

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE

TUESDAY 6 FEBRUARY 2001

SCOTTISH EXECUTIVE CONSULTATION ON THE POWER OF COMMUNITY INITIATIVE,
COMMUNITY PLANNING, AND POLITICAL RESTRICTIONS ON COUNCIL EMPLOYEES

Report by the Chief Executive

ABSTRACT

This report provides Elected Members with details of the Scottish Executive's consultation on the power of community initiative, community planning and political restrictions on council employees. It also provides a suggested Angus Council response to the Scottish Executive.

1. RECOMMENDATIONS

It is recommended that the Policy & Resources Committee:-

- (a) note the content of the Report "A Power of Community Initiative/Community Planning/Political Restrictions on Council Employees";
- (b) approve the attached draft response prepared for onward transmission to the Scottish Executive.

2. INTRODUCTION

Community planning provides a means of creating a strategic and comprehensive approach to the social, economic and environmental needs of a community. It brings together a number of partner agencies to tackle cross-cutting issues. In Angus, the community plan has three underlying principles of active citizenship, sustainability and social inclusion with five key themes being – the economy, lifelong learning, healthy and safe communities, caring communities and the environment.

3. CONSIDERATION

The consultation paper is in four parts. Part 1 is an introduction and overview; part 2 relates to a power of community initiative; part 3 relates to community planning; and part 4 is about political restrictions on council employees.

Part 1 - Introduction and Overview outlines the Executive's thinking in relation to why there is a need to legislate to enable authorities to deliver a community leadership role, and to ensure that effective partnership working improves all public services for communities.

There are close links with best value and the response to the Government's consultation paper Best Value in Local Government – Next Steps (Report No 959/00) is closely aligned with the response attached.

Part 2 – A Power of Community Initiative is intended to facilitate the repeal of CCT but also to change the trading powers of local authorities. There is within this section reference to a power of intervention and, consistent with the Next Steps response, Angus Council would be looking for a process which is transparent and only used in extremis.

The response welcomes the fact that Angus Council would take on the community leadership role, but emphasises the need to have clear mutual understanding of roles and responsibilities between partner agencies. Indeed, the response advocates that obligations are also placed on partners to participate.

Part 3 – A Statutory Underpinning for Community Planning stresses that Angus Council is firmly committed to community planning and is of the view that its importance should be underlined by introducing a statutory duty of community planning.

However, we would also advocate a flexible framework so that local communities can have flexibility and discretion over what is included in each plan. Therefore, a non-prescriptive approach is described where statutory guidance is avoided and any guidance produced should act as a broad framework to allow partnerships to develop local approaches.

There is some mention of streamlining planning processes between agencies. The response supports this view in terms of reducing duplication, but recognises that it is not just the number of documents or plans which are produced which need to be addressed. The number of partnerships and the processes also require to be reviewed.

Part 4 – Political Restrictions Effecting Council Employees poses questions relating to staff who wish to stand for election.

The response advocates that staff should not be allowed to hold political office in the Council in which they are employed. However, it is recognised that people may wish to stand and the response supports their ability to do this without resigning their employment until a day after polling day.

Where a candidate is not elected, Angus Council would support their continued employment.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

5. CONSULTATION

All Chief Officers have been consulted during the preparation of this Report.

6. HUMAN RIGHTS

There are no human rights issues arising from this report.

A B Watson
Chief Executive

Note: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing this paper.

ANGUS COUNCIL

RESPONSE TO CONSULTATION – A POWER OF COMMUNITY INITIATIVE/ COMMUNITY PLANNING/POLITICAL RESTRICTIONS ON COUNCIL EMPLOYEES

PART I – INTRODUCTION AND OVERVIEW

Angus Council welcomes the opportunity to respond to the Consultation Report and has set out some general points in addition to addressing each of the questions posed within the Report.

Overall this is a welcome document in that it reinforces the value of community planning in statute. Clearly, the links between Best Value, the proposed power of community initiative and community planning are important to consider.

We believe that new legislation requires to be developed in a way that promotes clarity while still enabling local authorities and their partners to find local solutions for their own planning.

It is considered that Section 83 of the Local Government (Scotland) Act 1973 is not used to any great extent across Scotland at present, and Angus Council would welcome a change in the legal framework of local government through a power of community initiative to develop our own and partners' roles within the local community.

Such a change will potentially enhance the capabilities of the local authority by encouraging a flexible and innovative approach to work, both within the Council and with partner agencies. In this context, it needs to be recognised that all new ventures will not necessarily succeed, and there has to be room for lessons being learned from failure on occasion.

Angus Council is committed to the modernising agenda and to pursuing the development of Best Value, community planning, community involvement, partnership working and the development of a strategic vision for the whole area.

Community planning requires genuine partnership working at local level, through agreeing a strategic vision and implementing an action plan, together with partnership working at national level, across the Departments of the Scottish Executive and the various agencies and Non Departmental Public Bodies which it sponsors.

This will require training for senior management across a wide range of agencies and work which has been done by Community Learning Scotland on training for community learning strategies and plans points a way forward in this regard.

We recognise that community involvement is a complex area and a range of mechanisms needs to be employed or developed to engage our local communities. While we recognise that community learning has an important role in this arena, we do not believe that it is the only mechanism for delivering and enabling community involvement.

PART II – A POWER OF COMMUNITY INITIATIVE

- (a) **What, if any, existing statutory limitations or prohibitions might be lifted or relaxed to facilitate the exercise of a power of community initiative, a statutory duty of best value or a statutory underpinning for community planning?**

Angus Council agrees with the definition of the power to do anything which a council considers is likely to achieve an improvement in the economic, social or environmental wellbeing of their area.

The Council welcomes the Executive's intention to review current statutory restrictions and would fully removing all such restrictions unless the case can be made that they remain necessary.

It is agreed that Best Value has complementary links with the power of community initiative. Indeed, in responding to the Next Steps document, Angus Council considered that much greater flexibility is needed for local authorities to explore alternative ways of working, if Best Value is to fulfil its potential. We consider that the current restrictions of the vires rules inhibit innovation, and the

proposal to introduce a power of community initiative is very warmly welcomed. We would see the application of the power being subject to a general duty of Best Value.

Councils have traditionally made wide use of partnerships in terms of certain types of services, which fit in with the local authorities' view of the needs of its citizens. It is suggested, however, that as long as there are doubts about the type of activity in which local authorities can indulge with their partners, there will be continuing inhibition of authorities' efforts to introduce improved and innovative service delivery.

With regard to the trading power of local authorities, it is considered that change to the Local Authorities (Goods and Services Act 1970) is long overdue, although it is recognised that there are limitations even with a power of community initiative, e.g. obligations under procurement, EU procurement regulations, Competition Act and the Human Rights Act.

We support the repeal of the CCT legislation, including the statutory return on capital. Issues concerning competition policy are, in our view, best dealt with through non-statutory guidance.

(b) What provisions, if any, should the statute include to ensure that the power is used to maximum benefit of communities?

It is recognised that Ministers would wish to have powers to intervene, but, it is hoped that such powers would be limited in extent and exercised only as a last resort.

If there is to be a genuine partnership between the Executive and local authorities, the intervention should, in the first instance, be about providing support and assistance. Angus Council welcomes the fact that the power would be kept in reserve and only used in extremis. Where intervention is felt to be necessary, Angus Council believes that the trigger should be based on a stepped process which is transparent. We would also wish to see an appeal

procedure developed as part of the process, with a role for the Scottish Parliament in the scrutiny of intervention proposals.

It is agreed that local authorities should be given every assistance to address their own issues/dilemmas in the first instance. Clearly, guidance will require to be developed if powers of intervention are to be introduced and it is hoped that local authorities could be involved in the production of such guidance. This may help to address the points outlined in paragraph 18 where descriptions of 'acute', 'anti-competitive behaviour' and 'chronic underlying problems' can be defined.

(c) How should local authorities' exercise of the power of community initiative relate to the functions of other statutory bodies?

Angus Council agrees that local authorities are best placed to take on a community leadership role. However, we believe that it can be effective only when obligations are also placed on partners to participate. Indeed, partners may welcome the opportunity to be more involved than is currently presented in the consultation report.

The emphasis on the need to have a clear mutual understanding of roles and responsibilities is welcomed, and indeed is absolutely essential. National guidance could be useful in addressing some specific problems and concerns which constrain partnership working, such as aligning budgets and human resources.

There would be benefit in developing clear guidance on relationships, on the role of community planning and on the necessity for all partners to engage in the process. There is concern at present that some LECs are already standing back from community planning in the belief that Local Economic Forums render a community planning dimension for economic development unnecessary. Angus Council is very strongly of the view that the thinking taking place at a community planning level should both inform and be informed by thinking at a Local Economic Forum level. Clear guidance and perhaps ministerial direction are required in this area.

It is pleasing to note that in the recently issued National Health Plan, "Our National Health" there is a clear recognition of the role of community planning, with stress laid on the need to develop Health Plans within the strategic framework of the Community Plan.

In responding to the Next Steps consultation, Angus Council advocated that Best Value should apply across the whole of the public sector. We believe that in this way, all agencies will be working to the same common framework and that guidance should apply equally to partner organisations.

In relation to paragraph 27, there are other agencies we currently work in partnership with who have not been identified e.g. Scottish Homes. We believe their input to community regeneration needs to also be considered.

- (d) Would there be merit in joining up statutory (or non-statutory) guidance for Councils on the exercise of the power of community initiative?**

Angus Council believes that there should be non-statutory guidance as this would be beneficial in indicating expectations without limiting flexibility and being over prescriptive.

We also consider that such guidance should be non-prescriptive allowing for different arrangements to be put in place dependent on the areas needs/wants.

PART III – A STATUTORY UNDERPINNING FOR COMMUNITY PLANNING

- (a) Should there be a statutory power or a statutory duty of community planning?**

Angus Council is firmly committed to community planning and is of the view that its importance should be underlined by introducing a statutory duty of community planning.

- (b) Should statutory provision for community planning go wider than local authorities?**

Partnership is central to community planning. We are therefore of the view that statutory provision covering local authorities should be widened to other partner agencies.

In the words of the First Minister in the foreword to the consultation: community planning 'should belong to all partners'. Any statutory duty should therefore also belong to all public agencies.

Our preference would be to find a mechanism which imposes a statutory duty directly on agencies as well as Councils, but this may only be possible by laying the duty on Ministers to give statutory direction to agencies/NDPB's.

With or without a statutory duty, other relevant agencies should be obliged to consult local community planning partnerships on new strategies.

As for voluntary and private sectors (which could not have a statutory duty applied to them), those partners covered by a statutory duty of community planning should have a responsibility to develop systems to facilitate genuine involvement from these sectors.

Whether a direct or indirect duty is initiated, it is important that public agencies, which are managed by Westminster rather than the Scottish Executive (such as the Benefits Agency), are equally included in any statutory measures.

(c) Should the statute be framed in terms of producing a strategy, or in terms of facilitating the preparation of a strategy?

Good practice in community planning emphasises the importance of process. It is therefore our belief that the statute should be framed in terms of facilitating the preparation of a strategy. There should however be a clear requirement to produce a working document or action framework, which is clearly measurable.

As community planning responds to diverse local communities and circumstances, we would support legislation that gives localities discretion over the format of each plan and the frequency with which the plans are reviewed.

Nevertheless there may be benefits in guidance providing clarity on at least a core of outcomes to be measured in each locality for benchmarking purposes.

(d) Should there be guidance (statutory or non-statutory) on the exercise of a power/duty of community planning?

Despite the possibility that guidance could inhibit innovative thinking, we believe that non-statutory guidance would be of benefit in limiting uncertainty and as a result would expedite the process. Such guidance would also provide some commonality of process nationally.

It is our belief that statutory guidance should be avoided, if at all possible, in order to ensure a non-prescriptive approach. Guidance should not be restrictive or overbearing but rather act as a broad framework to allow partnerships to develop local approaches.

An option to draw up statutory guidance at a later date if necessary could be included in legislation.

Guidance on systems that could be introduced to resolve disputes might be helpful, although we would acknowledge that developing a local response to this issue could be seen as part of the process leading to true partnership.

(e) If there were to be a statutory duty of community planning what, if any, arrangements should there be for monitoring its implementation?

Although we are fully convinced of the potential benefits of community planning, we feel that a coherent monitoring and evaluation framework is required to assess its real impact. Monitoring should not be confined to local authorities' involvement but equally address partner agencies: there may be merit in monitoring community planning partnerships as separate entities.

'Desired outcomes' of the community planning process are identified as 'better services' (page 32, para 24): Best Value would require effectiveness to be measured alongside efficiency and economy.

Qualitative measures are likely to be the main way in which the success of community planning is identified. We recognise that there may also be some quantitative measures, but would wish to emphasise that effective qualitative monitoring may take more time to introduce and will require different skills.

There will be monitoring opportunities both at local level by partners, and externally. It would be crucial that representatives of any external body involved in monitoring had received relevant training and/or had an appropriately wide background to be fully able to assess the 'joined-up' and cross-cutting nature of community planning.

- (f) Should the statute include powers to remove existing statutory constraints or requirements which are unreasonable obstacles to the effective exercise of a power/duty of community planning?**

Removing unreasonable obstacles to community planning would be beneficial for eliminating unnecessary documentation and making better use of time and resources.

As the instigator of statutory constraints and requirements in terms of obligations to produce local statutory plans or strategies, central government should itself take some responsibility to identify current statutory or non-statutory plans/partnerships which are unnecessarily impeding effective joint working. The responsibility for such identification should not rest solely on community planning partners.

There are examples of current plans/partnerships which are redundant, such as the requirement to review day care services for children. In many areas it is however the process of planning and producing strategies which needs to be rationalised. Paragraph 50 refers to the fact that work is already under way to streamline the local planning requirements relating to children's services, and

this is welcomed. It is the duplication of planning activity though, rather than just the number of documents or plans which are produced, which needs to be addressed. There is certainly scope to rationalise planning activity amongst partner agencies, so that plans are more aligned and that specific sections of one plan can fit, in a modular fashion, into other appropriate plans.

We are also aware that partner agencies may equally face statutory difficulties in fully participating in the community planning process, and would urge that restrictions should be lifted on them as well as local authorities.

- (g) Would there be merit in making arrangements to help streamline and rationalise the number of new strategies, plans and/or partnership which impact on communities?**

There is an argument for streamlining and rationalising strategies which have created unrealistic demands on local authorities and agencies alike (resulting in partnership fatigue). Unnecessary duplication reduces the chances of success and is a particular obstacle when attempting to encourage local community involvement.

At the level of community based needs assessment and appraisal activity there is certainly a case for streamlining and ensuring that investigation processes do not duplicate to the frustration of all.

A better fit with Scottish Executive policies must in part be supported by the Scottish Executive in rationalising central initiatives and demands. As the Executive is the instigator of the vast majority of initiatives it has a responsibility itself to ensure coherence between them. A central database of initiatives with information on deadlines would be a valuable first step. Central coordination of output and outcome indicators across work-areas would also be wise.

PART IV – POLITICAL RESTRICTIONS AFFECTING COUNCIL EMPLOYEES

Council employees, other than those in politically restricted posts, may stand for election to the council which employs them without first having to resign on selection or nomination as a candidate.

It is assumed that the current legal ban that exists on council employees being also members of the council which employs them is a ban which was introduced to prevent strong conflicts of interest. It would be a difficult adjustment to move from the role of employee to role of councillor within the same authority, not only for the individual but also for other staff/colleagues.

- *This council still has concerns regarding employees being allowed to stand for election in the council which employs them.*
- *The ban on employees serving as members of the council which employs them should remain*
- *However, we would be comfortable with an amendment to the current legislation to allow employees, other than those in politically restricted posts, to **stand** for election to the council which employs them **without** resignation*

If successfully elected, an individual would be required to resign their employment the day after polling day.

Further to the comments in the previous section:-

- *It is our view that the ban on employees serving as members of the council which employs them should remain and we, therefore, agree with the requirement for resignation, if they are successfully elected, the day after polling day.*

Where an individual resigns as an employee after being elected a member, any normal period of notice should be waived without detriment to an individual's pension entitlement or other benefits of his or her council employment.

Further to the response above:-

- *It is our view that where an individual resigns, any normal period of notice should be waived and without detriment to an individual's entitlements or benefits.*

If unsuccessful, an individual would have the right to remain in the council's employment without detriment to grade, pay, pension or other terms and conditions of service.

- *It is our view that an individual, if unsuccessful, should have the right to remain in the council's employment without detriment to any terms and conditions of service.*

We would welcome views on whether:

council employees standing for election should be given time off for the 10 working days up to and including polling day, whether such time off should be mandatory or optional, whether it should be paid or unpaid, and whether it is felt that such a provision would give council and employees an unfair advantage over other employees standing for office.

Such provision would cause resentment from other council employees and other candidates, particularly if granted with pay. It would, therefore, also exacerbate any problems/tensions. It would not reduce or minimise potential conflict

- *It is our view that time off should **not** be given.*
- *However, if it is agreed that there should be such a provision then we believe it should be **optional** although at whose discretion would require to be determined.*
- *Also, if it is agreed that there should be such a provision then we believe it should be **without** pay.*
- *Furthermore, it should be a blanket policy for anyone standing for office, i.e. not only council employees. Otherwise it would give council employees an unfair advantage. We are, however, unsure as to how this could be enforced for all employers.*

the existing approach to potential conflicts of interest (i.e. to rely on internal management arrangements and/or grievance procedures) should apply to unsuccessful candidates who retain employment in their employing council, given that this approach seems to have worked effectively for employees serving as elected members in other councils;

- *If there is a problem, the existing internal management arrangements and/or grievance procedures should apply as for all employees.*

it is felt necessary to provide, say, for some kind of reserve panel in each council (composed, say, of the Chief Executive and two other senior officers), which could be activated to assess any alleged conflict of interest concerning the duties of a post held by an unsuccessful candidate (or, for that matter, an employee serving as an elected member in another council), and determine whether or not the postholder should be moved to another post in order to avoid any such conflict.

- *It is our view that there is **no** need for such a formal panel. Existing internal management arrangements and/or employee relations procedures should apply.*

whether the types of post designated as 'politically restricted' in the current legislation should be amended in any way;

It is the nature of the duties rather than the salary level that determines the political sensitivity of a post.

- *This Council has no difficulties with the types or defining the posts and, therefore, it is our view that the current legislation does not require to be amended.*

whether explicit commitments to political impartiality should be incorporated into the terms and conditions of employees in the 'politically restricted' class.

Angus Council employees in politically restricted posts are aware of the political restrictions/obligations.

- *This Council has no difficulties with the existing requirements and arrangements, although is not averse to political impartiality being incorporated into the terms and conditions of employment.*

29 January 2001

VSIYEG\notes\response to consultation – Power of Com Initiative

