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**Report to Clackmannanshire Council**

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**Date of Meeting: 10 September 2020**

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**Subject: Scheme of Establishment of Community Councils**

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**Report by: Senior Manager Legal & Governance**

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**1.0 Purpose**

- 1.1. This report updates Council on the election which was due to take place in September for community councils and provides an interim way forward for those community councils at risk of dissolution.

**2.0 Recommendations**

It is recommended that Council

- 2.1. Note that council officers are not able to support community council elections which were due to take place in September 2020 as a result of the coronavirus impacts of the current community council election processes and that officers will continue to consider when it may be safe to hold an election process anticipated to be in the summer of 2021,
- 2.2. Note that the inability of community councils to have new members elected places a number of community councils at risk of not being able to operate in accordance with the minimum numbers required in the Scheme of Establishment for Community Councils (the Scheme)
- 2.3. Note that as a result of the low number of elected members of community councils that the community councils are not able to co-opt additional members without breaching the elected member/co-opted member ratio requirements in the Scheme
- 2.4. Agree that, as a consequence of the inability to deliver elections, the Council will not pursue suspension of any of the community councils on the basis of any breach of the co-option provisions in paragraphs 8.10 and 8.11 of the Scheme, continuing to recognise those councils as the voice of their communities and
- 2.5. Agree to begin a focussed consultation process in accordance with the statutory requirements to amend the Scheme on arrangements for community councils in circumstances such as pandemics and other unexpected events.

### **3.0 Considerations**

- 3.1. Community councils play a very important role for their communities. They have certain statutory responsibilities but they also undertake a much wider community role than set out in the statute and are often at the heart of community initiatives. The Council recognises the important role that they play and has agreed that community empowerment is one of the main drivers of transformation in the “Be the Future” agenda. In addition, community councils continue to play a critical role supporting their local areas during the COVID-19 pandemic and some have been involved in essential service delivery initiatives, including food delivery and supporting shielding people.
- 3.2. Community councils exist within the framework set out in the Scheme. This Scheme was approved by Council on 12 April 2018, following a statutory consultation process. In the consultation process consideration was given to additional opportunities for people to fill vacancies on community councils. In the final version an amended interim election process was agreed rather than top-up elections. The consultation process recognised that need to have co-option but also accepted that there needs to be safeguards to ensure legitimacy.
- 3.3. Many community councils have been preparing for the election process in September 2020. It is understood that two community councils; Menstrie and Tullibody, Cambus & Glenochil are very low in membership and had been relying on an election process to improve their numbers. In addition Alloa, Alva and Tillicoultry, Coalsnaughton & Devonside have numbers close to the minimum or need new members to continue to replace the capacity to operate. All of these community councils may need to use co-option in breach of the Scheme to continue to operate until a permanent solution is identified.
- 3.4. The main concern about holding an election process at present is the nomination process. There has been an assessment that nominations posed one of the most significant risks as currently there is a requirement to have 2 subscribers on a paper form. There was also concern about the ability of those with underlying health conditions or in the shielding category to participate and therefore be excluded from the nomination process which may have constituted direct discrimination. The current Scheme did include a provision that elections would take place in September 2020 however it also provides discretion to the Council on when to hold these elections.
- 3.5. A number of other local authorities have also decided not to proceed with elections at this time including Perth & Kinross and Scottish Borders. It is understood that the main considerations were the safety of everyone involved and the perceived non-essential nature of the community council election process. It appears that there are also a number of local authorities who have also determined not to enforce the Scheme where community councils are taking a pragmatic approach to membership.
- 3.6. On the basis that an election cannot take place, officers considered other options to allow community councils to increase their membership without an election and where there was no or limited co-option opportunities provided by the current Scheme. There were a number of mechanism identified as set out below:

- 3.6.1. **Option 1 - Officer amendment of the current Scheme.** This would have been a quick solution. However it is not possible for officers to amend the Scheme. The Council's current Scheme of Delegation reserves this power to Council as it concerns a Scheme required by law. In addition there are a number of other issues identified below which also apply to officer amendment.
- 3.6.2. **Option 2 Council amendment of the current Scheme** It is not possible for Council to amend the scheme as that is not provided for in the Local Government Scotland Act 1994. The Act only allows for new schemes to be laid and does not provide for a process of alteration of existing schemes. The 1994 Act was not amended by the coronavirus legislative changes although there were changes made to other election events including by-elections.
- 3.6.3. **Option 3 - Council approval of a new Scheme** It would be possible to proceed with a new scheme to change the co-option requirements but the statutory consultation requirements are extensive, in three parts and would take a minimum of 6 months. This would not address the issue of membership in the short term.
- 3.6.4. **Option 4 Council agreement not to invoke suspension as a result of non-compliance with co-option provisions (recommended option)** The provisions for suspension are contained in paragraphs 12.2, 12.3 and 12.4 of the Scheme and allow the Council to suspend a community council if the community council recruit members in breach of the provisions of paragraph 8.10 and 8.11. This option seeks Council approval for officers not to exercise this power in these particular circumstances of no elections due to COVID-19 where any co-option is done to ensure that the community council can continue to operate. In practice there would be an expectation that any co-option process would be carried out in accordance with democratic standards. The Council recognises that this is a temporary measure in response to the particular circumstances of COVID-19, it gives the community councils control over their membership to allow them to be sustainable and can be implemented immediately
- 3.7 On the basis that there is no other viable option to quickly amend the Scheme, and in order to give those community councils identified in this report some comfort and legitimacy in a situation which is not of their making, it is recommended that Council agree not to pursue suspension should the community councils co-opt new members in breach of paragraph 8.10 of the Scheme. This paragraph provides that co-opted members must not make up more than one third of the total members. The minimum and maximum numbers of members will continue to apply.
- 3.8 As part of the process of option assessment, officers consulted community councils on the options to address low membership. In the past contested elections have been in the minority and the majority of the current community council membership was elected unopposed. That said, community councils were in agreement that the electorate must be given the opportunity to determine who represents them on their community council in order that the community council continues to act in the interests of the community. It was considered imperative that public communication of the elections and membership decisions such as additional co-option were carefully planned

and that whatever course of action is agreed, accountability to the community is paramount.

- 3.9 Finally it is recommended that the Council agrees to undertake a focussed and formal consultation on the Scheme to include some provisions to deal with situations such as this pandemic and to future proof the scheme for nomination and election process. It may be that that a new Scheme could include provisions similar to those in the polling places review, giving delegation to officers to change co-option or ratios arrangements in an emergency or situation outwith the control of the Council.

#### 4.0 Sustainability Implications

- 4.1. None identified

#### 5.0 Resource Implications

##### 5.1. *Financial Details*

- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

- 5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

##### 5.4. *Staffing*

#### 6.0 Exempt Reports

- 6.1. Is this report exempt? Yes  (please detail the reasons for exemption below) No

#### 7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box )

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

Women and girls will be confident and aspirational, and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

**8.0 Equalities Impact**

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes  No

**9.0 Legality**

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

It is noted that members of the local community may challenge co-option decisions which are not in the accordance with the Scheme notwithstanding any Council decision not to suspend.

**10.0 Appendices**

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

**11.0 Background Papers**

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes  (please list the documents below) No

**Author(s)**

NAME	DESIGNATION	TEL NO / EXTENSION
Lindsay Thomson	Senior Manager Legal & Governance	2084

**Approved by**

NAME	DESIGNATION	SIGNATURE
Lindsay Thomson	Monitoring Officer	
Stuart Crickmar	Strategic Director Partnership & Performance	

