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Our ref /Ar faidhle: SD00002  
Date 29 January 2024

Dear Mr Middleton

**NOTICE BY THE SCOTTISH MINISTERS UNDER SECTION 60 OF THE LAND REFORM (SCOTLAND) ACT 2016: DECISION ON THE APPLICATION BY POETS' NEUK FOR CONSENT TO EXERCISE RIGHT TO BUY LAND AT GARDEN GROUND ON THE WEST SIDE OF GREYFRIARS GARDENS, OPPOSITE NUMBER ONE GREYFRIARS GARDENS, ST ANDREWS, KY16 9HG**

**Case Number: SD00002**

Notice under section 60 of the Land Reform (Scotland) Act 2016 ("the Act") is enclosed.

The Scottish Ministers have considered the application by Poets' Neuk to apply for consent to exercise the right to buy land consisting of garden ground on the west side of Greyfriars Gardens, opposite number one Greyfriars Gardens, St Andrews, KY16 9HG. Scottish Ministers have decided **to grant** consent to Poets' Neuk to exercise The Right to Buy Land to Further Sustainable Development in relation to the land at garden ground on the west side of Greyfriars Gardens, opposite number one Greyfriars Gardens, St Andrews, KY16 9HG.

The enclosed Notice sets out the reasons for Scottish Ministers' decision.

In accordance with section 60(1)(b) and (e) of the Act, a copy of the enclosed Notice is being sent to the landowner, Optimus Fiduciaries Limited (formerly Tenon (IOM) Ltd), as Trustees of FT REPSF, St Mary's, The Parade, Castletown, Isle of Man, IM9 1LG and all persons who were invited to send their views on the application. In terms of section 60(1)(f) of the Act, Scottish Ministers will send a copy of the enclosed Notice to the Keeper of the Register of Applications by Communities to Buy Land to be included in that Register.

Your attention is drawn to the notes contained in the Notice which provide information about the effect of Scottish Ministers' decision and on rights of appeal against the decision.

Yours sincerely

Vicky Reynolds  
On behalf of Scottish Ministers

## **Notice under section 60 of the Land Reform (Scotland) Act 2016 of Scottish Ministers' Decision**

The Scottish Ministers (“Ministers”) have received the application by Poets’ Neuk for consent to exercise the right to buy garden ground on the west side of Greyfriars Gardens, opposite number one Greyfriars Gardens, St Andrews, KY16 9HG in terms of Part 5 of the Land Reform (Scotland) Act 2016 (“the Act”).

Having considered the information provided, Ministers have decided to **give consent** to Poets’ Neuk to exercise a right to buy in relation to the land that forms the subject of the application. The decision is dated 25 January 2024 (“the decision date”). This notice states the reasons for that decision.

### **Observations on criteria**

It is Ministers view that, Poets’ Neuk is a community body in accordance with **section 49** of the Act and this application **meets** the conditions and requirements set out in **section 56** of the Act. Our main observations of this case are as follows:

### **Sections 46 to 48: Land in respect of which community can exercise a right to buy**

**Sections 46 to 48** of the Act provide that a community body can apply for consent to exercise a right to buy land under Part 5 of the Act in relation to any eligible land. The eligibility of the land is considered in more detail below at paragraph 6.17. However, Ministers are satisfied that the land is eligible land in terms of section 46 of the Act.

### **Section 49 of the Act: Community Bodies**

**Section 49** of the Act requires a community body to be either, a Company Limited by Guarantee (CLBG), a Scottish Charitable Incorporated Organisation (SCIO), or a Community Benefit Society (BENCOM). The application is submitted by Poets’ Neuk, a Company Limited By Guarantee, which satisfies the requirements under **Section 49(2)** of the Act. The governing document of Poets’ Neuk is their articles of association, which include provision for the matters required by **Section 49(2)** of the Act. The requirement of the Act has therefore been met.

**Section 49(9)** of the Act requires the community to be defined by reference to a postcode unit or units or a specified type of area (or a combination of postcode units and a specified type of area). The community have defined themselves using a range of postcode units and will comprise the persons resident in those postcode units who are entitled to vote at a local government election. Article 4 of the community body’s articles of association make such provision. The requirement has therefore been met.

**Section 49(2)(b)** of the Act requires that the community body’s governing document includes provision to enable the community body to exercise the right to buy land under Part 5 of the Act. **Schedule 1 Article 3.1** of the community body’s governing document makes such provision. This requirement has therefore been met.

**Section 49(2)(c)** of the Act requires that the community body’s governing document include provision that the community body must have no fewer than 10 members. **Article**

**9.1** of the community body's governing document makes such provision. The governing document also contains a provision at **Article 9.3** that should the number of members fall below 10 the community body will not conduct any business until it has secured that minimum number of members. This requirement has therefore been met.

**Section 49(2)(d)** of the Act requires that the community body's governing document include provision that at least three quarters of the members of the community body are members of the community. **Article 9.2** of the community body's governing document contains such provision. Ministers have scrutinised the membership list provided by Poets' Neuk as part of the application, and are satisfied that this requirement has therefore been met.

**Section 49(2)(e)** of the Act requires that members of the community should have control of the community body. **Articles 8.1 to 8.3** of the community body's governing document provide for **three** categories of membership – Ordinary Members, Associate Members and Junior Members. Only Ordinary Members are eligible to vote at any general meeting (**Article 8.2 and 8.3**). The Board of Directors is accountable to the Ordinary Members who have ultimate control of the community body. The Board will, in terms of **Article 32** of the community body's governing document, consist of **Elected Directors, Appointed Directors and Co-opted Directors**. **Article 32.1** of the community body's governing document provides that only Ordinary Members of the company can be appointed as an Elected Director.

Under **Article 44** of the community body's governing document, the board is only quorate where, at any board meeting, Elected Directors (i.e. Ordinary Members of the company) are in the majority and that the quorum shall not be less than 50% of all the Directors. The requirement has therefore been met.

**Section 49(2)(f)** of the Act requires that the community body's governing document contain provision ensuring proper arrangements for the financial management of the community body. **Articles 63 to 69** of the community body's governing document make such provision. This requirement has therefore been met.

**Section 49(2)(g)** of the Act requires the community body's governing document to include provision that any surplus funds (or assets) be applied for the benefit of the community. **Article 40.1** of the community body's governing document makes such provision. This requirement has therefore been met.

**Section 49(2)(h)** of the Act requires that the community body's governing document includes provision that, on the winding up of the company, any remaining property passes (i) to such other community body as may be approved by the Scottish Ministers, or (ii) if no other community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct. **Articles 75.2 to 75.3** of the community body's governing document make such provision. This requirement has therefore been met.

**Section 49(7)** of the Act states that a body is not a Part 5 community body unless Scottish Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. **Article 4.1** of the community body's governing document contains such a provision and Scottish Ministers have confirmed to the community body, in writing on 3 June 2021, that they are satisfied in this regard.

Ministers are therefore content that the community body comprises a compliant community body as the governing document contains the provisions that are required under **section 49** of the Act.

### **Sections 54 to 56 of the Act: Application and decision on application**

**Section 56(1)** of the Act requires that Scottish Ministers must be satisfied that:

- the **sustainable development** conditions mentioned in section 56(2) of the Act are met;
- and the **procedural requirements** mentioned in section 56(3) of the Act have been complied with.

### **Sustainable Development**

Under section 56(2) of the Act, the sustainable development conditions are met if:

- (a) the transfer of land is likely to further the achievement of sustainable development in relation to the land,
- (b) the transfer of land is in the public interest,
- (c) the transfer of land—
  - (i) is likely to result in significant benefit to the relevant community (see subsection (11)) to which the application relates, and
  - (ii) is the only practicable, or the most practicable, way of achieving that significant benefit, and
- (d) not granting consent to the transfer of land is likely to result in harm to that community.

Under section 56(4) of the Act, in determining whether an application meets the sustainable development conditions, the Scottish Ministers may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44.

### **Section 56(2)(a): The transfer of land is likely to further the achievement of sustainable development in relation to the land**

#### **Social sustainability**

The community body in their application state that The St Andrews Design Guidelines sets out the standards expected by the planning authority for development in the St Andrews Conservation Area to “ensure that new development proposals adopt an integrated approach to sustainability and meet or exceed Fife Council’s requirements for environmental performance”. The award of planning permission by Fife Council for the Greyfriars Poetry Garden project shows that these criteria have been met in relation to the planning decision. Whilst this does not necessarily mean that it is also met in relation to the requirements of the 2003 Act, it does indicate that the plans are considered to contribute to the area’s sustainability by others. In their response, the landowner’s trustees do not accept that the transfer of the land is likely to further the achievement of sustainable development and state that “the proposals themselves barely constitute “development”; there is no economic element to them, albeit the trustees accept that an economic or commercial benefit is not an essential ingredient of sustainable development”.

It is Ministers' view is that the garden will promote social sustainability by creating a place where members of the local community can meet and interact. The interpretive boards will provide an educational element to the garden for locals and visitors to better understand the history of the area. Ministers note that the proposals give consideration to those with disabilities by providing wheelchair access, audio interpretation and tactile objects so that the features of the garden can be enjoyed by all. The community body have received letters of support from a number of local groups such as the St Andrews Rotary Club confirming that they are willing to assist in the ongoing maintenance of the garden. Ministers consider that having volunteers from within the local community to help to maintain the garden and work alongside other volunteer organisations, is likely to help to promote social cohesion, reduce social isolation, and could contribute to an increased sense of pride in their community. Poets Neuk have also provided evidence in the form of the Fife Greenspace Audit, which indicates that St Andrews has a below average accessibility to greenspace. The studies mentioned within the Fife Greenspace Audit demonstrate how greenspace can contribute to the social wellbeing and cohesion of communities. Ministers consider the creation of a greenspace within the heart of the community could contribute to the social cohesion of the community and provide a safe space for members of the community and visitors to the area to congregate and interact. The landowner has not provided any comments in relation to the social sustainability of the proposals.

### **Economic sustainability**

It is Ministers' view that the transfer of the land and proposed garden could be a useful addition to St Andrews for both the locals and the many visitors to the area. The St Andrews Business Improvement District, which is a formal arrangement whereby the businesses in an area come together to fund, manage, and implement, an agreed programme of projects designed to improve the trading environment of the area to the benefit of all the businesses, state in their letter of support that the plans would prove a great asset and could provide economic benefits to the community. Ministers' view is that the proposals would provide a suitable space for visitors and locals alike to use. This could, in turn, have positive economic benefits for tourism and local businesses through the potential increase in footfall to those businesses close to the garden. A number of local businesses have indicated support for the proposed garden, expressing their concerns that the current state of the land is not conducive to attracting visitors to the area. Two of the local businesses which overlook the land cite that the unkempt, overgrown appearance of the land, its use as a dumping ground, and the regular use of the land as a toilet are having a negative impact on the surrounding businesses.

The owner's response states that there is no economic element to the proposals. Ministers acknowledge that economic activity is not the primary purpose of the proposals made by the community body, however there is no requirement for this to be the case. Ministers view is that the fact the community body do not propose to develop the land for commercial purposes does not mean the proposed development cannot have a positive economic effect on the local economy. In addition, the community body could charge a nominal fee to organisations wishing to hold poetry readings in the gardens to generate some funds for the upkeep of the garden.

## **Environmental sustainability**

The community body provides an extract from the Fife Greenspace Audit, quoting research showing that..." greenspace can improve air quality, coniferous trees can capture particulates and toxic gases such as nitrogen dioxide and ozone". Ministers' view regarding the environmental sustainability of the proposals is that the garden would regenerate the land, providing an attractive, accessible green space in the centre of the town. The planting of trees and a hedge would absorb gases from vehicle emissions, improving the air quality in the area to some extent. The community body's proposals are in line with the St Andrews Design Guidelines, which encourages both the management of visible private open space and arrangements for public access to these spaces where appropriate. Specific reference is made to the gardens on Greyfriars Gardens in the Open Spaces section of the guidelines, as well as in the Green Spaces section of the St Andrews Conservation Area Appraisal and Management Plan. These documents highlight respectively the landscape value and importance to the character of the area of the land subject to this submission.

The proposals state that the discrete lighting installed in the garden to allow for evening poetry readings would be solar powered, to ensure the garden has carbon neutral status. Ministers note however that the proposals mention audio interpretation and CCTV security cameras, both of which would likely require a power source. Accordingly, whilst it can be seen that the lighting itself would be carbon neutral, it is unclear whether this would apply to the energy requirements of the entire garden. In their business plan, the community body refer to reviewing their plans with specialists, including those in the field of sustainable electricity and water supply. This demonstrates that they have given consideration to the environmental impact of the garden

## **Summary on further the achievement of sustainable development**

Ministers' view is that the proposal to create a garden with seating area on a piece of land which currently has no particular function does constitute development. Based on the features of the garden as outlined in the proposals and the offers of support to maintain the gardens, Ministers consider that the transfer of the land to the community body is likely to further the achievement of sustainable development.

Ministers are **satisfied** that the application complies with the requirements of section 56(2)(a) of the Act for the reasons noted above. This requirement has therefore been met.

## **Section 56(2)(b): The transfer of land is in the public interest,**

It is Ministers' view is that the proposals outlined by the community body would create an attractive space in the centre of St Andrews for the local community to spend time in and would be a resource that would be of value to both the local community and visitors. The garden would be an aesthetic improvement on the current state of the land and could help to attract visitors to the area.

The information boards would provide an educational resource and connect current residents and visitors to the history of the site. Ministers note that the proposals give consideration to inclusion, with access provided for those with disabilities. Ministers consider that making use of volunteers within the local community will further help to promote social cohesion, reduce social isolation and help to lead to an increased sense of pride in their community.

The owners disagree that the transfer of the land is in the public interest on the basis that, at the date of their submitting comments, there was, in relation to the site, an as yet undecided appeal against the refusal of a planning application made by the owner. Ministers note that the planning application had been recommended for approval by the planning officer, however, the planning committee refused the landowner's application. The landowners subsequently appealed the council's decision but were unsuccessful in their appeal. Ministers are aware that the landowner has submitted another planning application to alter the boundary wall of the land and put up railings and a gate, at the time of writing this submission no decision had been made by the planning department.

The transfer of land to the community body would bring private land that has been neglected over a number of years into public use and enable it to be maintained and cared for by volunteers from the community. By being in community ownership it could help to reduce social isolation by providing an area where people can meet and chat in the centre of St Andrews. The creation and maintenance of the garden will provide volunteers with opportunities to learn new gardening skills, improve their health by getting exercise and being outdoors and making new social contacts while doing so - all good benefits to help improve both the physical and mental health of those in the community. The land has been recognised as having a historical significance and the proposed educational aspect of this project teaching both young and old about the history of the site through interpretative boards would benefit the local community and the many visitors that come every year to St Andrews. The land, as it currently stands, remains unused and uncared for with no purpose and does not benefit anyone in the area. Ministers note that the landowner has applied for planning permission to enclose the land to stop the anti-social behaviour that is currently happening. The community body owning the land would give it a purpose that would benefit the community and visitors to the historic town of St Andrews.

It is Ministers' view that the proposals outlined by the community body would create an attractive space in the centre of St Andrews for the local community to spend time in and would be a resource that would be of value to both the local community and visitors. The garden would be an aesthetic improvement on the current state of the land and could help to attract visitors to the area.

**Section 56(10)(a): In determining for the purposes of subsection (2)(b) whether a transfer of land or tenant's interest is in the public interest, the Scottish Ministers must take into account, in particular, any information given under section 55(2)(a). Section 55(2)(a) states that: An invitation given under subsection (1)(a)(i) or (ii) must also invite the owner or, as the case may be, the tenant to give the Scottish Ministers information about the owner's or tenant's views on the likely impact on the owner or tenant of the proposals for the land or tenant's interest, including on the current use of the land or tenant's interest (and any intended use)**

In determining whether the transfer of land is in the public interest, Ministers have taken into account the information supplied by the owner in relation to section 55(2)(a). The owner's comments with respect to 55(2)(a) are:

"The meaning of the question is not altogether clear. In one sense, the use of the land as envisaged by Poets Neuk would have no impact on the owner as the owner (i.e. our clients) would no longer be the owner and therefore could not be affected by that use per se. However, if paragraph (a) is enquiring as to the likely impact on our clients of an involuntary transfer of the land to Poets Neuk, the impact would be materially prejudicial as it would



deprive our clients of a property asset against our clients' wishes and would extinguish a legitimate commercial opportunity to develop the site. The site is not currently utilised but our clients are supportive of development on the site and, at the present time, that development is intended to take the form of use as an outdoor seating area, including the siting of two food shacks. A planning application for that change of use was submitted in February 2022 under reference 22/00332/FULL. The case officer's report to committee recommended the application for approval. A copy of the report is attached and is referred to for its terms.

Despite the officer's recommendation, the committee refused the application. An appeal was lodged with the DPEA on 24 February 2023 (PPA-250-2393) and our clients have received advice that the prospects of success for the appeal are good. Our clients are concerned that the planning committee gave too much weight to those who objected to the application (some of whom are members of Poets Neuk) and insufficient weight to proper planning merits, as brought out in the officer's report to committee."

Ministers acknowledge that the owner would no longer have the opportunity to develop the site if the land were transferred to the community body. However, the owner has applied for planning permission on more than one occasion and these applications have been refused, appealed and refused on appeal. Ministers note that the landowner currently has another planning application with Fife Council to repair a wall and affix gates to the property to help stop the anti-social behaviour that has taken place at the site.

**Section 56(10)(b) In determining for the purposes of subsection (2)(b) whether a transfer of land or tenant's interest is in the public interest, the Scottish Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant's interest on land use in Scotland.**

The owners are correct to state that "When considering the matter of public interest, Section 56(10)(b) of the 2016 Act requires Ministers to "consider the likely effect of granting (or not granting) consent to the transfer of land... on land use in Scotland." The owners say they do not consider that granting consent would have any positive effect on land use in Scotland as the site is small and has no national significance.. Whether it has national significance is not something that is specifically to be considered under this Act. Ministers agree that the site is small but the development of the garden could have an impact on both the local community and visitors in providing seating in the centre of St Andrews and as a place of learning. This is the first application of its kind in Scotland and, if granted, is likely to generate interest not only in St Andrews but also further afield and therefore influence land use in Scotland more widely. For instance, the granting of this application, in such a well known place of historical interest as St Andrews, could encourage other communities, in Scotland, to consider whether there is land in their area which, if transferred to the community, could bring significant benefits to the community. Ministers have considered the likely effect of granting (or not granting) consent to the transfer of land on land use in Scotland, and concluded that such a transfer is likely to have an impact on land use in Scotland through leading by example. There is no suggestion that it would have a negative impact on land use in Scotland in any way.

## **Summary of public interest**

In considering whether the transfer of the land would be in the public interest, Ministers have taken into account: the information submitted within the application; the landowner's views including the landowner's views on the likely impact of the proposals on them and their use of the land; the community body's response to the landowner; and the likely effect of granting (or not granting) consent to the transfer of the land on land use in Scotland. Taking these considerations into account, Ministers are satisfied that the transfer of the land is in the public interest.

Ministers are **satisfied** that the application complies with the requirements of section 56(2)(b) of the Act for the reasons noted above. This requirement has therefore been met.

### **Section 56(2)(c)(i) The transfer of land is likely to result in significant benefit to the relevant community to which the application relates**

Ministers have considered the likely effect of granting consent to transfer the land on the lives of the persons comprising that community, in relation to economic development, regeneration, public health, social wellbeing and environmental wellbeing.

#### **Economic development**

In relation to economic development the likely effects are an increase in trade for local retail and hospitality businesses as the increased attractiveness of the area leads to greater footfall, with larger numbers of visitors coming to that part of the town, or locals coming to this area of the town. This, in turn, should help to boost the local economy. The owner's view is that there is no economic development intrinsic in Poets Neuk's proposals. Whilst the proposals do not directly involve commercial activity, Ministers' view is that the secondary, positive impact on local trade constitutes a benefit, and the transfer of the land is likely to result in this benefit. Ministers also consider that there is currently no economic benefit to the land remaining in the condition that it is.

#### **Regeneration**

The proposals, should the land be transferred, are likely to lead to the transformation of an area, that is currently neglected, into an attractive place where members of the community and the public could use on a daily basis and, at the same time learn a bit more about their surroundings and the history of the area. The owner's view is that the proposals would involve removing overgrown vegetation but that this is too modest to amount to regeneration.

Ministers acknowledge that, on its own, removing overgrown vegetation from the site would not in itself amount to regeneration. However, the community body's proposals for the site include more than removing vegetation. They intend to make it a space for the local community and visitors to enjoy the fresh air, socialise, and learn about the history of the site. The creation of the garden, provision of outdoor seating and the educational elements of the project would transform the site from the somewhat neglected area that it has been for many years. It is Ministers' view that this does amount to regeneration. The owner stated in their comments of 7 April 2023 that the trustees intend to cut back any excessive growth by the end of April 2023. To date Ministers understand that this maintenance of the land has not occurred. It is Ministers' view that the proposed transformation of the land is likely to result in a significant benefit to the community and that the transfer of the land to the community is likely to result in this benefit.

## **Public Health**

In relation to public health the likely effects are that the improvement to the condition and visibility of the land, and the CCTV monitoring, would help to address the type of negative impact activities that have been reported by the community body and local businesses to be taking place on the land and which have led to public health risks. A letter from Johnalan Hair Design, a business based opposite the site, reports that these activities include individuals using the land as a place to live, use as a public convenience and as a place to consume drugs/alcohol. Photographs provided by the community body with their application show evidence of drug and alcohol consumption on the land. Although Ministers note that this only demonstrates the situation on one day, the information provided by Poets Neuk, in respect of their Part 2 Community Right to Buy registration over the land shows that such behaviour has been an ongoing issue for a number of years and that, the land is still being used for anti-social behaviour

Ministers consider that the use of the land for the purposes mentioned above, constitute a risk to public health. Food being left can attract vermin which can have adverse effects on the surrounding properties owned by members of the community and raises the risk of contamination. Drug-related litter can lead to injury and the need for medical examination and a risk of contracting a life-altering illness. Ministers consider that increased visibility of the land, through CCTV and ongoing maintenance of the land, together with the improvement in the condition of the land and the use of the land as a communal public space, will help to address these activities thereby assisting in removing the associated public health hazards. In addition to helping to reduce health hazards, the transformation of the land could lead to mental health benefits for both members of the community and visitors to the area in having a safe open green space, in the centre of St Andrews, to sit chat and relax. The benefits to be had by members of the community by volunteering to be part of the project, maintaining the grounds and garden can help to reduce social isolation and be both good for physical and mental wellbeing.

The owner notes that there are certain unpleasant examples of anti-social behaviour caused by unlawful entry to the site, but that none of these amount to a public health hazard. They also state that the site is a private site, the public has no right to enter the site and that the owner cannot reasonably be expected to erect and maintain barriers around the site to prevent unlawful entry. Ministers agree that the site is private and the public have no right to enter. Despite this, members of the public are demonstrably entering the site, and there is no sign to inform them that the site is private land, nor any barrier to entry. Ministers' view is that the improvement to the condition and visibility of the land, together with its ongoing maintenance, would constitute a significant benefit to the community and that the transfer of the land is likely to result in this benefit.

## **Social wellbeing**

It is Ministers' view that this project will create a pleasant space in the centre of St Andrews where both locals and visitors can sit, relax and interact with each other. The garden is being created to include those with disabilities by providing wheelchair access and this will help to ensure that the garden can be enjoyed by all. Having volunteers from within the local community, will help to promote social cohesion and reduce social isolation. By providing a safe and open place for people to sit, enjoy the garden and the fresh air and

hopefully interact with others also enjoying the space in the centre of a very busy town is a good concept for improving social wellbeing. It is Ministers' view is that the potential increase in social interaction resulting from the creation of the garden constitutes a significant benefit to the community and that the transfer of the land is likely to result in this benefit.

### **Environmental wellbeing**

The community body provides an extract from the Fife Greenspace Audit, quoting research showing that..." greenspace can improve air quality, coniferous trees can capture particulates and toxic gases such as nitrogen dioxide and ozone". Ministers consider that the garden would provide a green breathing space in the town, absorbing harmful vehicle emissions through the planting of trees and hedges. The owner's view is that the environmental consideration is not relevant to the site as "Poets Neuk's proposals are not primarily environmental in nature (unlike e.g. the planting of a new area of woodland)." Ministers agree that the proposals are not primarily environmental in nature, but disagree with the contention that this means the environmental consideration is not relevant. In determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) Scottish Ministers must consider the likely effect of granting consent to the transfer of land or tenant's interest on the lives of the persons comprising that community with reference to five considerations, one of which is environmental wellbeing. There is no requirement for any of these considerations to be the primary focus of the community body's proposals in order for them to be considered relevant.

### **Summary on significant benefit**

Ministers' view is that the provision of an attractive, publicly accessible green space on this site is likely to result in a significant benefit to the community and that the transfer of the land is likely to result in this benefit.

Taking account of the above, including the economic development, regeneration, public health, social wellbeing, and environmental wellbeing considerations, Ministers are **satisfied** that the application complies with the requirements of section 56(2)(c)(i) of the Act for the reasons noted above. This requirement has therefore **been** met.

### **Section 56(2)(c)( ii) - The transfer of land is the only practicable, or the most practicable, way of achieving that significant benefit**

The Trustees advise that they do not accept that "the transfer of the land is the only practicable, or the most practicable, way of achieving that significant benefit. It is not accepted that there will be significant benefit but, even if there was significant benefit to be gained, there may be a range of other ways of bringing that about. The trustees have not actively marketed the site for sale or lease and therefore it is not possible for anyone to be sure that there are no other ways of putting the land to a use which would create significant benefit. There is no legal obligation on the trustees to use the land in a way which achieves a significant benefit to the relevant community or anyone else and so no obligation on them to test the market."

The community body already has a registered an interest in this land under Part 2 Community Right to Buy. Under Part 2 the owner is prohibited from selling the land on the

open market, and would first have to offer the land for sale to the community body should they decide they wished to sell.

It is Ministers view that at the time of assessing this application, the only alternative to transferring the land to the community body is for the owner to retain ownership. A letter from Fife Council, Development Manager Jim Birrell , dated 21 June 2010 states that discussions and agreements regarding the land go back 15 years from the date of the letter as the condition of the garden has been a recurring issue Ministers acknowledge that there may be other ways to bring about significant benefit to the community, however the question here is whether the transfer of land is the only or most practicable way to achieve a significant benefit. The benefit described is most likely to be achieved by turning the land into garden for use by the public, a use which the community body currently has planning permission for. The owner, given the purpose of the previous two planning applications, has shown no indication that they wish to put the land to a similar use to that proposed by the community body. Given that the community body already has planning permission in place to carry out the proposals, no other party could have an opportunity to try to develop the site in any way due to the prohibition under Part 2 outlined above, it is reasonable to conclude that the community body is best placed to turn the site into a public garden and maintain it. Therefore Ministers' view is that the transfer of the land to the community body is the most practicable way of achieving that significant benefit.

Ministers are **satisfied** that the application complies with the requirements of section 56(2)(c)(ii) of the Act for the reasons noted above. This requirement has therefore been met.

**Section 56(2)(d) - Not granting consent to the transfer of land is likely to result in harm to that community.**

Ministers have considered the likely effect of not granting consent to transfer the land on the lives of the persons comprising that community in relation to economic development, regeneration, public health, social wellbeing and environmental wellbeing.

**Economic development** -The likely effects are that the land remains undeveloped due to the lack of planning options to develop the site other than as a garden and the fact that the owner has, until now, shown no desire to develop the land in this way. Ministers consider that the current condition of the land is having a negative impact on those living in the area and that this could be contributing to the area not fulfilling its full economic potential. Ministers' view is that while the lack of development of the site is negative for the local community it could not be said to constitute a harm or result in harm to them, rather it is a missed opportunity.

**Regeneration** – If the land was not transferred, based on the information provided, it is likely that the land would remain unkept and uncared for due to the lack of planning options available to the landowner and the unlikelihood of the owner developing the land as a public garden, therefore no regeneration occurs. A letter from Fife Council, Development Manager Jim Birrell , dated 21 June 2010 states that discussions and agreements regarding the land go back 15 years from the date of the letter as the condition of the garden has been a recurring issue Ministers' view is that while the lack of regeneration of the site is a negative for the local community it could not be said to constitute a harm or result in harm to them, rather it is a missed opportunity.

**Public health** – The likely effects of the site continuing in its current state will lead to further examples of the sort of negative impact activities and anti-social behaviour that the community body have highlighted in their application, such as littering, consuming drugs and alcohol or using the land as a public convenience. A letter from Johnalan Hair Design, a business based opposite the site, reports that these activities include individuals using the land as a place to live, use as a public convenience and as a place to consume drugs/alcohol. Continuation of these would come with a risk to the public in general. These risks could be, attracting vermin and creating unpleasant odours, which would have an impact beyond the bounds of the site, and dangerous items such as used needles being disposed of on the land thus posing a risk to anyone who might enter the site, pose a risk to public health. Although Ministers note that this only demonstrates the situation on one day, the information provided by Poets Neuk, in respect of their Part 2 Community Right to Buy registration over the land shows that such behaviour has been an ongoing issue for a number of years and that the land is still being used for anti-social behaviour. Ministers accept the owner's view that the site is private, however it is clear that members of the public can and do enter the site. Ministers' view is that the above constitutes a harm to the community and that not granting consent to the transfer of land is likely to result in the continuation of this harm.

**Social wellbeing** – Should the site continue in its current state, it would offer no scope for social wellbeing of any kind. The likely effects are the unkept appearance of the land will detract from the attractiveness of the local area. The likely effects are that the unkept appearance of the land will detract from the attractiveness of the local area. Members of the community and visitors **could** perceive the area negatively as a result. The landowner has submitted a planning application to fence off the land to prevent trespassers but has not given any indication what they intend to do other than that.

It is Ministers' view that the land continuing to exist in its current state provides no social wellbeing to the local community, and the appearance of the site can lead local residents and visitors to feel negatively about the area, which is likely to result in harm to the community.

**Environmental wellbeing** - Ministers' view is that not granting consent to the transfer has no significant effects in relation to environmental wellbeing.

Taking account of the above, including the economic development, regeneration, public health, social wellbeing, and environmental wellbeing considerations, Ministers are **satisfied** that the application complies with the requirements of section 56(2)(d) of the Act for the reasons noted above. This requirement has therefore been met.

**Section 56(4) in determining whether an application meets the sustainable development conditions, the Scottish Ministers may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44**

The owner has provided no evidence that they have engaged with the community, nor that they have done so considering the factors outlined in *“Guidance on engaging communities in decisions relating to land”*.

In their comments, the owners refer to engagement with the community as such:

“In terms of engagement with the community, the trustees have not thought fit to engage as the goals of Poets Neuk are incompatible with the goals of the trustees. The trustees have been working on supporting the development of the land through the planning application and to engage with Poets Neuk would be inconsistent with that work.”

Whilst the owner’s interpretation of community appears to be limited to the community body, the definition in the legislation is wider. The relevant community for the purposes of section 56(4) is the defined community which the community body relates to, rather than solely the community body itself (section 49(9)). For example the owner might have engaged with the residents in the defined community, perhaps including, but not limited to, members of Poets’ Neuk to ask their views regarding the owner’s plans for the land. The owner has provided no evidence of such engagement.

The owners have admitted in their response to the application, to not engaging with the community as their goals differ. Ministers consider that the landowner, despite selecting option 2 in their response that they do not agree to the request made by the community body to transfer the land are willing to discuss the community body’s proposals with them further, has not actively sought to engage with Poets’ Neuk or the community of St Andrews. Taking the information provided by both parties Ministers are content that no engagement has taken place between the relevant community, and the landowner when determining whether this application meets the sustainable development conditions in section 56 (2) of the Act.

Ministers are **satisfied** that the sustainable development conditions have been complied with, as noted above. Consequently, Ministers are **satisfied** that this application meets the conditions in **Section 56(2)** of the Act.

### **Procedural Requirements – section 56(3)**

Under section 56(3) of the Act, the procedural requirements for an application to buy land have been complied with if -

- (a) before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the owner of the land to transfer the land to the community body or to the third party purchaser and the owner has not responded or has not agreed to the request,
- (b) the land to which the application relates is eligible land,
- (c) the owner of the land is accurately identified,
- (d) any creditor in a standard security over the land or any part of it is accurate,
- (e) where the application nominates a third party purchaser – the third party purchaser
  - (i) is accurately identified in the application, and
  - (ii) is show to consent to the application,
- (f) the owner is not
  - (i) prevented from selling the land, or

(ii) subject to any enforceable personal obligation to sell the land otherwise than to the Part 5 CB or the third party purchaser,

(g) either

(i) a significant number of the members of the relevant community to which the application relates have a connection with the land,

(ii) the land is sufficiently near to land which those members of that community have a connection, or

(iii) the land is in or sufficiently near to the area comprising that community,

(h) the relevant community have approved the proposal to exercise the right to buy, and

(i) the Part 5 community body complies with the provisions of section 49 (i.e. meets the requirements to be a Part 5 Community Body).

**Section 56(3)(a) Before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the owner of the land to transfer the land to the community body or to the third party purchaser and the owner has not responded or has not agreed to the request**

The community body has enclosed along with its application, the written request to the owner and the owner's response. The written request was sent to the owner dated 19 January 2022 and the response from the owner was returned to the community body dated 8 July 2022. The owner responded by selecting option two, that they do not agree to the request made by the community body to transfer the land to them on the terms so specified but am/are willing to discuss the community body's proposals with them further and has therefore not agreed to the request for the purposes of **section 56(3)(a)** of the Act.

Ministers are satisfied that there is sufficient evidence in regard a written request to transfer the land being submitted to the owner, in compliance with the legislative timings. This requirement has therefore been met.

**Section 56(3)(b) - the land to which the application relates is eligible land**

**Section 46(1)** of the Act defines land to be bought under this part of the Act (eligible land) as any land other than excluded land. The land is not "excluded land" in terms of **section 46(2)** of the Act. Ministers are therefore content that the land is eligible land in terms of **section 56(3)(b)** of the Act. This requirement has therefore been met.

**Section 56(3)(c) - The owner of the land is accurately identified in the application**

A search was made on ScotLIS on 29 January 2023 by David Middleton. Land Register Title FFE79217 was enclosed with the application.

Ministers are satisfied that the owner of garden ground on the west side of Greyfriars Gardens, opposite number one Greyfriars Gardens, St Andrews, KY16 9HG has been correctly identified. This requirement has therefore been met.

**Section 56(3)(d) - Any creditor in a standard security over the land or any part of it is accurately identified in the application**



A search was made on ScotLIS on 29 January 2023 by David Middleton. Land Register Title FFE79217 was enclosed with the application as document 4(a). No creditors were identified.

Ministers are satisfied that there are no heritable creditors and that this requirement has therefore been met

**Section 56(3)(e) - Where the application nominates a third party purchaser, the third party purchaser is accurately identified in the application and is shown to consent to the application**

Poets' Neuk advise that there is no third party purchaser nominated therefore this requirement is not applicable

**Section 56(3)(f)(i) - The owner is not prevented from selling the land**

The landowner has not advised Scottish Ministers that they are prevented from selling the land, although there is currently a registration under Part 2 of the Land Reform Scotland Act on the garden ground at Greyfriars Gardens, which prevents the landowners from disposing of the land to any party other than Poets' Neuk. This registration has been in place since 20 February 2018. The registration is due to expire on 21 February 2028 and Poets' Neuk have the option to re-register their interest prior to the expiry.

Ministers are **satisfied** that the owner is not prevented from selling the land. This requirement has therefore been met.

**Section 56(3)(f)(ii) - subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 61(3)) to sell the land otherwise than to the Part 5 community body or, as the case may be, the third party purchaser**

The landowner has not advised Scottish Ministers of any enforceable personal obligations to sell the land other than to the Part 5 community body. There is currently a registration under Part 2 of the Act on the garden ground at Greyfriars Gardens which prevents the landowners from disposing of the land to any party other than the community body. This registration has been in place since 20 February 2018.

Ministers are **satisfied** that the owner is not subject to any enforceable personal obligation. This requirement has therefore **been** met.

**Section 56(3)(g)(i) to (iii) - Scottish Ministers must be satisfied that one of the options under section 56(3)(g) (i) to (iii) regarding the community's connection to the land has been met. In this case Poets' Neuk have selected the option under section 56(3)(g)(ii), that the land is sufficiently near to land with which those members of the community have a connection.** Poets' Neuk state in their answer to question 3A.7 of the application form that the community's connection to the land in relation to which this application relates is:

“The land is centrally located within the defined community. The Community Boundary/Postcode Map [Document 2] shows the physical relationship of the land to the defined community. It is located next to the former West Infants School, now used as Fife Council’s Area Office. It is a short distance from the Victory Memorial Hall which is a community facility managed by Fife Council. It is adjacent to the main shopping centre which has many retail premises including a chemist and supermarkets as well as restaurants and cafes which are well-used by members of the local community and the many domestic and overseas visitors to the town. It is near to St. Mark’s Church, and a number of members of the defined community worship there.

Nearby residents, some living in very close proximity to the garden, have been concerned about this neglected piece of land for many years, as it is an eyesore and attracts anti-social behavior. From time to time, members of the St Andrews community have themselves tidied up the site, and the Council have also been asked to improve matters by local residents. Occasional tidying up provides only a minimal temporary improvement. The St Andrews "Clean and Green Team" have now ceased to enter the area because of health and safety concerns and the chargehand from Fife Council with responsibility for maintaining the cleanliness of the area which includes the garden has confirmed the unacceptable uses and condition of the garden observed over several years. The long-term issues about the beneficial use of this land have remained unresolved for many years and it continues to be a matter of concern to members of the defined community. Its condition adversely affects the amenity of its neighbours.”

It is Ministers view that Poets’s Neuk **has satisfied** Ministers that the land is sufficiently near to land with which those members of the community have a connection. The land is centrally located within the community as defined by Poets’ Neuk. The community has a connection to and use of other assets within the defined community, such as the nearby Victoria Memorial Hall, a community facility managed by Fife Council and St Marks church, which is located a short distance from the land and which is used by a number of members of the community for worship. The land is also adjacent to the main shopping centre, which is well used by the community and visitors to the area, for shopping, restaurants, cafes etc. The criterion in **section 56(3)(g)(ii)** of the Act **has** been met.

**Section 56(3)(h) - the relevant community have approved the proposal to exercise the right to buy**

**Section 57(1)** of the Act provides that a community are to be taken as having approved the right to buy if a ballot of the members of the community has been held during the period of six months which immediately preceded the date on which the application was made on the question of whether the Part 5 community body should buy the land. In the ballot, at least half the members of the community must have voted, or if fewer than half have voted then a sufficient proportion so as to justify the Part 5 community body buying the land have voted. The majority of those who have voted must have voted in favour of the proposition.

1. Poets’ Neuk held a ballot on 25 August 2022 on the question of whether they should purchase the land. 384 were eligible to vote in the ballot and 84 (22%) voted. Of those who voted, 81 (96%) voted in favour of the proposition that the Part 5 community body buy the land.

Ministers are however satisfied that the proportion which voted is sufficient. We have had regard in that respect to the facts that the vote took place in the centre of a university town,

that it is reasonable to assume that the potential turnout was affected to at least some extent by a larger than usual number of transient voters, that the vote took place over the summer when it was more likely that potential voters would be absent (students in particular), that the number who actually voted was still respectable, and that there was very strong support for the proposal amongst those who voted.

Ministers are also mindful that the ballot result is only one of several elements that the Scottish Ministers must take into account when reaching a decision.

2. The majority of those who voted were in favour of the proposition therefore 57 (1) (c) is met.

The Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020 states that the Part 5 community body must appoint an observer to oversee, in person, the opening and counting of the votes made on the completed ballot papers, and the recording of the result. The observer must be an individual who is independent of the Part 5 community body, and sign a declaration in the form specified in schedule 4 confirming that the person oversaw, in person, the opening and counting of the votes made on the completed ballot papers and the recording of the ballot result. The "Form specified in schedule 4" is the 'Return of the Result of the Ballot' form, and the community body notified Ministers of the ballot result by sending this form to Ministers on 26 August 2022. The form is signed with a declaration from Gillian Prestage of Fife Council Electoral Services, confirming the above ballot results. Ms Prestage is not listed as a member of the community body in the membership list submitted with the application.

Ministers are **satisfied** that the relevant community have approved the proposal to exercise the right to buy. This requirement has therefore been met.

**Section 56(3)(i) - the Part 5 community body complies with the provisions of section 49.**

The requirements for a Part 5 community body were assessed under Section 49 of the Act. See sections 5.2 to 5.13 above

Ministers are **satisfied** that the Part 5 community body complies with the provisions of **section 49**. This requirement has therefore been met.

### **Section 56(3) - Conclusion of Procedural Requirements**

Ministers are **satisfied** that the procedural requirements have been complied with, as noted above. Consequently, Ministers are **satisfied** that this application meets the procedural requirements in **Section 56(3)** of the Act.

Conditions imposed under section 59 of The Act, as provided in section 60(2)(c) of the Act.

It is Ministers view that no conditions be attached to the decision to consent to the application.

**Section 56(13)** of the Land Reform (Scotland) Act 2016 imposes a duty on Scottish Ministers, in making a decision under section 54 of the Act, to have regard to relevant non-Convention human rights, and the desirability of encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998), as Scottish Ministers consider to be relevant, and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), subject to any amendments in force in relation to the United Kingdom for the time being and any reservations, objections or interpretative declaration by the United Kingdom for the time being in force. In advising Scottish Ministers on this application by Poets’ Neuk, Ministers have had regard to the ICESCR and have had regard to the landowner’s comments on the issue, in particular in relation to Article 25 ICESER. Ministers have regard to the desirability of encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).

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### **Effect of Scottish Ministers’ Decision**

Any owner, creditor or other person authorised to transfer, or take any action with a view to transferring, the land that forms the subject of the application for consent is prohibited from taking such action from the date that the application appeared as pending in the Register of Applications by Community Bodies to Buy Land.

Exceptions to the prohibition can be found under regulation 8 of The Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020.

Any right of pre-emption, redemption or reversion otherwise exercisable over the land that forms the subject of the application and any right or interest in land conferred under Part 2 of the Act (the community right to buy) is suspended from the date that the application appeared as pending in the Register of Applications by Community Bodies to Buy Land.

- the day after the expiry of the time period specified in section 69(7) of the Act (appeals) for lodging an appeal against Ministers' decision on an application made under section 54 of the Act, but only if no appeal is lodged within the appeal period; or
- the day on which the sheriff issues a decision in an appeal under section 69(10) of the Act, but only if the outcome of the appeal is that the Part 5 community body is refused consent to exercise the right to buy land.

The prohibition and suspension referred to end on the earliest of:

- the expiry of the period specified in section 62 of the Act (confirmation of intention to proceed with purchase and withdrawal), but only if the Part 5 community body and/or third party purchaser did not, within that period, send notice to Ministers and the owner of the land confirming its intention to proceed to buy the land;
- the day on which the owner of the land/tenant received a copy of the Ministers' acknowledgement under section 62(5) of the Act, but only if the matter acknowledged the Part 5 community body’s withdrawal of its application under section 62(3)(a) or (4)(a) of the Act, the Part 5 community body’s withdrawal of the confirmation under section 62(3)(b)

or (4)(b) of the Act that it intends to proceed, or the nominated third party purchaser's withdrawal of the confirmation under section 62(4)(b) of the Act that it intends to proceed.

- the day on which the Part 5 community body or nominated third party purchaser's confirmation of intention to proceed made under section 62(1) or (2) in relation to the land or the tenant's interest is to be treated as withdrawn under section 64(7) (completion of transfer) of the Act.
- the day on which the consideration is paid in accordance with section 64(2) or (3) provided that, on that day, the owner is able to effect the grant of good and marketable title or, as the case may be, the tenant is able to assign the tenant's interest to the Part 5 community body or nominated third party purchaser.

OR

• the day on which, following the consignment of the consideration or estimate of what the consideration might be into the Lands Tribunal under section 64(5) of the Act, one of the following events occur –

- (i) the owner grants a good and marketable title to the Part 5 community body or, as the case may be, the nominated third party purchaser,
- (ii) the tenant assigns the tenant's interest to the Part 5 community body or, as the case may be, the nominated third party purchaser,
- (iii) the Part 5 community body or, as the case may be, the third party purchaser gives notice to the Lands Tribunal of its decision not to proceed to complete the transaction.

An owner of land/tenant may, by virtue of section 69 of the Act (appeals), appeal to the sheriff against a decision by Ministers to give consent to an application by a Part 5 community body made under section 54 of the Act.

A person who is a member of a community as defined for the purposes of section 49(9) of the Act (Part 5 community bodies) in relation to a Part 5 community body may, by virtue of section 69(5) of the Act (appeals), appeal to the sheriff against a decision by Ministers to consent to an application to exercise The Right to Buy Land to Further Sustainable Development.

A creditor in a standard security with a right to sell land may, by virtue of section 69(6) of the Act (appeals), appeal to the sheriff against a decision by Ministers to consent to an application to exercise a right to buy abandoned, neglected or detrimental land.

An appeal under section 69 of the Act must be lodged within 28 days of the Decision Date.

The owner or tenant who has incurred loss or expense in complying with the procedural requirements of Part 5 of the Act, where consent has not been granted is, by virtue of section 67(4) of the Act (compensation), is entitled to compensation from Ministers of such amount as Ministers may determine.

Any person (other than a Part 5 community body) who has incurred loss or expense in complying with the procedural requirements of Part 5 of the Act, where consent has been granted is, by virtue of section 67(1) of the Act (compensation), entitled to compensation from the Part 5 community body.

Where an application made under section 54 nominates a third party purchaser, any person (including an owner or former owner of land, and, where an application is to buy a tenant's interest, a tenant) who has incurred loss or expense in complying with the requirements of this Part following the making of the application by the Part 5 community body, or as a result of the withdrawal by the Part 5 community body or, as the case may be, third party purchaser of its confirmation of intention to proceed under section 62(4)(b) or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or as a result of the failure of the Part 5 community body or, as the case may be, third party purchaser to complete the purchase, is entitled to recover the amount of that loss or expense from the third party purchaser. Any such person who has incurred loss or expense as a result of the withdrawal by the Part 5 community body of the application under section 62(4)(a) is entitled to recover the amount of that loss or expense from the Part 5 community body.

Ministers have granted their consent to the application. Accordingly, and by virtue of section 63(4) of the Act (completion of purchase), the owner of the land is obliged to make available to the Part 5 community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land, and to transfer title accordingly.