

## ABERDEEN CITY COUNCIL

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COMMITTEE	Communities Housing and Infrastructure
DATE	25 August 2016
DIRECTOR	Peter Leonard
TITLE OF REPORT	Community Empowerment
REPORT NUMBER	CHI/16/156
CHECKLIST COMPLETED	Yes

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### 1. PURPOSE OF REPORT

To present the viability of a community using the Community Empowerment (Scotland) Act 2015 to pursue the purchase of land at Cove Harbour and to consider the viability of 'adverse possession'.

### 2. RECOMMENDATION(S)

The Committee is asked to:

- (i) Note the terms of this report.

### 3. FINANCIAL IMPLICATIONS

There are no financial implications arising from the report.

### 4. OTHER IMPLICATIONS

There are no other implications specifically arising from this report.

### 5. BACKGROUND/MAIN ISSUES

- 5.1 A petition was lodged by the Fishermen of Cove Harbour in respect of a dispute with the local landowner over access to the Harbour. The petition was heard by the Petitions Committee on 20 April 2016. Officers have been looking at the issue of a vehicular right of way and have been gathering evidence to establish whether such a right of way exists. The landowner has

now commenced Court Action to have the fishermen and their boats removed from his land. The Petitions Committee requested this report in order to establish if the Community Empowerment (Scotland) Act 2015 would assist the fishermen in buying the land where they store their boats. The Petitions Committee also asked that officers consider the issue of adverse possession.

- 5.2 One of the main aims of the Community Empowerment (Scotland) Act 2015 is to help empower community bodies through the ownership of land and buildings. The Act allows community bodies to register an interest in land which enables them to buy the land for the benefit of the local community when it becomes available to purchase. It does not provide for a forced sale of land or compulsory purchase.
- 5.3 The Community Right to Buy may only be exercised by a properly constituted Community Body. The Community Body must have no fewer than 10 members and must be one of the following:-
  - A limited company with a dissolution clause (to another community transfer body or charity);
  - A Scottish Charitable Incorporated Organisation (SCIO);
  - or
  - A Community Benefit Scheme.
- 5.4 The Community Body should also be controlled by members of the community and be defined geographically. It should ensure that its main purpose is consistent with furthering the achievement of sustainable development. It is for Scottish Ministers to confirm that the main purpose is consistent with furthering the achievement of sustainable development before the Community Body can apply to register an interest in land.
- 5.5 A Community Body is normally required to demonstrate at least 10% support from their defined community for their proposed application to register an interest in land.
- 5.6 Any group seeking to purchase land would need to establish a Community Body that would meet the requirements of the Land Reform (Scotland) Act 2003 and 2015 Act before they could seek to register an interest in land. For the process to work the landowner has to be willing to sell the land. There is no scope to force the sale of land.
- 5.7 Adverse Possession - There is no concept of adverse possession in Scots Law. A title to land can only be perfected by 10 years peaceful and judicially uninterrupted possession of the land in addition to which a title has to be registered for at least the same period. If there is no challenge within the 10 years then the title will be perfected by what is called

prescription. The type of deed used is an "a non domino" deed and the Keeper of the Registers of Scotland impose additional requirements in relation to the acceptance of these types of deed in the registration process.

6. IMPACT

**Improving Customer Experience –**  
*Not applicable*

**Improving Staff Experience –**  
*Not applicable*

**Improving our use of Resources –**  
*Not applicable*

**Corporate -**  
*Not applicable*

**Public –**  
*This report will be of interest to members of the public, specifically fishermen who work out of Cove Harbour as it clarifies the position of Community Rights to Buy under the current law.*

7. MANAGEMENT OF RISK

There is no risk to the Council arising from this report.

8. BACKGROUND PAPERS

Land Reform (Scotland) Act 2003; Community Empowerment (Scotland) Act 2015

9. REPORT AUTHOR DETAILS

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