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To: Corporate POSC

Subject: Community 'Right to Buy' Assets of Community Value &
Community Asset Transfer

Classification: Unrestricted

Summary: As part of the Localism Bill the Government have published details of a Community 'Right to Buy' Assets of Community Value. This paper sets out the current proposals, KCC's response to those proposals and our policy approach to Community Asset Transfer.

1. Background

- 1.1 Under existing legislation [the *Local Government Act 1972 (General Disposal Consent 2003)*], public bodies can transfer assets to community groups at below market value to further local *social, economic and environmental wellbeing*, without seeking the Secretary of State's consent. The '*Right to Buy*' provisions extend this measure by conferring specific rights for community organisations covering public and private assets deemed to be of community value.
- 1.2 The 'Right to Buy' provision is contained within the Localism Bill, and is expected to be enacted in spring 2012. The proposal is essentially a 'Right to Bid' and a 'Right to Delay' the sale of physical assets. It is not designed for retaining public services within communities, but it might be used in conjunction with the 'Right to Challenge' to help achieve this.
- 1.3 There has been a considerable amount of opposition to these provisions particularly the aspects that relate to private land being able to be listed, and also property being listed that operates as a commercial business (i.e. post office, shop etc.) as it is felt that this could encumber owners from doing what they wish with their assets, which might have unintended consequences. The Government feels that this has been partially addressed by setting out a number of exemptions. .

2. Summary of Community 'Right to Buy'

- 2.1 A voluntary or community body with a local connection (including a Parish Council) will be able to identify public or private 'assets' and request that these are placed on a list of '*Assets of Community Value*' to be held, and publicised, by the Local Planning Authority (i.e. District authorities within Kent). A number of

exemptions will apply to listing (these are described in the full process set out in Appendix 1).

- 2.2 Assets can only be nominated by a Parish Council or by “a voluntary or community body with a local connection”.
- 2.3 Assets will have to meet the definition of an ‘Asset of Community Value’. This will be for local determination by the local planning authority. If the Local Planning Authority determines that an asset is of ‘community value’, an asset will be added to a local authority maintained ‘*Assets of Community value*’ list.
- 2.4 If the owner of a registered asset decides to sell it via a freehold sale or the grant or assignment of a lease for at least twenty-five years then the provisions of the Right to Buy will apply. The asset owner must inform the relevant planning authority of the intention to sell. Unless an exemption applies a ‘moratorium period’ will then begin (exact time to be set out in secondary regulation) during which a ‘Community Interest Group’ can inform the Local Planning Authority that they are interested in purchasing the asset, triggering a further moratorium process during which they can put together a bid to purchase the asset.
- 2.6 A ‘Community Interest Group’ is:
 1. A Parish Council; or
 2. A body with a local connection which is constituted in one of the following ways:
 - A company limited by guarantee; or
 - An Industrial and Provident Society (of either sort – a co-operative or a community benefit society);
 - A Community Interest Company; or
 - Any other body which is registered as a charity, including a Charitable Incorporated Organisation.
- 2.7 It is proposed that where a ‘Community Interest Group’ is able to purchase an asset at the price set by the asset owner, and the owner wishes to sell to the ‘Community Interest Group’ a sale can go ahead without waiting for the end of the moratorium window. The reason given is that is that this would enable local authorities to Asset Transfer to community groups without the restriction of a moratorium. If a KCC asset was listed on the register then KCC is bound to secure best value under the Local Government Act 1972 (see section 4).
- 2.8 An owner will have the right to an internal review by the local planning authority to their asset being listed as an asset of community value, and the right of appeal to an independent tribunal against this if they are not satisfied by the result of the internal review. An enforcement regime will be set out in future regulations.

3. KCC response to the Community Right to Buy consultation

- 3.1 In response to the Government consultation on the secondary regulations on Community ‘Right to Buy’, Kent County Council highlighted the following as potential issues (the full response is at Appendix 3):

- The potential misunderstanding by community groups that this could in effect be a 'Right' to protect a local public service;
- That Community Asset Transfer may well be a more appropriate mechanism to use than Community 'Right to Buy';
- The unintended consequences related to private property assets:
- Businesses could become risk averse at investing in new local services because of the extra burdens associated with selling on assets if the business is listed as an asset of community value;
- Communities may lose goodwill in relationships with local landowners who may have been open to supporting a community bid voluntarily. Local landowners and businesses are part of their communities and setting down a legislative approach to community ownership could actually prove counter-productive to the principles of Big Society. (For example, a farmer who may have been willing to give the local community use of a field for a one off/infrequent event, may actually be more reluctant to do this in the future as it could become eligible for listing as a result).
- Non-viable business models could be kept in place for up to 6 months longer causing increased debts or even bankruptcy for small businesses (see appendix 2 for anticipated costs)

3.2 It is important to note that the Community Right to Buy sets out no obligation on the owner of any listed asset to sell to any particular Group or at any price below the market rate (see section 4). Given this, especially in regard to public assets, increased applications to use pre-existing powers under Community Asset Transfer may arise when awareness of the limited scope of the Community Right to Buy becomes more widespread.

4. KCC's approach to Community Asset Transfer

- 4.1 KCC is under an obligation under section 123 of the Local Government Act 1972 to ensure it gets best value (e.g. market value) from its assets but there are exemptions which allow disposal below market value including public partners and registered housing associations.
- 4.2 At present, when assets become surplus to operational requirements, before assets are sold Property & Infrastructure Support write to local Members so they can comment. At this stage, local Members can comment upon any community local groups who may be interested in acquiring assets. A number of parish councils and local community groups have acquired assets from KCC at market value e.g. when have marketed these sites and they have been sold by public auction.
- 4.3 KCC will continue to work with community groups where surplus assets become available and may have benefit to local communities that have a low asset value.

However, the vast majority of surplus assets will secure capital receipts that are integral to KCC's capital programme to modernise services. The proposal under Right to Buy proposals outlines exemptions and this includes any asset required for disposal to fund future services and this will cover the majority of KCC surplus assets

- 4.4 A number of community groups do approach KCC seeking to acquire assets at a nominal sum and these are considered but KCC is governed by the best value requirements under the Local Government Act 1972 so the majority of KCC assets need to be sold at market value to fund the capital investment in the capital programme. There have been some disposals of land at nominal value to other public agencies below market value to fund regeneration projects.
- 4.5 KCC also leases part of its operational accommodation to external parties who are local service providers and local community groups. .
- 4.6 Property and Infrastructure Support are working on a number of policies and guidance for future delivery of services by organisations that run services under the Right to Challenge process in the Localism Bill as part of the Future Service Options working being lead by the Service Improvement and Business Strategy teams.

5. RECOMMENDATION

5.1 The Committee is asked to:

(a) NOTE the report regarding the Community Right to Buy and KCC's approach to Community Asset Transfer.

Background Papers:

- Proposals to introduce a Community Right to Buy – Assets of Community Value: Consultation Paper, CLG, February 2011

Appendices:

- Appendix 1: The Right to Buy Process (in full)
- Appendix 2: Illustrative Costs of Implementing Community 'Right to Buy' from Impact Assessment
- Appendix 3: KCC response to the Community Right to Buy consultation

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Appendix 1 – The ‘Right to Buy’ process

Listing of ‘Assets of Community Value’

‘A voluntary or community body with a local connection (including a Parish Council) will be able to identify, public or private ‘Assets’ and request that these are placed on a list of ‘*Assets of Community Value*’ to be held, and publicised, by the existing planning authority (i.e. not County). The principle behind this is to give a ‘Community Interest Group’ the time to put together a bid to purchase an asset that an owner wishes to sell.

Nominating process

Assets can only be nominated by a Parish Council or by “a voluntary or community body with a local connection”. Future Regulations will define what is meant by a ‘voluntary or community body’ and the “conditions that have to be met for a person to have a local connection for the purposes of” nominating assets. It is anticipated by the Government that this definition will be defined as “a body, other than a public or local authority, which may be incorporated or unincorporated, must not be run primarily for profit, and must have a primary purpose concerned with the local authority’s area, or the neighbourhood in which the asset is situated where this is in more than one authority’s area”.

Definition of an ‘Asset of Community Value

Assets will have to meet the definition of an ‘Asset of Community Value’. Buildings or land in a Local Authority’s area is land of community value if in the opinion of the local planning authority:

An actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community. ‘Social Interests’ are defined as ‘Cultural’; ‘Recreational’; or ‘Sporting’; & it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community;

Subject to further Regulations, a building or other land in a local authority’s area that is not land of community value, is land of community value if in the opinion of the local authority:

There is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community. The term ‘recent past’ will be left to the local authority to define; &

It is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

That land or buildings do not fall within one of the ‘exemptions’, which will be detailed fully in future regulations.

The list of Assets

If the Local Planning Authority determines that an asset is of 'community value', an asset will be added to a local authority maintained 'Assets of Community value' list, until the local authority has been informed that a relevant disposal has taken place, or if they consider that the asset is no longer of community value. An asset will remain on the 'Assets of Community value' list for five years until the local authority has been informed that a relevant disposal has taken place, or if they consider that the asset is no longer of community value.. The *Localism Bill* also makes provision for local authorities to maintain a list of assets that have been nominated unsuccessfully – but it is left to authorities how to organise and publicise these lists.

Asset owners

The Local Authority will be required to undertake reasonable steps to inform the owner and occupier, that an asset is to be added to the list, and the owner will be able to request that a review is undertaken.

Triggering the process

The process will only kick-in if the owner decides to sell the 'asset' via a freehold sale or the grant or assignment of a lease for at least twenty-five years.

Exemptions to listing

Several exemptions will apply to listing, which will be defined fully in Regulations. The exemptions will cover:

- Residential premises (including all land that is included within the title) of all shapes and forms – so mobile homes, boats etc. Exceptions to this would include the residential parts of a pub or shop;
- Operational land as defined in Part 11 of the Town and Country Planning Act 1990 i.e. land used for transport infrastructure and some other related purposes by specified bodies with statutory powers.

Additionally, some disposals, of listed assets, can take place without the local authority being informed or the moratorium periods coming into force. However, the Regulations will stipulate that if an exempted listed asset is sold and then put up for sale the full moratorium rules will apply.

The exemptions will cover:

- All transfers made other than for value (i.e. made as a gift);
- Transfers of land between members of the same family³ (i.e. made as a sale as well as a gift);
- Transfer due to the inheritance of the land;
- Sales by personal representatives in order to pay estate debts or cash legacies;

- Transfers occasioned by resignation or death of partners in a firm or trustees of a trust;
- Transfers between trustees, between a trust and a settler, and between a trust and a beneficiary;
- Business to business transactions of a going concern, where the intention is to continue the existing use of the asset;
- Transfers where the listed asset forms part of a larger estate

(A) Disposals made as a result of binding or pre-existing arrangements. This would include:

- All transfers of land made in pursuance of a court order;
- Transfers not in pursuance of a court order as part of a separation agreement between spouses or civil partners (or ex ditto) or between parents for care of dependent children;
- A transfer for the purposes of any enactment relating to incapacity (if not made in pursuance of a court order);
- Exercise of a pre-existing option to buy, nomination right, pre-emption right or right of first refusal;
- Sale by a lender, either through the lender being in possession of the land or through exercise of a power of sale;
- Disposal of land under bankruptcy proceedings (or other insolvency procedure);
- Disposals of land made under a Compulsory Purchase Order;
- Agreed sale of land which would otherwise be compulsorily purchased;
- Return to a previous owner under the Crichton Down Rules⁴.

(B) Transfers between connected companies;

(C) Disposals of land made under existing statutory provisions that clash with the Assets of Community Value moratorium rules.

The Government do not intend to automatically exclude land that is governed by existing legislation from being listed as an asset of community value. However, where the Assets of Community Value provisions are inconsistent with the rules for disposal of land under other legislation (e.g. if the legislation determines that land must be disposed of in a specified timescale or to whom the land must be sold) then they will provide that the Assets of Community Value provisions do not take precedence, so that the owner of the land would not be subject to the moratorium rules.

(D) Provision of ongoing public service delivery

The Government do not wish to disrupt the delivery of public services. There may be circumstances where public bodies transfer or shift assets and resources for the purpose of ongoing delivery of a particular service or statutory function. The intention is to exempt transfers where assets and resources that are tied to ongoing service delivery are shifted – it is envisaged that this will apply in the case of publicly owned bodies transferring assets for the purpose of ongoing service delivery.

Windows of opportunity i.e. 'Moratorium' periods

Unless an exemption applies, a time window – a 'moratorium period' will apply.

If an 'Asset of Community Value' is placed on the open market and a 'Community Interest Group' informs the Local Planning Authority that they are interested in the asset this will trigger an 'Interim Moratorium of six weeks', during which they can submit a written intention to bid. If no submissions are received then the owner is free to sell;

If a submission is submitted, the process moves into a 'Full Moratorium' period, of six months, during which local groups will be given reasonable time to build a business case to purchase the asset;

If the asset owner does not sell their asset at the end of the 'Interim' or 'Full Moratorium' period, there will be the remainder of the protected period in which they are permitted to sell without triggering another delay. This 'Protected Period' will run for 18 months.

Definition of a 'Community Interest Group'

The definition of a 'Community Interest Group' will be defined in future Regulations, but the indication is that it will be based on the following:

1. A Parish Council; or
2. A body with a local connection which is constituted in one of the following ways:
 - A company limited by guarantee; or
 - An Industrial and Provident Society (of either sort – a co-operative or a community benefit society);
 - A Community Interest Company; or
 - Any other body which is registered as a charity, including a Charitable Incorporated Organisation.

Permitted sales and Asset Transfers

It is proposed that were a 'Community Interest Group' is able to purchase an asset at the price set by an owner a sale can go ahead without waiting for the end of the moratorium window. The reasoning given is that is that this would enable local authorities to asset transfer to community groups without the restriction of a moratorium.

Appeals and Compensation

An owner will have the right to an internal review by the local planning authority and the right of appeal to an independent tribunal against if they are not satisfied by the result of the internal review.

The deadline for owners to make a request for an internal review would be 28 days from the date that the local authority notifies the owner that the asset has been listed. The timescale for the internal review should be completed within 6 weeks of the local authority receiving a written request for an internal review by the asset owner.

Compensation claims will be set out in Regulations. However, it is envisioned they will be considered and paid by the local planning authority and budgeted for in the Government's New Burdens Assessment. Asset owners would have to make a claim for compensation within a specified time period, such as 90 days after the end of the full window of opportunity period (or of the interim period, where the full period did not apply).

An appeal to an independent tribunal would have to be lodged within 21 days.

Enforcement

An enforcement regime will be set out in future Regulations.

Appendix 2 - Illustrative Costs of Implementing Community 'Right to Buy' – from CLG Impact Assessment

In their Impact Assessment of the *Localism Bill* the Department for Communities and Local Government (DCLG) place some illustrative costs of implementing the 'Community Right to Buy' nationally as:

Cost to local authorities in maintaining and publicising a list of designated assets of community value:

One-off cost to set up the list of assets of community value £379,000 (for year 1 only);
Cost of managing the list process and five year review of the list = £2.5m per year (note costs will be lower in the first 4 years).

Cost to asset owners:

Direct costs incurred by owners as a result of the delay in sale caused by the moratorium (e.g. additional maintenance, security and utility costs), estimated as £51,000 per year, however this cost will be recovered from local authorities in the form of compensation claims.

Cost to government:

Providing grants/loans to community groups- £12m (spread over 3 years) - note the loan element will be repayable.

Cost to government of providing resource support to community groups- £13.2m (spread over 4 years).

Summary

1. Kent County Council strongly supports the Government’s commitment to Localism and the Big Society, and we welcome the ambitious direction that has been taken in relation to this agenda since June, particularly through the Localism Bill. That being said, we do have significant reservations about the way in which the provisions for the Community Right to Buy will work in practice, particularly with regards to the restrictions on private property rights.

2. The legislation is, in practice, a right to delay the sale of physical assets rather than a means of retaining services within local communities; however the phrasing of the consultation does not make this distinction clear which may lead to some initial misunderstanding by community groups. For example, retaining a post office building within a community would not in itself retain a postal service function. There are undoubtedly some strong advantages to using the community ‘Right to Buy’ to complement the community ‘Right to Challenge’, if a community group has bid to take on the provision of a service and requires an asset to support this. However this distinction needs to be clearly articulated so that it does not create false expectations and unnecessary frustrations for community groups.

3. As the consultation paper recognises, Scotland has had similar legislation in place since 2004, the ‘Land Reform (Scotland) Act 2003’. Since then, whilst 120 applications have been made to register a community interest in land by 68 groups, only 10 purchases have occurred as a result of the right to buy. However, as the consultation document also acknowledges, the existing legislation laid out in Local Government Act 1972 (General Disposal Consent 2003)’ enables public bodies to transfer assets to community groups at below market value to further local social, economic and environmental wellbeing, without seeking the Secretary of State’s consent. Given this existing legislation, it begs the question whether this additional mechanism is required? Community Asset Transfer will already be considered when viable and there are many examples of this working well. The complex approach set out for the ‘Community Right to Buy’ may be disproportionate to the problem it seeks to address. The more realistic model would be a practical and straightforward approach to Community Asset Transfer, as we have committed to in Bold Steps for Kent, our medium term plan.

Key risks and issues

4. Whilst the consultation sets out over forty individual questions regarding the regulations for the Community Right to Buy, Kent County Council believe there are a number of core issues which stand out and we will therefore limit our response to some general comments and issues raised within the consultation sections. We welcome the aim of the consultation to only set general principles in the formal regulations so as to allow room for local discretion and flexibility. There are, however, a number of risk areas where we believe that some further clarity would be prudent.

Section 3 – Definition of asset of community value

5. The consultation proposals extend the Community Right to Buy to include privately owned assets, in addition to public assets. Kent County Council has strong concerns that the expected benefits of the Community Right to Buy (above and beyond existing asset transfer provisions in LGA 1972) are not sufficient to justify the intrusion into the rights of private asset owners. KCC firmly believes that the scheme should be limited to publicly owned assets, as the most appropriate way of balancing the benefits for community groups versus the wider public.

As the 'Community Right to Buy' is an enforcement approach to promoting community ownership, we are also concerned that it has a number of potential unintended consequences in relation to privately owned assets:

- Businesses could become risk averse at investing in new local services because of the extra burdens associated with selling on assets if the business isn't a success.
- Communities may lose goodwill in relationships with local landowners who may have been open to supporting a community bid voluntarily. Local landowners and businesses are part of their communities and setting down a legislative approach to community ownership could actually prove counter-productive to the principles of Big Society. (For example, a farmer who may have been willing to give the local community use of a field for a one off/infrequent event, may actually be more reluctant to do this in the future as it could become eligible for listing as a result.)
- Non-viable business models could be kept in place for up to 6 months longer causing increased debts or even bankruptcy for small businesses.
- Large businesses such as breweries would most likely find a loophole for exemption from these regulations such as clauses in deeds etc, leaving the burden to fall solely on small and medium size local landowners.

6. One concern from a local authority perspective, in a period where we are all doing our best to manage tight budgets with the minimum impact on front line services, is that this process has the potential to severely curb our ability to manage our assets strategically and deliver on our duty to get best value for all Kent taxpayers. Therefore we would recommend that the factors for deciding whether an asset is judged to be an asset of community value should include an assessment of the owners' ability to manage their estate strategically. This should take place during the process of deciding on the suitability of the asset for listing in discussion with the owner, and before it is on the register so that it would not delay a disposing of an asset where there is a greater public benefit as a whole from a quick sale.

Section 4 – Ways in which assets may be nominated and listed

7. We agree that the process should be open to all individuals or groups with a local connection given that it would be extremely difficult to set out a more restrictive definition for this whilst still including the groups that the new right is intended to support. By their nature, community groups and individuals will not be likely to have a legally defined status therefore the most appropriate means of defining this group will be by a local connection, allowing discretion for the local authority to interpret this on a case by case basis.

Section 5 – Information to be included in community nominations

8. We agree that regulations should specify the minimum information that should be included in a community nomination and that this information should be sufficient to demonstrate a genuine commitment to pursuing the bid so as to avoid vexatious and frivolous bids, such as those simply intended to delay sales, or those done on a purely speculative basis. We also propose that consideration of bids by the local planning authority should include an 'affordability test' to rule out delaying the sale of assets which have a very high market value. It must be recognised that securing funds to meet market prices for assets will prove very prohibitive to many community groups - particularly in the South East. There is no reason to delay a sale of a high value asset by six months if the cost of the asset is well outside of the community's potential purchasing power.

Section 6 – The procedure for listing assets

9. As previously stated, we have significant reservations about the inclusion of private assets in the Community Right to Buy as we believe this will fundamentally infringe on the owner's private property rights. However, if the government is to go ahead with including this category, we fully support the proposal that the owners should be informed before the local authority makes a decision on whether or not to list an asset. Not only is this a matter of courtesy to the asset owner, but as acknowledged in the proposals it is also crucial for the local authority to be aware of any potential reasons which the asset owner may present about the suitability of the asset for listing.

Section 7 – Notification about the inclusions and removal of a listed asset

10. We agree that an asset should be removed from the list of assets of community value once the local authority is aware that it has been sold as a result of a relevant disposal, or if it is no longer considered an asset of community value. There is no reason to keep an asset listed if it isn't truly eligible as this will only cause confusion and ambiguity for community groups. There must be discretion for local planning authorities to exercise common sense about the listing process, so that it can be used in the best way possible to support community groups and asset owners.

Section 8 – Content and publication of the list of assets of community value and the list of land nominated by unsuccessful community nominations.

11. Kent County Council supports the proposal that local authorities should decide the most appropriate ways to publicise the lists and bring them to the attention of the community and other interested parties. This should not be an overly burdensome process as the vast majority of groups and individuals involved will be able to access the information through online publication. Consideration of the need to provide alternative means of communication should be flexible to individuals rather than creating an overly bureaucratic and expensive system.

Section 9 – The right of appeal for landowners

12. Kent County Council believes that the opportunity to appeal an asset listing is an fundamental right for landowners and whilst we agree with the proposed 28 days as an appropriate period for requesting a review, we would also recommend that it should be

for the discretion of the local authority to decide to extend this, if there are mitigating circumstances to explain why an asset owner has been unable to respond within this period, so as to allow for a fair process.

13. The proposals suggest that the appeal mechanism for asset owners regarding listing of their asset would also sit with the local planning authority, so that a district chief executive could oversee an internal review on decision made by their own head of planning – without member oversight. We are very concerned that this could come across to the public as a lack of transparency and democratic accountability in the process and would increase the possibility that an asset owner is dissatisfied with the outcome. We strongly recommend that the internal appeal process is managed through the local authority's planning committee to ensure the process is seen to be transparent, democratic, and includes an oral hearing.

14. Given the level of burden which the scheme potentially has for private owners in terms of delaying disposals of assets and the restrictions this may have on their private property rights, we believe it is absolutely vital that landowners have access to robust external appeal mechanisms. This should include access to court and the Local Government Ombudsmen in relation to due process, but also a tribunal for matters relating to the decision itself so that there is the opportunity to review the factors which informed the original decision.

Section 10 – Length of the windows of opportunity and protected period

15. There is a fundamental conflict in the proposed window of opportunity to allow community groups and individuals to come together to bid for an asset - between the time needed for a small community group to put such a bid together, and the time period which could be considered reasonable to delay a private owner from selling their property. Research into the Scottish scheme by the Joseph Rowntree Foundation suggests that one of the key reasons for the low figures of usage of the scheme was down to the short time period available for the community group to put together a bid, which was six months. Conversely, six months is an extremely long time to expect a private owner to delay the sale of an asset – particularly where it has a cost implication for a small business. We strongly recommend that that the decision on the length of the window of opportunity should not be prescribed in regulation, but should be down to the discretion of the local planning authority, so that the particular circumstances of the case, including the needs of the community group in creating a bid and also the potential impact on the landowner, can be considered. For example, a 3 month option is preferable to six months where a community group is well established and in a good position to develop a bid.

Section 11 – Exempt disposals and permitted sales within the full window of opportunity

16. It is important to allow for flexible approaches to the Community Right to Buy as it will be preferable to find arrangements which meet both the interests of an asset owner and a community group. It should be down to the discretion of local planning authorities to assess the value of such arrangements and qualify which should be deemed relevant disposals.

There needs to be consistency between those groups who are eligible to bid for assets of community value and those groups for whom it would be deemed a 'relevant sale'.

We would propose that this is also subject to the test of having a local connection, but not the further provisions as this could ensure a longer, more drawn out process to community groups where there is commitment from an asset owner to sell to them already. The local authority will have the knowledge to ensure that the group is a suitable group to qualify, so it should be left to their discretion to establish whether a particular group or individual meets the criteria rather than specifying legal entities.

Section 12: Compensation for landowners.

17. Kent County Council believes that it is absolutely vital that private landowners are not out of pocket financially as a result of the new provisions, and there is a need to ensure that the process for compensation is clear and equitable. We note with some concern, however, that the potential cost burden this could involve for taxpayers does not appear to be fully appreciated. In many cases, the sale of a privately owned asset will be triggered because the business it supports is no longer viable, and is making a loss. If this is the case, a delay of the sale by up to six months will almost certainly have a substantial direct cost implication. As a result, it must be recognised that in many cases it will not service the wider public interest for these costs to be incurred at all. Whilst Kent County Council is fully committed to supporting the growth of the Big Society; we have a duty to all Kent taxpayers to achieve best value and a degree of caution is needed to balance these endeavours to support individual groups against the cost to the wider public.

18. The proposals also suggest that this compensation should be paid by the local authority. Unlike the specification that the asset list should be held by the local planning authority the proposals do not make it clear where this burden would fall in two-tier areas. We would recommend that, in two tier areas, the authority responsible for listing assets also has the responsibility for compensation claims, so that there is a strong link between these two duties and an incentive for the local planning authority to undertake considered appraisals of asset nominations.

19. Regarding the review of decisions regarding compensation, we strongly believe that it is a fundamental right for an owner to have the opportunity for a review by a court or tribunal.

Section 13: Enforcement of the Regulations

20. Enforcement of the regulations will be safeguarded effectively in two ways – both through the entry on the local land charges register (which should be automatically cross referenced by the planning authority with the assets of community value listing) and also through the involvement of solicitors in the sale of assets, who should not allow any illegal sale to go through. Given these robust safeguards, we believe that instances where a sale goes through in breach of the regulations are so unlikely as to not be worth outlining in additional provisions through civil court. Furthermore if breaches of these regulations do occur, then this would be a matter of maladministration by the local planning authority, or malpractice by the solicitor given their own obligations within the process and should be dealt with as such. We are extremely wary about the idea of retrospective civil action, as this could open up a very complex and onerous process for the courts.