

## Democracy Matters 2



### Consultation Questions

1. How could your community use these types of powers to achieve its ambitions, now and into the future?

It is the view of Argyll and Bute Council that the structures which are currently in place are deemed fit for purpose in terms of meeting identified need and we do not support the proposals set out within the consultation document. The Council recognise value in supporting and investing in the current arrangements and have significant concerns about the level of additional resource that would be required to implement what is being suggested here. Our concerns are further compounded by the timing of these proposals, which coincide with a number of other significant public sector reforms and financial/resource constraints. Please refer to Q16 which picks up on these points further.

The powers are outlined as general, specific, direction of associated budgets, employment and community collaboration. The consultation does not outline how it would build on current facilitators such as community planning, community empowerment, Planning with People and co-production through the national standards of engagement.

The consultation is unclear on the framework of developing citizen participation in the democratic process, the source and availability of resource and the development of a co-productive relationship in service development outwith current structures, legislative requirements and guidance. It is further unclear how this relates to stimulating the third sector who have developed on the basis of local need, community councils, social enterprise and community interest companies.

It is also not clear how this aligns with or is intended to complement the Scottish Government's Scottish Approach to Service Design, which sets out a new model of designing services with, as opposed to, for communities and service users. Expanding the use of this as a public service design tool will have a positive impact on supporting better decision making with rather than for communities.

2. What other powers should be added, and are there some which should be retained by existing decision-makers?

The Council would like to reiterate its concerns about the proposals being consulted on and, again, would promote a focus and investment in current structures that are operating well. For example, by continuing to develop approaches to Community Wealth Building to support local inclusive economies by focusing on key areas such as:- fair employment; progressive procurement; plural ownership of the economy; financial power; and use of land and assets, in conjunction with other models such as the Scottish Government's Scottish Approach to Service Design.

The consultation document notes out of hours health care as an option for specific powers. Health and Social care services are delegated to IJBs which have structures within the legislation and guidance governing their relationship with communities around regulated services. Some further exploration in powers relating to regulated services that don't take into account professional advisory and available funding at a national level for health service (NRAC). There is the potential to create greater health inequalities where you may have a small and unrepresentative number of decision makers and a changing demographic. For example co-production within current structures allows for the development of on island out of hours health care involving as far as possible the whole community and its representatives. The exercise also co-opts planning, transport infrastructure, social care and clinical expertise which takes a long term whole system approach and considers need across the lifespan and where other resource can be capitalised with wider partners. Planning can in effect be undertaken and resource directed with a shared approach to power, within regulation and with a future focus.

Providing community groups with the power to employ staff presents significant challenges where this is to be applied to a resource or service currently operated by the Council. An example of this may be in recycling. Any transfer of resource from the Council to a community group would include by necessity the transfer of staff under TUPE. This would mean that the community group would have to be able to provide all of the employer resources currently provided by the council – pension, employee assistance, sick pay entitlement etc and at the same salary level. The economies of scale mean that the Council is better placed to retain staff employment therefore this power should be retained by the existing decision maker – ie the Council.

3. When thinking about who might be part of new decision-making bodies, what are the best ways to ensure they truly reflect their communities and enhance equality?

The Council are opposed to the notion of introducing new decision making bodies and there are a number of factors that require to be considered in this regard including:

- Consideration should be given to the structures that are already in place and how any future structures would sit alongside those which are required and advised through guidance. Argyll and Bute Council has 36 elected members, representing constituents across 11 multi member wards. There are a wide range of efficient governance arrangements in place at both a council, HSCP and wider community level to support the area, including:- 4 decentralised Area Committees with delegated authority to make decisions affecting local communities; 4 Area Community Planning Groups – an unincorporated partnership of agencies and organisations drawn from public/private/third sector, community organisations and partnerships; 4 HSCP Locality Planning Groups – bringing together NHS and Council staff, community members, carers, representatives from third and independent sectors, and community based groups; 56 community councils; and a whole raft of other community organisations and trusts. Adding a further layer of governance presents a real risk of cluttering the landscape and increasing the potential for local conflict and polarisation.
- Potential difficulties around engagement from communities could be a barrier to ensuring appropriate representation. For example, in Argyll and Bute we currently have 54 out of a possible 56 community councils established. After an initial round of elections we had 39 CCs from 56 formed (38 uncontested and one contest). We had a further 15 formed after a second electoral process (none contested); and one further CC formed after a third round of elections. Two community councils remain dormant as we were unable to get enough of the community to come forward to be in a position to formally establish the community councils for those areas.
- The definition of community in terms of this question is key – does this mean a geographic area (small or large) or does this mean something else? There will be major differences across Scotland in terms of what this could mean and will depend on the demographic of the area, with notable differences across urban/semi-rural/rural areas.
- Ensure that the current, and projected future, demographic make-up of the community is understood.
- Ensure that representation on any new decision making body fully reflects the equalities profile of the area, including those people who are harder to reach.
- Ensure that all those invited/appointed to represent have the skills (or are appropriately supported), to have the skills to work collaboratively with others. Some under-represented individuals do not want to participate as they feel disempowered as a single representative and prefer to engage in the 'safety' of their particular characteristic (i.e. age, gender). This requires support and skills of paid workers to support these challenges and enhance equality.

4. Thinking about your own community, what groups would you like to see represented through other selection methods, and what should these methods be?

As per question 3 above.

This question assumes that groups would want to be represented, however we know from working with equalities groups that representatives can experience disempowerment when they are the single representative voice in the room. It is more important that rather than 'select' people, that there is a requirement to link with local or national bodies that represent experiences of different equalities groups.

There has to be a recognition of the demographic of a particular area and also that the representation on any new body reflects the remit which has been set for that body. Once there is clarity on the remit and decision making powers then it will be clearer in terms of who might wish to become involved.

It is important that representatives are able to be a voice for all in the "community" and not just for their specific group. In terms of mechanisms for selection, this would need to be open and transparent and widely advertised. There should be identification of best practice used in previous recruitment exercises.

All those selected to represent should be required to be accountable to the community they represent, to demonstrate that they are representing all views and to be open and available to feed back to the wider community and accountable for their decisions.

**5. What would the role of local elected representatives be, and what would incentivise other people to take on/be part of decision-making?**

Firstly, it is unclear from this question if this relates to Elected Councillors or includes Community Councillors who could also be identified as local elected representatives. The Local Councillor, who is elected by the community and has a democratic mandate to represent the views of their constituents, should be involved in any future decision-making bodies.

An obvious difference is that elected members are remunerated, whereas community councillors are not. In terms of possible incentives, is there a suggestion that remuneration would be offered to any new local decision body? Clarity on this would be helpful.

As per previous views expressed in this consultation response, it is deemed important to invest in the current structures, including our elected members. Councillors are the democratic elected representatives of the local areas and there is merit in strengthening their role. There is also perhaps an opportunity to enhance communities understanding of the role of elected members and promote/encourage community members to put themselves forward for election and invest in the current democracy. Councillor remuneration is one area that is cited as a barrier to recruitment, and on this basis the Scottish Government and COSLA have committed to undertaking an independent review to ensure that moving forward the terms and conditions for councillors truly reflect their responsibilities.

It is not deemed feasible to consider giving more powers to other local decision making bodies if local elected councils do not have parity of esteem with other elected bodies in Scotland.

Encouraging other people to take on or be part of the decision-making process may prove to be difficult depending on the arrangements in place for the body. If the new body has a general remit without a focus or specific purpose, then it would be more difficult to engage others in the process. Taking for example the work around the formation of the IJB, this has a clear remit and therefore those who applied to be part of this decision-making body were aware of what the remit and purpose was.

**6. What do you think are the best ways to ensure new decision-making bodies are accountable to their community?**

Proposals are such that the new community decision-making bodies are suggested as being half directly elected and half selected by different methods, and that they should be autonomous.

Accountability for those elected, such as local councillors and community councillors, will be via their individual Code of Conducts and in addition, there are fixed terms which give the community the opportunity to voice any concerns they have about how they are represented at the ballot box. Elected members also have a range of support frameworks in place to enable them to fulfil their roles and ensure good governance. A similar set up would be required for any other local decision making body put in place, including any inspection and audit requirements. While it is seen as desirable to have a more diverse set of decision makers than the range of diversity that might be returned through those elected positions, as a minimum there must be a similar standard of enforceable principles to adhere to that would apply to those selected by alternative methods.

We would also make the point that elected roles are the most democratically accountable for the reasons set out above. Therefore, it may be preferable to undertake targeted campaigning to those underrepresented groups, to encourage them to stand for election to a relevant community body. Clearly defined roles and responsibilities and terms of reference for each group will help with attracting people to those positions. That may be simpler where there is a group formed to respond to a single issue, or a series of interrelated issues, less so if proposals are to form one representative body for an indefinite period whose role might be to look at all community issues. The consultation is vague regarding the definition of "community."

Transparency of decision making will be crucial in terms of accountability. Public meetings in the truest sense should be a requirement for community bodies so that the community have the right to actively participate in discussions, or at very least attend a meeting to understand why certain decisions are being progressed on their behalf. However, public meetings cannot be the only method of engagement as it should not be the case that those who are most vocal about an issue are perceived to be the representative view to the detriment of what may be a silent majority.

Whatever model might be introduced in terms of local decision making, the vessel tasked with this must have a clearly defined procedures which set the purpose, parameters within which it will operate, membership (including how members of the community body are selected) and they must have the access to training and tools to allow them to actively demonstrate that they are listening and engaging with the communities represented.

The level of accountability is dependent on the level of ask. For example, existing public bodies operate within a statutory framework and when it comes to delivering services, there are a whole range of regulations to comply with. It is our view that any new community decision making body, who is charged with taking on the delivery of a service in the same manner as another public body, such as a local authority or NHS, should be subject to the same level of accountability. It is difficult to comprehend how a relatively loose/unincorporated community could be held to the same standards. Is there an acceptance of this by the Scottish Government? It would be useful to understand the type of democratic framework envisaged here.

7. Are community events a good way to involve local people in scrutinising progress and setting future direction?

We are of the view that community events are not the most effective means of providing relevant scrutiny and setting future direction. This assumes that everyone identifies as a 'community' and has the capacity and capability to attend events. Events have limited attendance and although there is always a feel good factor to events they do not meet equalities or exclusion. Engagement through a range of means to ensure diversity of thoughts and scrutiny and over a min of 3 months is needed to do this well.

It is our view that a better approach would be to seek advice from audit bodies such as Audit Scotland, Education Scotland, who are experienced in scrutinising spend of public money on outcomes – including processes of organisations and their ability to engage.

One of the challenges in setting future direction will be access to and willingness to be informed by data that highlights needs. Public bodies are driven by legislation and by needs assessments when designing services. Communities may be influenced more by desires than needs unless the data and analysis showing need is made available.

The decision making bodies will need to set goals and show their work towards these by measuring progress. They will need to keep clear financial accounts and have this looked over by an independent accountancy body. They will need to publish their accounts and have AGMs so that people can ask questions.

They will need to have ways that people in communities can contact them and routes for people to make complaints.

**8.** What other mechanisms would help achieve high levels of community participation in local decision-making processes?

Investment in the understanding of democracy through formal and informal training programmes, school subjects and better 'routes to become an elected member' apprenticeship programmes to encourage this as a valued career path. Increasing the knowledge, understanding and participation in the current system will enable better participation in decision making.

As mentioned in Q5 above, the independent review of Councillor Remuneration, which is one area that is cited as a barrier to recruitment, may assist in ensuring that moving forward the terms and conditions for councillors truly reflect their responsibilities, and encourage others to consider this role in local decision making.

It should be recognised as part of this consultation that many people do not have capacity to participate in decision making due to time with work and caring responsibilities and trust those who they locally elect to do so. There is also a need for investment in trusted online platforms and apps to enable full, safe, inclusive digital engagement. The work being carried out by Audit Scotland on Digital Exclusion and due for publication in 2024 will inform particular consideration of this. The answers to this question are best found by asking - why do people not participate now? And building solutions through the answers to this.

9. What else should this process include to provide new community decision-making bodies with a strong locally agreed mandate?

Argyll and Bute Council are not in support of the proposals being consulted on, however in terms of good practice we would suggest that the following is included within any locally agreed action plan should a decision be taken to implement:-

- Budget - overall and for individual outcomes / areas of work;
- Vision and timescales;
- Risk appetite and how much community is willing to lose by 'trying something' new;
- Impacts the plans will have on - jobs, people, environment etc...
- Clear agreement on employment status and the implications of being an employer.
  
- Communities receiving public and third sector support to develop a multi-year community action plan - this is a laudable aspiration and new resources, including multi year budgets, will be required to provide the desired level of support.
- Community action plans including a suite of powers to achieve their community vision – we are of the view that guidance will be required on what these powers are and how they can be accessed.
- With regards to using a process similar to Community Right to Buy to test whether people wanted to establish new decision making bodies, this will require the establishment of ballots which will require extensive guidance and resource and will need to be included as part of this endeavour.
  
- Argyll and Bute Council are currently in the start-up stage of a new initiative to develop area plans for all our areas reflecting investment opportunities and local service prioritisation. These will include natural and publicly recognised boundaries and will be a participative process. The plans will;
  - Capture community vision and aspirations for each area.
  - Reflect investment opportunities.
  - Identify local projects.
  - Whilst this process will not guarantee the provision of funding towards projects agreed within the plan, it will be orientated towards maximising external funding.
- The outcome of this process will be a locally agreed mandate.
- It would seem sensible for any new community decision making body to work closely with the Council and other local partners in the development of local action plans to ensure a joined up approach and to eradicate any duplication of effort.

**10.** Are there ways to ensure new bodies are still wanted – for example by making them time-bound and subject to renewal ballots?

Yes, it is our view that all new bodies should be time bound. For example, it could be recommended that an upper limit of 5 years is applied for elected positions, in line with current electoral cycles and the national standards/legislation for the delivery of an elective process.

It is also worth considering what the back up plan/safety net should be, in the event that any new community decision body fails to deliver on their agreed mandate.

**11.** How do you think community decision-making bodies should be resourced?

Adding in this additional tier of governance will be at a cost and this would need to be adequately resourced. Dependent on the remit of any new decision-making body and if there are budgetary decisions to be taken then there could be implications in terms of ensuring good governance and this, again, would incur extra costs. Making use of existing structures could offer a way to offer options for more community based decision-making but there would still be an additional resource implication, which would require to be funded centrally by the Scottish Government. Over and above the direct funding approach, another type of funding for any new community decision making body that requires to be given consideration to is seed funding.

Some good work has already been done in terms of the utilisation of participatory budgeting models, which involves the community in decision making, has budgetary powers and can in some cases be at little additional cost.

However they are resourced, there will need to be 'extra' money from somewhere as it will take an injection of funds to get them set up and in place. Why would they have light touch regulation when the examples show that they may take on services that are heavily regulated by public bodies? A supportive step in this for bodies such as councils would be to have lighter regulation now so as to ease pressures on constant reporting and enable more resource on service delivery.

We would query how this can be applicable to a whole system approach as identified by Argyll & Bute if the responsibility lands with local government to discharge – perception will remain local government. Likely requirement to need skilled capacity to discharge and address relevant governance.

The consultation document notes local fund raising which does not take account of the impact of the cost of living crisis and fuel poverty within a remote and rural area. This may be more easily facilitated in a highly populated area but there is limited economic potential where the financial challenge is already being felt.

**12.** Are these the right set of standards to provide reassurance that new community decision-making bodies will be effective and treat everyone with dignity and respect?

The most logical way forward would be for the members of any new community decision-making bodies to be subject to the existing ethical standards framework – namely the *Ethical Standards in Public Life etc. (Scotland) Act 2000*, and in particular, the Model Code of Conduct for Members of Devolved Public Bodies. This would hold the members of any new bodies to the same standards of conduct as are expected by councillors, and members of other public bodies. It would also mean that any alleged breaches of the Code would be subject to independent investigation by the Ethical Standards Commissioner, and adjudication by the Standards Commission for Scotland (with the legal powers to impose sanctions should a breach be established).

It necessarily follows that members of any new community decision-making bodies should be subject to the same standards of conduct of those operating in similar public bodies. Please refer to the points raised in Q6 in respect of accountability, which are also relevant here.

**13.** How could a charter be designed to best ensure a positive relationship between community decision-makers and their partners in national and local government and the wider public sector?

A Charter should set out the principles in which any new community decision making body would operate, but a Constitution (including a Scheme of Delegation and/or Standing Orders, where appropriate) may assist those bodies in carrying out their regular functions and recognising the scope/extent of their powers.

Such a Charter would have to clearly set out the limits of the decision-making powers that a new community decision-making body shall have, and the matters that are retained by existing partners, which the new body will require to collaborate with them in relation to. Any links to existing legislation/frameworks should therefore be made clear within the Charter.

To have a positive relationship, each body needs to have an understanding of what is expected of the other – in terms of both activity, outcome and behaviour. A process also needs to be set out in the Charter which states regularity of meetings and routes/mechanisms to resolve disputes - much like a service level agreement. However it would not be the Charter itself that ensures behaviour and positively, this will be based on the personalities and conduct of those involved. Therefore it would be very important for all members of bodies subject to the Charter to also be signed up to/have completed something like co-production training. This better enables a positive culture of working together where all are equally informed, and have a baseline skill level, of behaviours and ways of working.

It may be that the new body requires support from professional services in the Council (see Q2 above). A charter or service level agreement or contract could set out what would be provided and what the resourcing terms of that agreement are. The level of this support would be dependent on the aims, objectives and scale of the body's ambitions and activities.

It should be noted that Argyll and Bute Council already have adequate measures in place with community groups in respect of service delivery, for example via the use of Service Level Agreements and it is unclear what value a charter would add. This approach is continually adopted to ensure that the voting public are clear on what is being delivered by the local authority/others. For example, during the COVID-19 pandemic, in an environment when arrangements had to be progressed quickly, the Council were able to formalise arrangements and ensure a positive working relationship with our communities.

**14.** What types of support might communities need to build capacity, and how could this change the role of councils and public sector organisations?

It would be helpful to understand the scrutiny/evidence that exists which has identified the perceived gaps in ability to participate beyond current national guidance – is the requirement ad hoc? Do urban areas fair differently from rural and island communities? Do we need to tailor the approach/charter to acknowledge current activity? What are the impacts on delegated services and the requirement for professional advisory for safe services?

Building on the narrative provided in response to Q3 and Q4, different communities will require varying degrees of support and assistance in building capacity to enable any new tier of governance to operate well, if at all. As previously mentioned, some communities are very active and engage effectively, however there are others with a distinct lack of participation. This could lead to issues of inequality across different communities within Argyll and Bute – for example those communities that are better equipped will be able to leverage advantage from any new tier of local democracy, more than those that are less engaged/capable of doing so for whatever reasons (e.g. deprivation).

In order to address such issues, there will need to be significant resources/ funding to put in place capacity development support for any new community decision making bodies, and to aid the process for creating them in the first place, with focus being placed on those communities that may require additional assistance. In line with the response to Q15 below, extra community development staff and co-production monies will be essential.

The Council envisage a number of risks arising from the proposals as they stand, including:-

- Possibility that Councils will lose economies of scale and see other costs rise as a result;
- Additionally, there is a real risk that the Councils ability to respond to emergency situations would be adversely impacted.
- The proposals set out a role for Councils in terms of acting as mediators in community disagreements. Previous experience/cases of such disputes show that they require a huge amount of time to resolve. Councils are not suitably resourced to take on such additional duties.

**15.** Are there specific additional powers and resources which would help public sector organisations to work effectively in partnership with new community decision-making bodies?

Rather than “powers” in addition to current structures, the focus could be on enablement within the current legislation, guidance and structures and better use of key community assets and plans supported by a place based approach. This may also be more economically viable and sustainable. Community resilience planning could play a wider role here for remote and rural expanding physical resilience with ongoing community led capacity building and maximisation of current channels of effective two way communication.

Clarity about the different roles of the various bodies is an essential precursor to effective partnership working. This should set out clearly what the roles of each of these bodies - Local Government, Community Councils, Community Planning and the new bodies are. This must make it clear who is responsible for delivering what and how the bodies are expected to relate to and complement one another. This clarity will foster clear understanding and mutual respect which will facilitate effective partnership working.

If these proposals are to be adopted moving forward, there will be an additional resource/budget pressure on local authorities to support any new community decision making bodies in terms of training, navigating their new roles etc, therefore there is a need for more community development resource to support this extra work. In addition there will be a requirement for additional co-production monies to support the new roles.

The consultation documentation suggests that some of the principles of this piece of work is to (a) simplify the current arrangements, a notion that we dispute and would argue that the opposite is in fact true, and (b) to provide parity of approach across all public sector bodies, including any new community decision making bodies. If the latter is a vision then this is to be welcomed. However we would question what this means in terms of ensuring bodies are suitably accountable and are reporting to an appropriate standard – for example via inspections, audits and the wide range of other regulatory requirements that local authorities and others are currently subject to. Further information and clarity is sought in this regard.

16. Thank you for considering these questions. When sending us your views, please also tell us about anything else you think is important for us to know at this stage.

As mentioned throughout this consultation response, Argyll and Bute Council are opposed to the proposals as set out. They come at a time when there are a number of other significant programmes of public sector reform being progressed, such as the other strands of Local Governance Review (LGR) and the National Care Service (Scotland) Bill, both of which involve a review and potential changes to the powers of existing decision makers. With regard to the former it is understood that the COSLA position is that all elements of the LGR should be pursued in parallel, however this would not appear to be the case, with progress in other areas falling behind.

We also have concerns about how financially viable the proposals are, at a time when local authorities are having to make difficult budget cuts year on year. It is our view that implementation of the proposals would have further detrimental impacts on our budgets.

Overall, it is very difficult to ascertain the benefits here, as there would appear to be a potential for duplication of efforts/ double handling in terms of service delivery. During what is such a challenging time for local authorities and other public bodies it would seem sensible to strengthen and continue building on those structures already in place. The proposals have the risk of cluttering the landscape, increasing the likelihood of local conflict/polarisation and impacting negatively on already depleted resources/finances.

### Respondent Information Form

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Please tell us who's views you represent:

- My own
- My organisation's
- My community conversation's

If you're an organisation who held a community conversation, please check the 'my community conversation' box

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No