
DFP CONSULTATION

**ENHANCED SPORT &
RECREATION RATE RELIEF -
UNLICENSED COMMUNITY
AMATEUR SPORTS CLUBS**

MARCH 2016

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INTRODUCTION AND SCOPE

1. This consultation paper is about the granting of additional rate relief for unlicensed community amateur sports clubs (CASCs).
2. The consultation exercise is a targeted one, both in terms of its reach (who the Department is consulting with), and its scope (what it covers).
3. There has already been a series of consultations undertaken on this subject area in recent times. Firstly, the Department of Culture, Arts and Leisure engaged with sporting bodies on the issue back in 2012. Then there was a further consultation with sports clubs undertaken to inform a Private Members Bill in 2014. The Finance Committee undertook consultation with stakeholders in 2015 to inform their response to the Rates (Amendment) Bill 2016. Furthermore, the matter is also touched on as part of this year's Review of the non domestic rating system.
4. This consultation is to help supplement known views and address gaps. The Department will be contacting relevant umbrella groups and organisations but given the nature of this consultation will not be engaging directly with individual sports clubs and ratepayers. However, written responses from individuals are most welcome.
5. A list of key stakeholders that have been written to by the Department can be found at **Annex A**. The consultation period will be **8 weeks** and it will close on **9 May 2016**.
6. In terms of its scope, this consultation is intended to inform decisions around the rules associated with the granting of enhanced rate relief to eligible amateur sports clubs in Northern Ireland. This follows enabling legislation which was passed by the Assembly on the 2 February 2016 and is currently awaiting Royal Assent. A copy of the Bill can be found through the following web-link:

7. When commenced this Bill will provide a new enabling power to increase rates relief from 80% to 100% for sports clubs in **prescribed cases**. Those 'prescribed cases' will be set out in subordinate legislation, informed by this consultation.
8. The Department is seeking views only on its intended policy approach in order to identify any unforeseen consequences; it is not consulting on alternative policy proposals at this time and the consultation is not presenting an opportunity to significantly broaden the scope of the relief at this time.
9. A wider use of the power was not the basis on which the enabling bill was introduced to the Assembly.
10. The Department's policy intent is to allow clubs with rateable premises to qualify for 100% rate relief if:
 - a. **the club is registered with HMRC as a community amateur sports clubs; and**
 - b. **does not hold a liquor licence.**
11. The Department recognises that there are many amateur sports clubs that operate small bars a couple of days or evenings a week, as a 'mere accompaniment' to participation in sport, which could not be said to be in competition with the licensed trade nor a significant source of revenue.
12. This may well be the case, however, differentiating between one type of bar and another is not a straightforward matter in the context of administering rates and for the time being the line is being drawn at unlicensed clubs.
13. In the meantime it is important to note that those clubs that operate bars **will still be entitled to at least 80% relief on their sporting facilities**. Furthermore, there is already an allowance in the existing legislation that allows

non sporting areas (such as bars) that do not exceed 20% of the assessed value of the entirety (ie the whole premises and the grounds) to avail of 80% relief on everything, including the bar.

14. An integrated impact assessment statement can be found at **Annex D**.
15. Finally, this consultation also takes the opportunity to consult on the list of prescribed recreations, (all the sports who currently benefit from 80% relief) prompted by the unforeseen inclusion of pigeon racing during the passage of the legislation referred to above.

POLICY CONSIDERATIONS

16. The full details of how the existing 80% relief scheme operates are set out in **Annex A**. This will remain undisturbed but some new eligibility rules are needed to ensure that the unlicensed Community Amateur Sports Clubs that are currently entitled to 80% rate relief on their sporting facilities, can take advantage of 100% relief.
17. Before outlining what these proposed rules are it is worth setting out some of the wider considerations associated with this policy. The first issue, and one that has dominated the debate, is the question of **competitive advantage**.
18. This is by no means a new issue. Indeed, it is worth noting the following extract from the **1978 Lawrence Committee report** which led to sporting rate relief increasing from 35% to 65% :

“The Northern Ireland Hotels and Caterers Association drew our attention to the fact that many clubs in Northern Ireland with catering and associated services and facilities enjoy 35% relief from rates, whereas hotels and catering establishments are fully rated. The Association also argued that clubs are free from many statutory restrictions which apply to hotels and caterers, involving them in additional expenditure. Representatives of the Association complained that their members were confronted by a large growing volume of unfair competition which, by reductions in rates and other ways, was supported by public policy. In written and oral evidence, the Association indicated that, while it did not object to appropriate measures of rate relief, it did object strongly to the principle of giving relief to clubs providing catering and associated services and withholding it from private operators.”

19. The Department accepts the issue is a complex one. As noted earlier the Department recognises that there are many amateur sports clubs that operate small bars a couple of days or evenings a week, as a ‘mere accompaniment’ to participation in sport, which could not be said to be in competition with the licensed trade nor a significant source of revenue. Differentiating between one

type of club bar and another is not a straightforward matter in the context of administering rates.

20. There are limits to the amount of information that **Land and Property Services** can be expected to handle in arriving at relief decisions and issues of disproportionate cost associated with, what is effectively, a 20% top up to existing support.
21. Currently in Northern Ireland, all CASCs with their own premises are in receipt of at least 80% relief on their sporting facilities. The bar areas are excluded from the relief unless they amount to 20% or less of the assessed value of the entire property. In such circumstances 80% relief applies to the entirety (the bar and the sporting facilities).
22. It is important to note, that club bars and restaurants are assessed for rates using figures derived from the cost of construction, rather than receipts and expenditures figures adopted for commercial licensed premises. Typically that leads to assessments per square foot of club bars being much less than commercial premises. The valuation method is not something, however, that would normally be set out in legislation. In the final analysis it is the courts that decide and their different treatment is a consequence of the differences in terms of their status as legal entities. Clubs should only be selling food and drink to members and occasional guests, the other is open to the general public.
23. DFP is concerned with developing policy that is both balanced and represents good value for money (which includes measures that forgo revenue) but it is not the policy competent Department in determining the underlying need for policy interventions associated with amateur sport in NI. That role falls to the Department of Culture Arts and Leisure (DCAL).
24. In taking forward its policy responsibility in this area DFP has considered the views put forward by the DCAL, in their response to the Finance Committee's call for evidence on this policy area on 28 May 2014.

<http://www.niassembly.gov.uk/globalassets/documents/finance/legislation/rates-relief-for-amateur-sports-clubs-bill/written-submissions/dcal.pdf>

25. In particular the following has helped inform thinking:

“This priority informs a range of key issues of concern for DCAL going forward on this issue as follows, that...the application of financial savings by clubs who benefit from maximum relief, should be for the development of sport and the increase of participation and not the development of the club and those facilities not directly linked to these priorities, for example, bar and clubrooms, entertainment facilities and spectator facilities”

“The [Private Members] Bill seeks to apply the CASC criteria to rate relief in the north of Ireland [direct quote], providing a benchmark by which clubs can be assessed for 100% relief. Its standard conditions however should be supplemented by requirements in the interest of Government priorities here in the north [direct quote]. It may not be the case that every club will or should benefit, unless there is clear evidence that they have signed up for and are seen to implement existing and any new additional criteria”

26. Evidence heard and received by the **Finance Committee** in late 2015 is worth noting in terms of the policy effects in Northern Ireland. Two Committee sessions in particular highlighted what could be regarded as competing stakeholder interests in this policy area. Those sessions took place with the Sport Governing Bodies and Sport Northern Ireland on **2 December 2015** and with Hospitality Ulster on **3 December 2015**.

27. The minutes of evidence from the two sessions can be accessed in full at the following links:

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=16057&eveID=8805>

28. Issues around unfair competition in this policy area manifested themselves in December 2013 when the EU Commission received a complaint concerning alleged **State Aid** under Corporation Tax and business rates granted to member-owned golf clubs with CASC status in the United Kingdom (UK). The complaint was submitted by the Association of Golf Club Owners, which represents proprietary golf clubs in the UK.
29. According to the complaint, the alleged beneficiaries (CASCs) are being allowed to trade for gain with outsiders and non-members, by registering visitors as members so that their income is not taxed, and by offering their services including the use of their golf courses, bar and catering sales, accommodation, conferences and weddings. The complainant alleged that the tax measures provided a selective advantage to the qualifying golf clubs which compete with the "proprietary" golf clubs.
30. Given that the case related to CASC status the Department could not legislate on the issue of enhanced rate relief for any CASCs until the outcomes of the Commission Case. The Commission ultimately reported on the case at the end of April 2015. The judgment was silent on the specific issue of rate relief but its tone suggests that enhanced rate relief could amount to State Aid unless due care is taken in policy design.
31. **Consistency of policy treatment** is another consideration and the approach the Department intends to take forward aligns policy with that which operates for community halls, where licensed halls are excluded from full exemption on the grounds that this can generate revenue and so make a contribution to rates revenue.
32. The approach taken in the rest of the UK is summarised in **Annex B**.

33. Finally, there is the **issue of cost**. If the enabling power is subsequently used to allow for the provision of 100% exemption for unlicensed clubs the cost is not expected to exceed £750,000 per annum.
34. In terms of bearing this cost, the full amount will be borne by central government, as opposed to district councils. The reduction in rateable value within the district council will initially act as a loss to both central government and district council revenue. The district council revenue reduction is normally compensated in full under DOE's long standing policy to pay "derating grant" to councils.
35. The remainder of the cost to central government is accounted for by way of revenue foregone to the tax base. Effectively the enhanced exemption will reduce the return to central government.
36. If the scheme is implemented for a partial year in Year 1, the cost will be as above only reduced in proportion to the remaining months in the rating year.

PREFERRED POLICY APPROACH – ENHANCED RELIEF

37. The proceeding section explains the background to the Department's approach. This section sets out how this could be achieved. It is on this section in particular that views are sought.
38. The Rates (Amendment) Bill passed through its final stage in the Assembly on 2 February 2016. The Bill will provide a new enabling provision to grant enhanced rate relief under Article 31 of the Rates (Northern Ireland) Order 1977 ("the 1977 Order"), subject to prescribed criteria.
39. The policy proposal is to:-
- a. allow clubs registered with HMRC as community amateur sports clubs to qualify for 100% rate relief, rather than 80%, in accordance with the new Article 31(5A) as inserted by Article 1 of the Rates (Amendment) Bill 2016; but
 - b. exclude from exemption properties that have a liquor licence.
40. This will align rating policy with the treatment of community halls. The legislation governing Community Halls stipulates that exemption applies to a body which does **not** under licence (other than occasional licence), or a protection order sell intoxicating liquor by retail, or by virtue of the occupier being a registered club.¹ Eligible sports clubs therefore would be entitled to sell alcoholic drink at special occasions and not lose their entitlement.

Trading subsidiaries / related entities

41. The main financial restriction within CASC legislation is the 'income condition' which restricts a club's receipts from trading with non-members and property income to £100,000 per annum.

¹ Registration of Clubs (NI) Order 1996

42. At present if a club or company is a CASC (or intends to be) and determines that they are at risk of exceeding that £100,000 p.a. income threshold (thus putting its CASC status or eligibility at risk) the Department is aware that arrangements can be put in place so that any trading income and/or property income that is generated can be placed in a separate trading subsidiary (for example a wholly owned subsidiary trading company).
43. The Department takes the view that clubs that occupy premises alongside a trading subsidiary should be excluded from any enhanced relief, on the basis that trading activity is substantial enough for the club to afford to pay 20% rates on their sporting facilities.
44. This principle also extends to clubs with licensed premises that are physically connected (for example in the same building) and that are functionally “not unrelated”, notwithstanding that the social club is legally occupied in different names under a separate title, lease or licence. This is to guard against contrived or artificial arrangements being set up. In other words, for the purposes of determining relief entitlement, the Department will treat the two parts as if they are in the same occupation.

Council contribution to the cost of enhancements / discretionary enhancement

45. During the course of the Committee evidence session on the use of the Bill enabling powers, the issue was raised as to whether District Councils should contribute to the funding of a discretionary top-up.
46. This would require adjustments to primary legislation which could not be put in place for September. The issue is not a new one however. In 2005 DFP consulted on the issue but it was decided to await the conclusion of the Review of Public Administration (RPA) before considering Council funded discretionary rate relief for qualifying sports clubs.

47. RPA or local government reorganisation was implemented in April 2015 and accordingly DFP consulted on greater discretions for councils, as part of the wider and ongoing review of Non-Domestic Rating. See page 24 of the consultation paper:

<https://www.dfpni.gov.uk/sites/default/files/consultations/dfp/Review%20of%20Non-Domestic%20Rating%20System%20-%20Consultation%20Paper%20-%201%20December.pdf>

48. Longer term decisions on this issue will be taken as part of the Non Domestic Rating Review and are not therefore being considered within this consultation.

Treatment of spectator facilities and stands

49. An issue raised by the DFP Committee is the treatment of spectator facilities and stands, which are not entitled to relief. This is set out in primary legislation which states that relief is only applicable to those parts of the property used by those taking part in a prescribed recreation, which means not those parts used by spectators. This cannot be changed through the new regulations.
50. In any case, because of the 20% “de minimus” rule (where non sporting areas can be disregarded if they amount to less than 20% or less of the total value, explained in full detail within **Annex B**). It would be rare for unlicensed clubs to exceed this threshold. In any cases where this does arise, it does raise the question that if such assets are income generating whether or not it is reasonable for rates to be charged.

PIGEON RACING AND CHANGES TO LIST OF SPECIFIED RECREATIONS

Pigeon Racing

51. Prompted by the unforeseen inclusion of pigeon racing in the prescribed list of eligible recreations during the passage of the recent legislation, the Department is now taking the opportunity presented by this paper to consult further on the issue.
52. This is a complex issue and one this is widely misunderstood, in terms of the impact it is likely to have.
53. It is important to note that raising the issue in this consultation paper has nothing to do with the merits, or otherwise, of allowing premises used by pigeon racing clubs to secure Sport and Recreation Relief.
54. The tabled amendment that was unexpectedly passed by majority vote in the Assembly (which was against the advice of the Department) is unlikely to have the anticipated effect of delivering 80% rate relief to many of the premises occupied by pigeon clubs.
55. The amendment is unlikely to work in practice because of the requirement placed on the Department under the existing legislation to only permit relief for rooms or areas involving a:

*“recreation, whether conducted indoors or outdoors, **which in the opinion of the Department** demands an appreciable degree of physical effort **and which is of a kind specified by the Department**, after consultation with the Sports Council for Northern Ireland and with any association which appears to the Department to be representative of district councils, **by an order made subject to affirmative resolution.**”*

56. In other words, although the Assembly has voted in favour of the amendment, it is not enough to simply place the activity “Pigeon Racing” onto the list of specified recreations in rating legislation² to secure rate relief. As was pointed out when the amendment was debated in the Assembly, entitlement to rate relief still requires an appreciable degree of physical effort to be present and for the Department to be satisfied that this is so in every case.
57. Although the question was debated in the Assembly and views were expressed that the physical effort involved in pigeon racing stood comparison with many recognised active sports, pigeon racing does not feature in Sports NI’s list of recognised sports on their official list of “sports we recognise”. In addition Sports NI state that:
- “any physical effort and skill required to prepare for the activity to take place (e.g. preparation of playing fields, animal husbandry, travelling to and from a place where the activity is played) will not be taken into consideration for the purposes of recognition”.***
58. Notwithstanding this, pigeon racing will feature shortly as an addition to the list within rating legislation when the Rates Amendment Bill is enacted. As noted above, this may not in itself confer rate relief to premises used for activities associated with pigeon racing.
59. It is important, therefore, that bodies associated with pigeon racing clearly present the case that the ‘sport’ involves an appreciable degree of physical effort and go on to identify and explain the various activities involved and where they typically occur. This is in order to help the Department draw up practicable guidance notes so that rate relief can be granted in appropriate cases.
60. It is worth noting, however, that there is an assortment of buildings associated with pigeon racing that are currently rated, ranging from lofts and sheds through to higher value clubrooms and halls. It is this latter category of property where the most difficulty may lie. This is because the physical activity needs to be the

² <http://www.legislation.gov.uk/nisr/2007/72/made>

sole use of the room or area. For example, “pigeon moots” or other social gatherings are unlikely to qualify because even though they may be associated with racing, generally speaking they do not involve an appreciable degree of physical effort.

Review of list of specified recreations

61. The list of Specified Recreations in the subordinate rating legislation will simply mirror the centralised list of “recognised sports” and this has led to some anomalous entries, particularly as certain activities have been removed from the “recognised” sport listings by sporting authorities since the last prescription exercise by the Department. There are, therefore, specified recreations on the rating list that may not pass that further test and would not therefore get rate relief.
62. There is a case for tidying up the list of specified recreations in rating legislation and removing activities in order to ensure that the list is more in keeping with the other requirements for rate relief. However the current process is intended to prescribe the sport / recreation as one stage, with another being the assessment by LPS on behalf of the Department to satisfy itself as to the appreciable degree of physical effort.
63. Any addition to or exclusion from the list of prescribed recreations is carried out through subordinate legislation and is subject to a condition precedent that consultation must have been undertaken with sporting and local government authorities.
64. Views are sought on the issue of listing, particularly from bodies who may consider themselves (or be under the mistaken belief that they may be) disadvantaged by their removal from the list contained in rating legislation.
65. These recreations include, camping, model aircraft flying and model power boating, wild fowling, and camping.

66. Although it is not possible to bind any future Executive or Assembly, in the absence of any decision to the contrary, the Department will ensure that pigeon racing is placed on future prescribed lists, as this was the will of the devolved Assembly as reflected in the primary legislation.

NEXT STEPS

67. This targeted consultation will last for **8 weeks**, and will end on 9 May 2016.

68. Details of where to send consultation responses are set out below.

Rating Policy Division
Department of Finance and Personnel
Carleton House
1 Cromac Avenue
Gasworks Business Park
BELFAST
BT7 2JA

69. Responses to the consultation exercise will be made available on the Rating Policy website at:

<https://www.dfpni.gov.uk/topics/property-rating/rating-policy>

70. A paper setting out the main issues raised during consultation will also be made available in due course. The results of the consultation exercise will be analysed and shared with the Finance Minister and the Committee for Finance and Personnel. Decisions will then be reached on the way forward by the Finance Minister.

71. Any queries and consultation responses should be sent to:

ratingpolicy.cfg@dfpni.gov.uk

72. If you require any further information about this consultation exercise you should contact Rating Policy Division on (028 9090 9325). The consultation paper can be made available, on request, in alternative languages and formats.

Annex A – List of initial key stakeholders for targeted consultation

Northern Ireland Sports Forum
Sports NI (on behalf of governing bodies)
Sports Institute NI
NI Federation of Clubs
Northern Ireland Council for Voluntary Association (NICVA)
Association of Golf Club Owners
Disability Sport Northern Ireland

Hospitality Ulster
NI Food and Drink
NI Federation of Hotels
Tourism NI

District Councils
Northern Ireland Local Government Association

All MLAs

Other consultees upon request.

The Paper will also be made available to all interested parties on the DFP public internet site.

ANNEX B

Current level of relief

1. The current rating exemption for sport and recreation in Northern Ireland is authorised by statute under Article 31 of the Rates Order (Northern Ireland) Order 1977 (the 1977 Order) and there are currently no discretionary schemes available. Article 44 of the 1977 Order is also relevant in this context.
2. Article 31 provides that there can be a reduction of rates on certain rateable properties used for “prescribed recreations”. **The level of reduction in such cases is currently 80% of the normal rate.** Ancillary social facilities, such as bars, restaurants, card rooms, etc. remain fully rateable.
3. Article 44 provides for apportionment of the hereditament where part of it is not used for prescribed recreation, subject to “de minimus” criteria (see below).

Prescribed recreations

4. “Prescribed recreation” is defined as meaning “*a recreation, whether conducted indoors or outdoors, which in the opinion of the Department demands an appreciable degree of physical effort and which is of a kind specified by the Department, after consultation with the Sports Council for Northern Ireland and with any association which appears to the Department to be representative of district councils, by an Order made subject to affirmative resolution*”.
5. Such recreations are currently prescribed by The Rates (Recreational Hereditaments) Order (Northern Ireland) 2007. See:-

<http://www.legislation.gov.uk/nisr/2007/72/made>

6. As the definition makes clear, the relief is restricted to those activities that require an appreciable degree of physical effort. The rationale for this

longstanding policy stems from the Lawrence Report of 1978 which recognised the wider benefits of encouraging fitness in the wider community and deemed it worthy of special treatment.

7. Games that require a high degree of skill or contribute to intellectual development but require little physical effort do not generally qualify as prescribed recreations, although the degree of physical effort in the list of prescribed recreations varies considerably. The Department usually takes its lead from the list of activities recognised by the UK Sports Councils for the purpose of registering clubs as Community Amateur Sports Clubs. In its last iteration the lists of sports were consulted on in 2005, and updated using the most up to date list in light of consultation outcomes in 2007³. A copy of the previous consultation document can be accessed through the link below:-

<http://webarchive.proni.gov.uk/20150609103612/http://www.dfpni.gov.uk/rating-review/charitableexemptions.pdf>

Apportionment of bar facilities and non-sporting areas

8. Article 44 then states that “if only one or more than one part (but not the whole) of the hereditament is so used, the net annual value of the hereditament shall be apportioned by the Commissioner or the District Valuer between the part or parts of the hereditament used solely for the purposes of a prescribed recreation and the remainder of the hereditament.” This is apportioned as follows:-
 - i. if the amount apportioned to the part or parts of the hereditament used solely for the purposes of a prescribed recreation is less than 20% of the net annual value, the hereditament shall be shown in the NAV list as having no part of its net annual value apportioned to that part or these parts;
 - ii. if the amount so apportioned is 20% or more, but less than 50%, of the net annual value, the apportionment shall be shown in the NAV list;

³ Prior to that the list of recreations were outlined in the Rates (Recreational Hereditaments) Order (Northern Ireland) 1979

- iii. if the amount so apportioned is 50% or more, but less than 80%, of the net annual value, that amount shall be increased by 20% thereof (and the amount apportioned to the remainder of the hereditament shall be reduced accordingly) and the apportionment as so adjusted shall be shown in the NAV list;
 - iv. if the amount so apportioned is 80% or more of the net annual value, the hereditament shall be shown in the NAV list as used solely for the purposes of a prescribed recreation.
9. References to “the hereditament” for the above purposes do not include any part of the hereditament which is used for the purposes of a private dwelling.
10. The level of mandatory rate relief available for all qualifying sports clubs was increased from 65% to 80% on 1 April 2006 by Article 9 of the Rates (Capital Values, etc.) (Northern Ireland) Order 2006. The conditions that need to be met for the mandatory 80% are less stringent here in NI than the rest of the UK (see **Annex B** below). For example, wealthy private members clubs are entitled to relief if they satisfy the conditions. The Department does not intend to increase relief for these clubs through the new enabling provision.

Annex C

Position in rest of UK

1. The position on rate relief in Northern Ireland is different to Great Britain. In the rest of the UK sports clubs that are registered as Community Amateur Sports Clubs (CASCs) receive 80% mandatory rate relief. This is granted under section 43 of the Local Government Finance Act 1988 to occupiers who are Community Amateur Sports Clubs and have been registered with HM Revenue & Customs for the purposes of Chapter 9 of Part 13 of the Corporation Tax Act 2010, and who use the hereditament wholly or mainly for the purposes of the club. Local authorities then have the discretion to grant a further 20% rate relief in accordance with section 47 and 48 of the Local Government Finance Act 1988. In addition, sports organisations that are charities and use their premises wholly or mainly for charitable purposes are also entitled to 80% mandatory relief and a possible further 20% discretionary relief. Each local authority has its own policy on who benefits from this additional discretionary relief.

2. CASCs in the rest of the UK get the same level of mandatory relief (80%) as Sport and Recreation hereditaments occupied by sporting facilities here. To qualify for the additional discretionary top up relief in GB (providing up to 100% relief) a CASC must satisfy additional criteria set by the Local Authority. Typical additional criteria include:
 - i. club objectives that must align with local antipoverty strategies and local council priorities;
 - ii. pricing structures that reflect the impact of forthcoming cuts and benefits changes;
 - iii. a requirement to provide training or education to its members, and non-members such as young people, people with disabilities, retired people (the organisation should provide facilities that indirectly relieve the local Council of the need to do so, or enhance and supplement those it does provide);
 - iv. organisations required to provide two years worth of their most recent financial accounts;

- v. Verification of Valid recognised Sport England Clubmark / associated National Governing Body Accreditation;
- vi. Proof should be presented that facilities are available to and used by all parts of the local community; (i.e. non-restrictive membership rates, membership open to general community and facilities available to non members);
- vii. Verification that a significant percentage (usually over 51%) of the membership is made up of local residents

ANNEX D

See separate attachment