

Report

Report to:	South Lanarkshire Council
Date of Meeting:	16 December 2020
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Review of the South Lanarkshire Scheme for Establishment of Community Councils
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1. Purpose of Report

1.1. The purpose of the report is to: -

- ◆ Update the Council on the outcome of the consultation on the proposed amendments to the South Lanarkshire Scheme for the Establishment of Community Councils.
- ◆ Seek the approval of the Council for changes to the South Lanarkshire Scheme for the Establishment of Community Councils.

2. Recommendation(s)

2.1. The Council is asked to approve the following recommendation(s): -

- (1) that the response to the consultation on the proposed amendments to the South Lanarkshire Scheme for the Establishment of Community Councils (the Scheme) be noted, and
- (2) that the proposed amendments to the current terms of Clause 11 of the Scheme as set out in Appendix 2 of the Report be approved.

3. Background

- 3.1 At its meeting held on 23 September 2020, the Council noted that whilst the current Scheme reflects the terms of the Model Scheme recommended by the Scottish Government, the Coronavirus pandemic has highlighted that there are issues with the Scheme which resulted in Community Councils not being able to continue to hold meetings and actively function using modern technology since the Coronavirus restrictions were put into place in March 2020.
- 3.2 The Scheme and in particular Clause 11 (as set out in Appendix 1) requires that all meetings of a Community Council must be held in public and that its members and members of the public must be physically present. Community Councils, unlike Local Authorities, have not been provided with the powers to meet in any other way such as by using online facilities to hold meetings.
- 3.3 It was noted that this had resulted in issues for Community Councils who wished to hold formal meetings online particularly during periods where physical attendance of members of the Community Council and members of the public/press was impossible such as where public gatherings were restricted by the Coronavirus (Health Protection) (Scotland) Regulations.

- 3.4 Local authorities have the statutory power to hold online meetings with members participating remotely and to exclude members of the public from attendance at meetings during the pandemic. The creation of similar powers for Community Councils would require an amendment to the Scheme. This could only take place after a review of the Scheme, which would require a public and Community Council consultation process.
- 3.5 At that meeting the Council agreed to commence a restricted review of the Scheme to remedy these issues as quickly as possible. In doing so, it was required by the legislation to publicise the proposals and undertake public consultations on the proposed amendments for a period of 8 weeks.
- 3.6 The consultation process was advertised in accordance with the temporary provisions put in place through the Coronavirus (Scotland) Act 2020 and the Report considers and responds to comments received during that process.

4. Proposed revisals to the Scheme

- 4.1 There were two issues that required to be dealt with to resolve the effect of the current Scheme in situations such as the current pandemic in order to allow Community Councils to continue to make decisions involving all members where they and members of the public cannot physically attend meetings. These are:-
- ◆ allowing all or some of the members of the Community Council, press and public to attend a meeting using remote access and
 - ◆ suspending the requirement for the public to be able to physically attend any meetings
- 4.2 Draft possible wording that would amend the Scheme to deal with these issues had been prepared and formed the basis of the consultation.

5. Representations

- 5.1 Over all the Council received 19 representations to the consultation. Whilst many of these representations were supportive of the principle that Community Councils be permitted to meet online, they did also make objections and express concerns in relation to proposals. These grounds of objection/concern are summarised as follows

5.1.1 Lack of equipment/Infrastructure issues

Some representations raised the issue that in some locations within South Lanarkshire, the lack of equipment and the level of existing internet infrastructure would not permit the holding of meetings online.

Response: the purpose of the amendments is to allow Community Councils to use existing infrastructure where possible. It does not replace the ability to hold meetings in the traditional manner with physical attendance at the meeting which remains the default position nor does it require that all members of the Community Council join through remote access. It would be possible to have a blended approach if Public Health restrictions or regulations allow it. The lack of equipment to utilise the ability to hold online meetings would form part of the considerations of the Chairperson when deciding whether a meeting should be held wholly online rather than blended. It would be expected that the Chairperson would exercise his or her discretion in order to ensure that the meeting is held in a manner inclusive to all members.

5.1.2 **Who should have the discretion to make the decision to hold meetings online**

Some representations questioned whether the power to decide whether a meeting was to be held online or in a blended format should lie with the Chairperson or Deputy Chairperson of the Community Council. These questions fell into 2 categories:-

- (1) Whether there was such a role as a Depute Chairperson and
- (2) Whether there was sufficient oversight of how those office bearers exercised their discretion without the involvement of the other members of the Community Council.

Response: It is accepted that in terms of the model constitution there are 3 specified office bearers (Chairperson, Secretary and Treasurer) with the ability to have other office bearers if considered appropriate by the Community Council. It was not the intention of the Council to require that there should be a fourth specified office bearer. The reference to Deputy Chairperson was a reference to any other person who was able to chair a meeting of the Community Council in the absence of the Chairperson. This has been considered in the proposed amendment contained in Appendix 2.

There were suggestions that the decision should rest with the members of the Community Council rather than the Chairperson etc. However, this is likely to be impracticable. The decision as to whether a meeting is to involve remote participation would be taken at the time of issuing the agenda for the next meeting. This is an executive rather than plenary decision made at that time. Consequently, it must be made by an individual office bearer. However, it should be noted that:-

- ♦ there is nothing to prevent that office bearer from consulting with other members of the Community Council to make that decision and
- ♦ the amendment does not result in the decision maker being unaccountable to the Community Council and its other members.

The Council considers that consideration of the method adopted to make a decision to permit wholly remote participation or to hold a blended meeting and whether such a decision made by an office bearer is justified or otherwise initially rests with the Community Council itself and the public in general at the time of election to the Community Council. The constitutions of Community Councils include the possibility of removal of a Chairperson under certain circumstances and this serves as sufficient accountability for decisions made.

5.1.3 **When should the public/press be excluded from a meeting**

There was a mixture of representations made in respect of this proposal. Some wanted the power to exclude the public to be extended to cover business which the Community Council wished to discuss in private and others said that the proposed amendments did not preserve the right of the public to attend meetings of the Community Council.

Response: With regard to the extension of the power to exclude the public because of the subject matter of the discussion, the Council is of the view that the right of public/press to attend meetings of Community Councils is fundamental to openness and accountability of members of the Community Council to their electors. That right should be able to be exercised freely and at the absolute discretion of the member of the public/press.

The existing Scheme does not permit the exclusion of the public for any reason as it was considered that, given their remit as set out in clauses 2 and 3 of the Scheme, there should be no matters that could not be discussed by the Community Council in the presence of the public. The Council remains unconvinced that this should be changed in any way.

However, the Council recognises that there may be external factors which would make interference with that right a necessity such as the current pandemic situation where public meetings are restricted by legislation or not recommended as a result of public health guidance.

In the absence of such external factors, the right of the public and the press to physically attend any meeting of the Community Council will continue.

5.1.4 Clarification as to how and when the new powers should be exercised

Some representations asked for clarification from the Council as to the circumstances in which such decisions could be made. Some were of the view that the amendments were too vague and wide and did not provide required controls over the exercise of these powers.

Response: The Council is of the view that it should give powers to Community Councils with as little restriction as possible. Community Councils are autonomous quasi-public sector organisations and the Council believes that placing too much restriction on powers interferes with that autonomy. The Council considers that the Chairperson of the Community Councils and its members should be accountable to the other members of the Community Council and the electors in their area, respectively, in the first instance. Accordingly, there is no proposed restriction on the exercise of the new powers relating to when it would be permissible for remote participation except where, through interaction with the other amendment, it is intended to hold the meeting wholly online.

The Council is of the view that, strictly, the decision to hold meetings wholly online is not unrestricted. Given the Council's view that attendance of the public/press at a meeting is not satisfied by the issuing and acceptance of an invitation, the decision to hold a meeting of the Community Council wholly online could only be taken in situations where the public and press do not have the right to attend in person.

However, this does not mean that Community Councils do not have the power to allow the public/press to view their meetings be it through streaming (if resources permit) or through watching through the app provided. However, it will be at the discretion of the Community Council concerned whether they would allow that to happen rather than allowing the right to attend in person. Failure to provide such access will, provided that the decision to exclude the public and press is validly made, not invalidate the meeting. This would equally apply to any blended meeting at which the right to attend does not apply for similar reasons.

At present, the Council hopes that further restrictions would be unnecessary, and that Community Councils would continue to operate in an open, transparent and inclusive manner. Members of Community Councils who fail to ensure that this is continued will be answerable to the electors at the next General Election to the Community Council.

5.1.5 **Clarification of how remote participation could be facilitated**

Some representations were of the view that the amendment permitting remote participation should be more prescriptive about the methods used to facilitate such participation.

Response: taking account of the foreseeable advance of technology, the Council does not wish to set out what methods should be used by a Community Council provided that whatever method is adopted permits the participation of all members and allows them to hear and/or see each other. This would include videoconferencing, but also alternatives such as live streaming of meetings on the internet and potentially telephone conferencing or such other methods that may become available over time.

5.1.6 **General Review of the Scheme and terminology**

Several representations indicated that they considered that a more general review of the Scheme should have been undertaken or should be taken in the future.

There were some comments regarding the wording used in relation to the proposed amendment on remote participation with it being described as too legalistic. This wording was used as it matches the powers given to the Council in 2003 to allow for remote participation in its meetings. It was considered that the power being given to Community Councils should, so far as possible, match those of the Council in the first instance. It will be possible to reconsider the wording used when a further review of the Scheme is undertaken.

Response: this was not the intention of this review process which is intended to resolve issues arising from the existing Scheme and to allow meetings to continue in unusual/unprecedented situations such as the current pandemic.

6. Assessment and Next Steps

- 6.1 It is clear that there is support for Community Councils to have the power to hold meetings either partially or wholly through remote participation. The contents of the objections and concerns received during the consultation process have been considered within the Report.
- 6.2 It is recommended that the Council adopts the amendments to the existing Scheme set out in Appendix 2. If there are no further amendments to the proposed revised Scheme, then provided that two thirds of the Councillors present vote in favour, the proposed Scheme would be adopted.
- 6.3 However, if there are further amendments to the Scheme then a further period of consultation on those amendments would be required. Once again, it is proposed that the consultation period be 8 weeks. The outcome of this consultation will again be reported to Council to allow it to consider any representations and proposed amendments to the Scheme and to agree a final draft amended scheme which again must be subject to a 4-week public consultation period and the same approval/rejection process undertaken in respect of any changes to the proposed revised Scheme. At the end of any period for consultation period, there are no further changes proposed to the proposed revised scheme, and the amendments are still wanted, Council will be asked to approve the final amendments to the Scheme.

7. Community Council Engagement

- 7.1 Engagement has taken place with Community Councils and the public through the consultation process.

8. Employee Implications

8.1 There are no employee implications in terms of the content of this report.

9. Financial Implications

9.1 None.

10. Other Implications

10.1. There are no risk implications

11. Climate Change, Sustainability and Environmental Implications

11.1. There are no climate change, sustainability or environmental implications arising from the information in this report.

12. Equality Impact Assessment and Consultation Arrangements

12.1 This report does not introduce a new policy, function or strategy, or recommend a change to an existing policy, function or strategy and, therefore, no impact assessment is required.

12.2 All necessary consultation has taken place.

Paul Manning

Executive Director (Finance and Corporate Resources)

2 December 2020

Link(s) to Council Values/Ambitions/Objectives

- ◆ Accountable, effective, efficient and transparent
- ◆ Fair, open and sustainable

Previous References

- ◆ South Lanarkshire Council of September 2013, December 2013, June 2014 and 23 September 2020

List of Background Papers

- ◆ South Lanarkshire Scheme for the Establishment of Community Councils

Representations

- ◆ Christine Stokes
- ◆ Kevin (No surname supplied)
- ◆ Barbara Dufner (Quothquan and Thankerton Community Council)
- ◆ Angus Milner-Brown (Quothquan and Thankerton Community Council)
- ◆ Barry Knock (Quothquan and Thankerton Community Council)
- ◆ Meg Macdonald
- ◆ George Kitching
- ◆ Chloe Aitcheson
- ◆ Ken Brown (Larkhall Community Council)
- ◆ Graeme Crawford
- ◆ Karen Kelly
- ◆ Liz Ritchie (Coalburn Community Council)
- ◆ Wendy (no surname supplied)

- ◆ Mark Monie
- ◆ Jerry Sumpster
- ◆ David Wardrop-White
- ◆ Michelle Farmer (Cambuslang Community Council)
- ◆ Biggar Community Council
- ◆ Neil Ingram
- ◆ Thelma Ingram

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact: -

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Appendix 1

Extract from the Current Scheme for the Constitution of Community Councils

11. Meetings

- a) The first meeting of a Community Council following a Community Council election, will be called by an Independent Interim Chairperson approved by the outgoing Community Council and will take place within 21 days of the date of the election, or as soon as practicable thereafter.

The business of that meeting will include adoption of a Constitution and Standing Orders and Code of Conduct, appointment of office bearers, Chairperson's and Treasurer's reports and any outstanding business matters from the outgoing Community Council.

- b) The frequency of meetings will be determined by each Community Council, subject to a minimum of one Annual General Meeting and 4 ordinary meetings being held each year. The Annual General Meeting shall be held in a month of each year to be determined by the Council.
- c) The quorum for Community Council meetings to be 1/4 of the current voting membership of a Community Council, or 4 voting members, whichever is the greater.
- d) An outline for the content of business that Community Councils should adhere to when holding ordinary, special and annual general meetings is contained within the Model Standing Orders.
- e) All Community Council meetings, including Sub Committee meetings, to be held in public and open to the public and press **without exception**. There is no provision for any of the Community Councils or its Sub Committees' meetings to be held in private.
- f) No Community Council, or any of its members, may take steps to or shall do anything that would deter, discourage or obstruct a Community Councillor or a member of the public (including the press) from attending a meeting or, if entitled to participate in the meeting, from doing so.

No Community Council will be able to or require a Community Councillor or a member of the public (including the press) to leave a meeting of the Community Council, unless the Chairperson of the meeting has good cause to be satisfied that that Community Councillor or member of the public is behaving in a way that is disorderly or disruptive to the conducting of business of the meeting. Provisions regarding the exercise of this power to eject a Community Councillor or member of the public to leave a meeting shall be contained in the Core Standing Orders.

- g) Officers of the Council shall have the right to attend any meetings of Community Councils.

Appendix 2

In the existing Clause 11

Amendment 1

Replace the existing sub clause e) with the following

- “e) Unless permitted in terms of this sub-clause, all Community Council meetings, including Sub-Committee meetings, are to be held in public and open to the physical attendance of public and press. However, if it is in the public interest not to allow the public and press to be in physical attendance for a reason unrelated to the business of the Community Council, members of the public and the press may be excluded from the meeting by the Chairperson or if unavailable, the member authorised to chair that meeting of the Community Council.”

Amendment 2

Insert

- “h) Whilst it is expected that meetings of a Community Council and its committees are conducted with all members being present together in a pre-determined place as set out above, it will be competent for a Community Council to conduct its meetings in any other way in which each member is enabled to participate although not present with others in such a place subject to the following.
- (1) such a meeting shall be conducted, however, only on the direction of the Chairperson, or if unavailable, the member authorised to chair that meeting of the Community Council, and
 - (2) the references in sub paragraphs a) to g) above or elsewhere within this Scheme to the presence of members were references to their participation in that meeting.”