower call in rate. Equally the independence of Education Scotland should provide reassurance to communities that proposals are scrutinised and their assessment takes into account all relevant factors. The role of Education Scotland and their assessment in terms of education benefit should not be subject to challenge in itself however, as the process does not need a further appeal stage.

The capacity of Education Scotland to adopt an enhanced role would need to be carefully assessed. We understand that there is a significant volume of closure proposals which are in the process of consideration by local authorities following the expiry of the moratorium which will put a strain on Education Scotland's core functions. Similarly an expansion of Education Scotland staff to support this role will have an added cost implication.

3.4 Involvement of Young People

The Council took cognisance of the "Participants not Pawns" guidance issued by the Children's Commissioner and appointed an external consultant to engage pupils in this exercise. It was a point of note that many parents reacted angrily to the proposal to involve their children and expressed concern at the stress that engaging them in a discussion around the closure of their school would cause. Further consideration of the guidance around this requirement would be beneficial to avoid this further area of potential conflict.

Further consideration of the relationship with children's rights arising from the new Children and Young Persons Act should be reflected in updated guidance on school closure consultation.

3.5 Consistency of Information

The Council developed a template for the statutory consultation proposal document following a review of those used by other authorities that had conducted successful consultation proposals. The focus on process as a means of challenge gave rise to criticism about the format of information provided. The format of information also varied from authority to authority and it is understood that similar criticisms were levelled at other authorities. A standardised template for the proposal document as noted for the presentation of financial information (below) would also remove a further area of contention for communities.

The recommendations by the Commission to present full financial implications through the development of a standard template for the presentation of financial information along with guidelines to ensure consistency is strongly welcomed. This work is already well progressed in conjunction with COSLA. Equally, similar challenges regarding school capacity modelling and capacity assessments will benefit from a consistent methodology. Although this work has commenced, we appreciate the potential difficulties in arriving at a single consistent model but would highlight the importance of this work for asset management planning as well as its application for school merger proposals.

It is further helpful to have recognition that the financial consequences of a proposal have an impact on the education services provided to all pupils in an authority area. To consider an individual school and its costs in isolation, fails to recognise the impact of supporting and staffing a significantly larger than required school estate. There is a direct impact on the resources available to support the delivery of education to all pupils in the authority's area.

The Scottish Government's published response to the consultation responses it received on amendments to the Act is ambiguous and fails to acknowledge the comments of the Commission (paragraph 89 of the Commission report) which notes "the Commission agreed that it is unrealistic to suggest that closure proposals are only made for solely educational reasons and recommends that there should be a place for setting out transparent financial information in a closure proposal". Further clarity on the legislative content would be helpful to reflect the Commission's findings on this point.

3.6 Additional Option for Ministers/ Independent Referral Body to Determine a Call In

Recommendation 33 which proposed a third disposal available to Ministers/ Independent Referral Body to determine the outcome of a called in proposal is a welcome proposal and will contribute to the update of section 5 of the Act which deals with errors or amendments in proposals. The proposal to remit a proposal back to an authority for reconsideration will allow for issues to be highlighted to authorities to address without the cost, expense and timeline associated with re-running consultation programmes. Helpfully, it does not enable proposals to be the subject of a moratorium as a result of minor administrative errors and will help move the focus towards consideration of the overall impact of a proposal and away from divisive arguments about points of minor and non material detail.

3.7 Evaluation of Called in Proposals

We would note the Scottish Government's intention to deviate from recommendation 34 of the Commission and establish an independent referral body to evaluate called in proposals. Whilst we fully support the position of

COSLA in pursuing the acceptance of all 38 of the Commission's recommendations, given the Scottish Government's published intent to establish an independent referral body, it is appropriate to make some reference to that proposal. The intent to remove the evaluation of individual proposals from direct ministerial influence and the reasons behind the intent is understood. Any such mechanisms would need to have the confidence of all parties and therefore be fully independent. Regard should be given to the costs of such an arrangement, the additional time this stage in the process may take and the additional work to service this body and provide information. Additionally the decision of the body should not in itself be the subject of a further appeal and this position should be set in the legislation.

3.8 Five Year Moratorium

The proposed introduction of a 5 year moratorium on reconsidering schools for closure should not be an absolute position and we welcome the acknowledgement in the Scottish Government's statement that circumstances can change substantially in relation to rural schools. Whilst acknowledging the reasons behind the 5 year moratorium, the intent to establish in the legislation a set of exceptions that may apply is equally welcome. It would be helpful if the Scottish Government would commit to further consultation with COSLA on the definition of these exceptions.

3.9 The Use of Former Rural School Buildings

The Commission makes an important point regarding the use of school properties following closure. Legislative vehicles such as the Land (Reform) Act 2003 and the current Community Empowerment and Renewal Bill provide mechanisms for communities to secure former public assets and associated grant programmes from distributors such as the Big Lottery Fund provide practical support. Local authorities however must not simply transfer liabilities to community organisations that are ill prepared to sustain ownership arrangements and should ensure a robust business plan is in place. Care should also be taken that displacement does not occur that threatens the viability of other rural community owned assets such as local village halls that may survive on a financial knife edge. Carried out correctly however the sale or transfer of former school properties can add to the local economy – recently the sale of the former St Kieran's Primary School in Campbeltown enabled the development of a large bed and breakfast business that supports tourism in the town and generates economic benefit.

3.10 Transport Implications

In assessing the travel impacts of proposed school mergers on pupils, the travel time data was the subject of significant challenge by opponents of the proposals. In response, when the consultation documents were published the

travel durations were backed up by satellite tracker reports which recorded the start and finish times of the test runs, the speed of the vehicle and the drop off/pick up stops which were undertaken. Whilst there was some further challenge to the times quoted the availability of this supporting data was helpful in providing reassurance to elected members faced with the decisions on whether to commence formal closure consultations.

4. Other Issues Relating to Rural Education

4.1 Funding of Small Rural Schools

In its initial submission to the Commission the Council highlighted a number of issues in relation to the funding of rural education that are worthwhile re-emphasising. Whilst the Commission acknowledged at paragraphs 95-98 in its report the costs associated with funding very small schools and the impact of the small schools element of GAE, more could have been noted around that funding mechanism. There are significant differences in costs per pupil associated with running primary schools with between 60 and 70 pupils and those with single figure rolls. Particularly where the schools are island based or in very remote locations and no alternative options are available. One size does not fit all rural schools and it would have been helpful to see a more sophisticated look at how the enhanced funding support for rural schools could be tiered to reflect the costs of education in those contexts.

Similarly it appears incongruous that an authority would receive the enhanced support of around £2,500 (annually variable) per pupil for each pupil up to 69 and then have support reduced to zero (a reduction of over £170,000) when a 70th pupil enrolls. Setting aside the obvious disincentive that is at odds with growing our rural communities, the trajectory is away from where the costs are highest (in the very small schools) at one end of the spectrum and there is a financial cliff edge at the other.

4.2 Audit Bodies and Best Value

There is a need for some clarity and reconciliation between the findings of the Commission and the approach of Audit Scotland in relation to Best Value. Councils have an obligation to deliver Best Value: education is not exempt from this. Any decision which does not increase the efficiency of the school estate, impacts upon the education of all children and young people by creating a situation where the financial resource must be spread more thinly. Authorities will strategically plan for the size and use of its education estate and how it deploys its resources. However compliance with the Commission's findings and the ability of authorities to meet the requirements of the amended Act, may result in sub optimal decisions being taken. Authorities seeking to embrace the spirit of the Commission's report and specifically the "presumption against closure" which is likely to be clarified in future legislation should not feel the

tension of negative audit findings in this regard. For example the Assurance and Improvement Plan 2010, noted the shared risk assessment had highlighted the need to consider school estate given “school occupancy levels amongst the lowest in Scotland and the significant backlog of maintenance in primary schools”.

4.3 Proportionality

Due regard should be given to the proportionality of the expectations on local government to consult on proposals. In our experience in the case of a merger proposal whose consequences would generate a recurring £28,000 per annum saving, the authority was being encouraged to commission very expensive unique research on the full gamut of community impacts. We are aware of another island authority who commissioned this level of research for one of its communities at a cost nearing £30,000. To expend considerable resources at this level in the context of the proposal is questionable. The burden on authorities should be proportionate and balanced.

4.4 Role of Local Elected Members

Opening a dialogue regarding changes to school provision is a difficult process without raising risks of communities entering into “campaign mode”. The suspicion with which such discussions are regarded and the highly emotive attachment to local community assets add to that difficulty. In an ideal world the difficult balance between strategic authority level needs and local community needs would be achieved without confrontation. However there are often barriers with senior officers or political leads arriving in a community where they are unknown to engage on such delicate topics. Equally it is unlikely to be appropriate to request local head teachers or other staff to lead these discussions when their own positions may be directly affected by the outcome.

In such circumstances the role of local elected members become a critical factor and requires significant political leadership to engage with communities on such sensitive yet important issues. Multi member ward arrangements may also add to the complexity as local members may take opposing positions on the issue or members may be exposed to political risk from the position they take. Nonetheless the most productive dialogues with communities as referenced by the Commission are politically led at a local level.

5. **Conclusion**

Argyll and Bute Council appreciates the opportunity to share some observations on the issue of school closures. The focus of these comments has been to deliberately look forward on how the process of school estate planning and, if appropriate, school closure consultations could be improved. The experience during 2010 and 2011 for communities, pupils, parents, elected

members and staff was stressful, divisive and at times personally unpleasant. The Council is working hard to ensure that any future discussions regarding the education services in Argyll and Bute have a more positive and productive basis. The Council has no current plans to bring forward any proposals for school closures and would hope that the highlighted issues in relation to the funding of rural education are given further reflection by the Scottish Government.

Councillor Dick Walsh
Council Leader
20 November 2013

For Further Information, Please contact Cleland Sneddon, Executive Director of Community Services, tel 01546 604112 or e mail Cleland.sneddon@argyll-bute.gov.uk

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