

# **Strathnairn Community Benefit Fund**

## **A Review of Governance, Strategy and Grant-making**



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**May 2017**

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## Foreword

In August 2016, Strathnairn Community Benefit Fund (SCBF) commissioned Foundation Scotland to conduct a review into the work of SCBF. The Board felt that, after 13 years of operation, the time was right to consider whether SCBF remains fit for purpose. Foundation Scotland (FS) was recommended to the Board by one of SCBF's funders. FS is an independent charity, and provides services to other grant-making charities to help meet their aims and to a diverse range of other clients wishing to establish charitable funds.

The review was to consider, amongst other things, an examination of its governance, operating arrangements and overall approach to distributing funds. A subgroup, comprising Mark Burton, Ian Hunt, and Paul Robinson, of the Board was formed to whom FS reported.

This report is the result of FS's work, and has been endorsed by the SCBF Board.

SCBF has already begun to fulfil some of FS's advice. SCBF, with the support of the Strathnairn Community Council, proposes to commence a community consultation at the end of July 2017, with a view of establishing the Strathnairn community's preferences for SCBF's future governance, structure and strategy. Guided by feedback from the community consultation, SCBF proposes to implement changes to SCBF's constitution in December 2017.

This report is being made available for download from the [SCBF website's documents webpage](#). This is so that the whole community can read the recommendations contained in the review, and understand the options for the future direction and operation of SCBF. The Board recognises that many residents will have questions, comments and queries. Now that Foundation Scotland has delivered its report, many will also want to know what SCBF intends to do with the recommendations contained in this report.

SCBF is committed to implementing the recommendations contained within this report, where it is possible to do so. It will take a number of years to implement them. This is because the SCBF Board comprises community volunteers, who can only give some of their free time. Some of that time will be needed to carry out the usual day-to-day running of SCBF, which will, of course, continue as before.

There will be a series of community consultations carried out, where necessary, as SCBF implements the report's recommendations. SCBF encourages the community to respond to these consultations. They will be the best way for community members who have comments to provide feedback. As mentioned above, the first community consultation will be held in July 2017.

Due to the size of the report, and the potential for a high demand for the document, SCBF will not be printing paper copies for general distribution. However, paper copies can be provided on request.

Please look out for further announcements with respect to the first community consultation, in July 2017, on the SCBF website, on social media, on community notice boards, and in the August 2017 edition of the Strathnairn newsletter.

**Mrs. Isobel McQueer**  
**Chair of Strathnairn Community Benefit Fund**

[www.strathnairncbf.com](http://www.strathnairncbf.com)

# 1 Introduction

## 1.1 Context

Strathnairn Community Benefit Fund Ltd (SCBF) was established in 2004 to administer the portion of community benefit, linked to RWE Innogy UK's Farr Wind Farm, ring-fenced for the benefit of the area served by Strathnairn Community Council (SNCC). It is also responsible for administering community benefit monies linked to Dunmaglass Wind Farm which is owned by Monadhliath Energy Limited and will shortly also be administering community benefit monies from Eneco's Moy Wind Farm.

SCBF was originally formed following ratification of an agreement covering the administration of Farr Wind Farm monies between SNCC and the owner of the Farr Wind Farm (Farr Wind Farm Limited, part of the then RWE npower group of companies). The Highland Council was also closely involved in designing the Agreement.

Available records seem to indicate that since 2004 SCBF has received circa £2,524,166 and distributed around £1,100,000. It currently holds £1,238,972 (value at 31 December 2016 with Brewin Dolphin) in investments accrued in part by one off capital payments received from both the Farr and Dunmaglass wind farms owners once they started generating electricity.

In 2016/17, the funds received by SCBF totalled £158,480.81, which included £92,537.91 from Farr Wind Farm Limited (based on the index linked value of £716.40 per megawatt of 92 MW installed capacity) and £63,577.80 from Monadhliath Energy Limited (based on half the index linked value of £2,000 per megawatt of installed capacity at Dunmaglass Wind Farm). Other income of £2,365.10 is from a closed Allied Irish Bank account. As of 1<sup>st</sup> June 2017, the 2016/2017 payment of £2,500.00 from Farr Hydro, had not been received.

In an effort to improve its overall impact and legacy, the Board of SCBF has commissioned Foundation Scotland to conduct a review of SCBF's work including its governance, operating arrangements and overall approach to distributing funds.

Foundation Scotland is a registered charity which distributes funds to charities and community organisations. Clients include SSE, EON, RWE Innogy UK, EDF Energy Renewables, Shell, Deutsche Bank, Scottish Whisky Association, Scotrail, and Comic Relief as well as individual philanthropists and occasionally the Scottish Government. Established in 1996, Foundation Scotland works now with over 250 individuals, companies and communities, enabling them to distribute funds effectively and efficiently to charities and voluntary organisations every year. Foundation Scotland also administers over £20M in charitable endowments for its clients.

In the area of community benefit funding, Foundation Scotland is currently delivering and/or developing over 40 community funds across Scotland and working with over 100 communities. Clients include a wide range of energy developers, communities and

commercial asset managers. This significant volume of operational activity enables the Foundation Scotland team to cultivate strong relations with communities and developers / owners, test different approaches and practice, and use its learning to influence policy and the wider sector.

The review represents a significant opportunity for the Board of SCBF to assess the overall functioning and effectiveness of current arrangements for distribution of community benefit monies through SCBF and ensure, as far as possible, that it is capable of meeting the current needs and future aspirations of the community. It has offered opportunities for some representatives of local groups and former and current directors of SCBF to share ideas, aspirations and opinions on the work of SCBF and the distribution of funds under its governance.

This draft report will be finalised subject to discussion with and responses from the Board. A summary of the review's key findings and recommendations may also be produced for distribution to the wider community, depending on the preferences of the Board.

## **1.2 Review Purpose & Objectives**

The overall purpose of the Review is to review the governance and grant-making aspects of SCBF to ensure that it is fit for purpose and sustainable for the long term. Ultimately Foundation Scotland is keen to provide a report that can enable the Board and the wider community to have confidence that the impact of community benefit funds flowing through SCBF can be maximised for the Strathnairn area.

The objectives of the Review are to:

- Review the SCBF's governance arrangements to ensure that these are fit for purpose and reflect good practice;
- Assess the effectiveness of SCBF's current strategy against its Memorandum and Articles of Association and Charitable Objectives;
- Recommend improvements to current arrangements that will help enhance the work of SCBF and by implication, the impact and legacy of funds it administers.

## **1.3 Approach and Methodology**

We have sought to approach this review in a constructive manner and acknowledge that we are coming into a long established community company into which many different Strathnairn residents have given freely of their time, energy and skills for the benefit of the wider community. Whilst at times the commentary and findings may appear critical our intention is to help find workable solutions based on practice and learning from other similar settings. We are aware however that every community is distinct and what works in one place is not directly transferable to another.

We have found that most stakeholders who were consulted were receptive to the exercise and open in sharing information and views.

The following methods were used to conduct the review:

- Initial discussion with a sub-group of the Board about the context, purpose / objectives of the review, its scope and timing, and the methods to be used.
- Desk-top review of material related to SCBF's governance, administration and grant-making.
- Semi-structured interviews with a range of stakeholders to identify their perceptions, expectations and experience of SCBF and its work, and in the case of Directors, the skills and understanding they bring. This included:
  - All eight serving Directors of SCBF (as at the start of January 2017);
  - Two representatives of SNCC;
  - A number of former Directors of SCBF including some former Chairs and Vice-Chairs;
  - A former Secretariat;
  - A pool of representatives from Strathnairn community groups which are all former or current recipients of grants from SCBF.

Questions used to guide the semi-structured interviews are provided at Appendix 1.

This report presents information gathered during the review along with Foundation Scotland's analysis of the key observations and findings that emerged. These are presented under the areas of: governance, strategy and the business of grant-making. Drawing on these findings and also our own extensive experience of designing and administering community funds of varying levels of complexity across Scotland, we then present a series of recommendations for the Board to consider.

For noting, SCBF has distributed a range of types of grants including grants for groups and individuals. Whilst this broad scope of grant-making is considered within the Review and was referenced in interviews, the Review has not sought to assess or analyse any of the former or current types of grants available for individuals. Nor does the Review present detail on SCBF's financial strategy and approach to managing its income.

Sample material relating to grant making that may be useful in implementing these recommendations could be provided in due course.

As part of this review, the Board of SCBF asked Foundation Scotland to consider some legal points relating to its governance and grant-making. Although some of the questions become somewhat redundant in the light of the content of this Report, our answers to the questions posed are included as Appendix 4.

## 2 Governance

In reviewing the governance of the organisation we considered the effectiveness of SCBF's legal structure and governing rules. We have identified issues in the following areas:

- the currency of the governing documents;
- the requirements of the Agreement with Monadhliath Energy Limited;
- the structure of the company including membership;
- the process for appointing Directors;
- SCBF policies;
- SCBF profile, culture and reputation.

### 2.1 Legal Structure and Governing Document

As a company limited by guarantee with charitable status, the SCBF Board has legal responsibility to ensure that the company is appropriately run and managed, that it operates in accordance with its Memorandum and Articles of Association, and that it reports to both the Office of the Scottish Charity Regulator (OSCR) and to Companies House. Discussions with stakeholders did not raise concerns about the suitability of this basic legal structure of a not-for-profit community organisation for the purposes of holding and distributing community benefit monies. It remains fit for purpose.

The governing document of the SCBF is the Memorandum and Articles of Association. It is important to note that SCBF was registered with its Memorandum and Articles of Association prepared under the Companies Acts 1985 and 1989. When the Companies Act 2006 came into force, many of the provisions in the Memorandum of Association of each company registered at that time were deemed to be transferred to the company's Articles of Association. This change took place automatically, with no action needed on the part of SCBF. However, what this now means is that in the event of any proposed changes to the Articles of Association (and which this report does recommend) the entire Articles of Association will need to be updated as the original Articles have not been changed since this legislative provision came into force.

The constitution of SCBF should accommodate provisions within the Agreements between SCBF and Farr Windfarm Limited and between SCBF and Monadhliath Energy Limited. We assume there is also an Agreement in place between SCBF and Farr Hydro Limited though have not had sight of this. We understand from Board minutes that there is an agreement in place for £2,500 to be paid each year to the community from the Farr Hydro. The Forestry Commission wished for the funds to be paid direct to SCBF and legal documents were provided to SCBF. An Agreement between SCBF and the owners of Moy Wind Farm is in process of being approved and it would be important for any future Articles of Association to be able to also accommodate this and or any future new agreements or contracts.

Whilst many of the restrictions and safeguards set out in the two Agreements we have had sight of are ensured through SCBF being a registered and therefore regulated charity, the documents could be more mutually reinforcing of each other. For example Monadhliath Energy Limited does require certain governance and operational practices including *elections of Committee members at an agreed frequency, Company representation on the Committee* and reference at all times to the funds as coming from *Dunmaglass Wind Farm Community Fund*, and which neither SCBF nor Monadhliath Energy Limited appear to have particularly adhered to. For noting, the Agreement with Monadhliath Energy Limited appears to suggest that a separate Committee is set up, apart from the Board of SCBF, to advise on grant awards. We recommend it may be worth seeking clarity on this from Monadhliath Energy Limited. Alongside this we would recommend that the clause relating to Monadhliath Energy Limited itself having membership of the Committee is removed in a revised Agreement with Monadhliath Energy Limited, since it has clearly not enacted this provision nor seems committed to it. Unlike the Agreement with Farr Wind Farm, Clause 8.5 of the Agreement with Monadhliath Energy Limited does contemplate reviews of the Agreement, and Foundation Scotland would recommend this be pursued to help improve alignment between governing documents and Agreements.

Alongside the Company's Articles sit two other core documents – one titled 'SCBF and the Community Council', popularly referred to as 'the Protocol', and an 'Operational Statement'. The Protocol explains SNCC's role as the sole member of SCBF. The document was first adopted by the SCBF Board in December 2005, and has remained in force, with one minor amendment, ever since. We are unclear if it was formally adopted by SNCC. The Operational Statement was first approved by the SCBF Board in December 2005, and has been amended at various times since then. The current version was approved by the SCBF Board in September 2014. It is feasible that in the event of SCBF's Articles being updated and amended the Protocol may become redundant and the Operational Statement's status and content will require revising since aspects of it may be integrated into the revised Articles of Association.

Foundation Scotland is aware that there have been amendments proposed to the Operational Statement, and that these are on hold pending the outcome of this Review. Potential amendments include Directors also holding membership of SNCC; the term of Directors and the provision for their rotation/retiral; the period before Directors standing down can be re-appointed; the method of appointing Directors; and the issue of the Board meeting in public.

## **2.2 Membership**

As a company limited by guarantee, SCBF is required to have at least one guarantor or member, but with no limit to the numbers of members contained in the Articles of Association. The Articles of Association do not stipulate who might rightfully become a member other than that they need to be approved by the Directors.

However, as SCBF's original subscriber, due in part to its central role in establishing the initial community benefit arrangement with Farr Wind Farm Limited, SNCC is SCBF's sole member. The SCBF and Community Council Protocol states that the Fund 'was formed in this way because it was deemed important that the SCBF be responsible to the elected representatives in the community for the management of the wind farm funds.' Whilst this was perhaps a reasonable and best faith approach at the time, 13 years on there are mixed views about the purpose and benefits of the arrangement continuing. Whilst many interviewed are respectful of the historic links between SNCC and SCBF, a majority of current Directors and community group representatives interviewed question whether this arrangement remains fit for purpose.

Some questioned how legitimate or sustainable the current membership arrangement might be. For example, given the status of a community council as an unincorporated voluntary association – albeit facilitated by statute (the Local Government (Scotland) Act, 1994) - could SNCC actually legitimately be a member of a company limited by guarantee?<sup>1</sup> If it could, what if SNCC was disestablished or dissolved?<sup>2</sup> As noted in the footnote below, neither concern is a barrier to continuing with the current arrangement but what appears more compelling is a view that the current arrangement effectively puts an unnecessary institutional barrier between SCBF and the wider community it is established to serve.

The current arrangement qualifies SNCC as Persons with Significant Control (PSC) under paragraph 24(3) of Schedule 1A to the Companies Act 2006 as amended by Schedule 3 to the Small Business, Enterprise and Employment Act 2015. Companies must identify PSCs and keep a register of these, and file the PSC information with the central public register at Companies House. This is aimed at increasing transparency over who owns and controls UK companies and at helping inform investors when they are considering investing in a company and supporting money laundering investigations. SCBF filed its register entry on 2 September 2016.

Some Directors are of the view that the relationship helps ensure a valuable degree of democratic accountability to the wider community and SCBF should focus on ensuring that a sound strategy for grant-making is in place, and that SCBF is doing the optimum to communicate what it does and what it offers, and it ensures groups are adequately supported to develop projects and applications. However, others feel that the ongoing arrangement whereby SNCC can ultimately control who is on the Board and thereby

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<sup>1</sup> SNCC can legitimately be a member of a company limited by guarantee. However Community Councils cannot own assets or enter into contracts in its own name – this has to be done by the community council's trustees, i.e. its office-bearers.

<sup>2</sup> Whilst the Scheme of Establishment for Community Councils adopted by the Highland Council makes provision at the dissolution of a community council whereby 'all assets remaining...shall transfer to the Highland Council...' membership of SCBF does not actually confer ownership of assets to members. As a comparison, in sequestration provisions such membership is not considered as an asset for disposal as part of the 'bankrupt's' estate. Indeed, as there are no shareholders, it is not possible to own a company limited by guarantee in the way that a company with a share capital is owned by its shareholders. Members control the company, in the same way as shareholders control a company limited by shares, but they do not have any shares or other asset in the company that they can sell to another.

significantly influence its actual strategy and direction, constrains SCBF and that, under a different regime, the Board itself could ensure accountability to the wider community directly. Directors who reflected this view felt that this would be an important contribution to opening up the Fund to be more open and directly connected to the community it is serving and to *stand on its own two feet*.

The group representatives broadly viewed the relationship between the SCBF and SNCC as unhelpfully entangled. There was a general consensus that SNCC's exclusive involvement - whilst in theory representative on behalf of the community - only adds to the underlying caution sometimes felt about SCBF's identity and purpose. In addition there was a sense that SCBF could be a stronger and more effective organisation if it was independent from SNCC. An observation was made that SNCC itself was not itself strengthened by being SCBF's sole member but rather it only i) added to any already busy agenda of statutory responsibility, and ii) gave SNCC an uncomfortable level of 'moral' responsibility for the Fund which was felt to be out of date.

In Foundation Scotland's view the current arrangement is certainly unique and adds to the complex constellation of perspectives and understanding about SCBF and how it operates. We are familiar with the concept of 'wholly owned trading subsidiaries', for example, when a parent company limited by guarantee may establish a distinct trading arm but it is new for us to learn of a community company, established on the back of community benefit opportunities, being established with only one member.

At the Annual General Meeting of SCBF the Directors of SCBF report to its member, and require approval of any resolutions (appointment of directors, appointment of auditors etc) to be approved by its sole member, the SNCC. The SCBF Board currently allow members of the public to attend such meetings, and will generally take questions from members of the public, but it is not obliged to do so. At the 2016 AGM there was frustration felt by some members of the public who had attended the AGM, who felt they had legitimate questions which needed an answer (whatever the merits of the questions), but had no right to get any answers, and the Directors had no actual obligation to hold any subsequent meetings at which members of the public could ask questions of the Directors. This scenario does illustrate some of the conundrums and complexities brought about by the current arrangement.

Companies limited by guarantee are generally a collective endeavour. In the case of SCBF, this feature was assumed by SNCC at the point of establishing SCBF although it is unclear to what extent the wider community was aware of the arrangement even though the Community Council's function is to actually represent the community. Whilst this was done with laudable intent it has provided varying degrees of confusion, comfort and consternation in different ways at different times to different people. We understand that in 2005 the Board did discuss opening membership to individuals in addition to SNCC but it was suggested then that SNCC as the Member *would not actually allow this and that in any case it would not be advisable*. (Board Minute) It is not clear to Foundation Scotland on what premise this judgement was based, suffice to speculate that at the time SNCC had a

certain status within the community which enabled it to effectively also control or protect the Fund.

Neither of the current Agreements with the wind farm developers set out an expectation that SNCC should have a specific role within SCBF and the Articles of Association of SCBF simply stipulate that any representatives appointed by SNCC to the Board should not be in a majority, following advice from OSCR prior to SCBF's registration as a charity. Therefore there is no legal requirement for SNCC to actually be SCBF's only member.

Based on the views of interviewees and considering wider practice around good governance of community benefit funds<sup>3</sup>, Foundation Scotland recommends that the Board does change the general structure of SCBF so that any resident within the Area of Benefit of the Fund can apply to become a member of the company. Open membership would potentially also improve its profile and credibility and compel greater interest in and a sense of ownership of SCBF by residents.

Subject to any special provisions in SCBF's articles, members would (as SNCC is currently) be entitled to attend general meetings and vote, and appoint and remove the directors. Just as in a company limited by shares there may be different classes of shares, it is possible to have different classes of members in a guarantee company. There may be non-voting members, for example, or members who have restricted rights in some other way. Equally membership could be open to different categories – for examples, individuals, families and/or community organisations or private businesses operating in Strathnairn – meaning that SNCC could in fact retain membership but would need only to understand that it was not exclusive. The Board may wish to consider the feasibility of membership categories in due course and seek further advice on this option and/or consult with the wider community about what categories could be most feasible.

Although at present the Board of SCBF could choose itself to open up membership to others besides SNCC without requiring the Articles of Association to be amended, it is suggested that the community is consulted about this option, and that, if pursued, it is embedded within the governance structure of SCBF by making the necessary changes to the Articles of Association. Otherwise any subsequent Board of SCBF could reverse the decision to admit other people/groups to membership. Any such changes would also cover the introduction of different classes of member, if the Board wishes to pursue that option.

Currently the Board of SCBF has a veto on the admission of any person to membership. It is suggested that that provision is retained to provide a degree of security and reassurance to the Board about the potential membership and in a bid to continue the positive profiling building work of SCBF that is now underway.

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<sup>3</sup> Local Energy Scotland (2013), Community Benefit Guidance Package  
<http://www.localenergyscotland.org/communities/benefiting-from-commercial-operations/guidance/setting-up/>

## 2.3 Directors

### ***Composition***

The Board of Directors consists of 10-12 Directors, with representatives from SNCC not having a majority. Whilst this is in place to avoid SNCC controlling SCBF's operational activity and grant-making decisions, as the sole member of SCBF, SNCC does have to approve all non-SNCC Director appointments. Although in practice SNCC has not declined any proposed Director appointments, the fact that it holds this authority – as well as nominating up to one half of the Board – does give cause for concern about where control ultimately lies – even though the SNCC is itself a legitimately elected body and seeks only to represent the views of the community.

In Review discussions there was a continuum of views as to whether there should be any reserved places on the Board for Directors appointed directly by SNCC.

Foundation Scotland's view is that the majority of local decision making bodies for community benefit funds (whether constituted Boards or un-constituted Panels operating to an agreed Terms of Reference) do reserve a number of places to elected community councillors and, in the event of SCBF changing its membership structure, would recommend that this practice is adopted. It does however raise the issue of whether other established groups should also have reserved places on the Board. Many communities consider but don't pursue this unless there is a body like a Development Trust or Community Association that is deemed to be similarly representative of the whole community rather than a single issue group.

One further issue raised about the composition of the Board and its relationship to SNCC was the fact that at any point members of SNCC can also be on the Board independently rather than as nominated SNCC representatives. Whilst this does add a layer of complexity it was apparent to Foundation Scotland that those representatives are able to manage the wearing of multiple hats. What is less clear is the perception of others and whether in the event of changes to the membership structure and subsequently the Board composition, there is value in capping the number of Directors who are also serving community councillors.

### ***Terms of Office***

The Articles do not specify a term of office but SCBF's published Operational Statement does specify a three year term that can be extended to four. The Operational Statement does reflect the Articles of Association about retirement of Directors but introduces an additional clause that a director 'shall not be eligible for re-appointment as a director during the three years immediately following his or her termination as Director'. Arguably this is at odds with Article 80 that does not restrict the term for a retiring Director to be reappointed at an AGM.

There were different views about the optimum arrangement for Terms of Office. On the one hand lifting the restriction in the Operational Statement for Directors to serve longer than four years could assist with Board stability and continuity. However it also runs the risk of discouraging other residents to put themselves forward and optimising the fresh insights and operational improvements that new blood can bring into any company. A relatively simple compromise could be that provision is made that retiring Directors may not be re-elected to the Board until the AGM following their retiral. This therefore allows an opportunity for new candidates to come forward for election whilst still being able to 'retrieve' previous Directors within a reasonable period where it is felt by members important to re-institute that particular Director.

Any change in Terms of Office has to sit alongside how Directors are appointed. In the event of Directors continuing to be merely appointed by other Directors and ratified by SNCC, then extending the Terms of Office beyond a four year term should in Foundation Scotland's view, be treated cautiously. However if the Terms of Office were extended but reliant upon a wider membership electing those Directors then that may provide a more representative and potentially effective foundation from which to build future Boards (see next points on Recruiting and Appointing Directors).

### ***Recruiting and Appointing Directors***

Since 2004 there has been a relatively high turnover of Directors - circa 45 to date according to Companies House records – as a result mainly of the three year term of office stipulated in the Operational Statement but which does permit a fourth year to be served.

The Operational Statement says that the Board 'shall follow a documented process for the recruitment and subsequent election of new directors other than those nominated by the Strathnairn Community Council'. Foundation Scotland understands that the Board advertises vacancies in the community newsletter and interviews candidates who apply on a template form asking for the candidate's background and relevant qualifications and also what they can bring to the Board. A number of Directors then interview the candidates and make a recommendation to the next Board meeting. The Board will then submit its candidates to the AGM for approval, having intimated them to SNCC in advance. If this is an interim appointment, then the same procedure applies, save for the submission of appointments to the AGM. At the AGM the SNCC will formally approve the appointment (or not).

Successive Boards have sought to encourage fellow residents to put themselves forward for Director vacancies. However, based on interviews, it seems that people's reluctance to put themselves forward more readily is due to the mixed reputation of the Fund locally and varying degrees of caution about what the recruitment process actually involves. Whilst there have been efforts to advertise vacancies rather than rely only on 'arm twisting' particular individuals, there appears to be limited public faith in the onward selection process. Interviews have been held but some expressed discomfort at trying to implement a rather formal process into a community setting where often people know each other

anyway. In fact this was a good example of a key criticism of SCBF by some respondees, that from the outset it was trying to adopt the mantle of a very formal funding body, appropriate more to a national organisation, rather than a community based fund and which only had to concern itself with a relatively small and very specific geography. However there was a comment also that the interview process served a useful purpose in helping the candidate understand better what was involved and the kind of matters that might come up.

Notwithstanding the fact that recruiting volunteer boards is a challenge across the non-profit sector irrespective of rules, policies, custom and practice, it appears that recruiting and appointing of non-SNCC Directors has always been a challenge due in part to a predominant view that *no one wants to be Director* and *it's a poisoned chalice of a role*. Therefore it is perhaps not surprising to suggest that a fundamental challenge around Director recruitment has been the reputation of the Fund itself, which at a very local level has on occasion been difficult. Although these occasions have been relatively contained it seems they have left some unhelpful scars.

As already noted, Foundation Scotland recommends that the challenging matter of Director appointments (and in fact overall Fund reputation) could be better addressed if SCBF did open its membership, enabling members to then vote for Directors in line with procedures as set down in revised Articles of Association. Should this feel too drastic a change, another option could simply be to retain the arrangement of SNCC as sole member but change the Articles to allow for the election of non SNCC Directors by a public vote. SNCC's other powers however would remain.

### ***Director skills and roles***

Foundation Scotland observed that there was no Role Profile or equivalent for Directors. A role profile can be a useful tool when recruiting new Directors in helping clarify expectations, tasks and remits of Directors. A number of non Director interviewees who had been approached to consider becoming Directors or knew others who had, pointed out that this might have been useful. There is of course a Code of Conduct for Directors, but it fulfils a different function to the Role Profile. A Role Profile sets out what the Director does, and the Code of Conduct should set out how the Director does it. It is clear that the current Board as a whole has a rich and relevant skill set and range of experience, for example in:

- Company administration and legal frameworks;
- Contract management and contract law;
- Developing and managing projects / services;
- IT;
- Running community groups and voluntary organisations, and;
- Sales, negotiation, and communications.

Previously financial investment and risk management has also been a key skill area shared by some former Directors, and in the early days of SCBF the necessity for investment experience was stressed in trying to recruit directors.

It may be worth conducting a skills analysis of the current directorship with a view to identifying any gaps so as to inform future director recruitment. Foundation Scotland did not pick up that this had been done previously although the Application Form for Membership of the Board of Directors does usefully asks for the person's background skills and qualifications and what they can bring to the Board. It was however commented by a few of those interviewed that SCBF has at times appeared to 'over professionalise' the Board at the expense of a broader community focus and/or bringing in specific technical expertise as and when required.

It appears that induction of current directors is limited although there have been efforts to provide incoming Directors with an induction pack of relevant written material, including a copy of SCBF's Memorandum and Articles of Association, the Operational Statement, the Protocol, the wind farm agreements, background information on SCBF, and the Code of Conduct. While this is important it is unlikely alone to be sufficient in ensuring Directors have a strong grasp from the start of their role and responsibilities under company and charity law, where they are not already aware.

As well as there being no role description for Directors, there is no role descriptions for office-bearers, leaving individuals to define their own remit. Related, it appears that the actual office-bearer roles – other than the Chair or Vice-Chair – have not been adopted to date. We found no records of a Treasurer, for example, ever being appointed meaning that there is no Director with explicit responsibility for oversight of the Company's finances. This is despite the Board resolving on 21 December 2004 to appoint such a Treasurer, which decision appears never to have been formally revoked. However this is possibly a result of neither the governing document nor the Operating Statement requiring the appointment of any office-bearer other than a Chair or Vice Chair. What is worth noting though is the obligation of SCBF in its Agreement with Monadhliath Energy Limited 'to appoint a Treasurer who shall maintain accounts and report on them to the Company within 3 months of the designated year-end.' (Clause 5.1). We would recommend that whilst there is not a legal requirement to appoint a Treasurer within SCBF's Articles of Association, this role is introduced to assist and advise the Board in overseeing the finances of the Company. Foundation Scotland would suggest that person should have reasonable levels of experience or competence in financial planning, budgeting and reporting and Company accounting.

Despite the lack of consistent induction, the current directors displayed awareness that their role was to:

- Ensure the effective administration of the company;
- Distribute funds for community benefit in a fair / impartial manner;

- Conduct due diligence on spend / evaluate proposals for funding objectively and constructively;
- Adhere to company and charity law.

Current Directors also displayed an openness and willingness to learn and take on new practice, and a strong desire to move on from what they all acknowledged was a 'mixed bag' of practice to date, including what was described by an interviewee as *some nepotism and uncomfortable grant-making*. As a collective body they appear keen to create a more accessible feel to SCBF and encourage a more open and inclusive approach to running the company.

As part of this intention, Foundation Scotland would recommend an annual Board review / development and strategy day, perhaps facilitated by an external person. This could replace the existing meeting in October or November of each year which includes carrying out a review of grant categories. This would be aimed at team building, reviewing progress and achievements to-date, and planning for the future.

## **2.4 Policies**

### ***Respect & Dignity***

We are aware of an SCBF Respect & Dignity Policy which is under review. Its emphasis seems to be more on protection of Directors from fellow residents rather than focusing on the approach or behaviour of Directors. We have however learnt about some of the challenging incidents and activity that SCBF Directors have on occasion been caught up in involving fellow residents and remain unclear about the value or impact of the Policy/or the extent to which it has credibility in the wider community. We would recommend the Board review the value and impact of the current Respect & Dignity Policy before developing it further. This could perhaps be carried out by bringing together some past grant awardees for a discussion on this. If membership of SCBF was opened out then the members of SCBF would be consulted.

### ***Code of Conduct***

Clause 1.6 of the Operational Statement refers to a Code of Conduct that sets out the expected behaviours and norms for Directors and which can be a useful reference point for all involved. Directors affirm agreement with the Code of Conduct annually at the first business meeting post AGM. It is observed that the Code of Conduct needs to be reviewed and updated, for example including reference to the relevant charity legislation. At an opportune time it might be helpful for Directors to review its contents and how it can be used more actively as a tool when conducting Board business, learning and development.

## ***Confidentiality***

The issue of confidentiality was raised in relation to Board meetings and whether they should be open or not. This is not a new issue for SCBF to contend with. For example the SNCC News of March 2011 reported the following:

*The Board has been informed that some residents have expressed concern regarding the level of transparency of the Fund's operation. The Board regrets that due to the nature of many of the discussions their meetings cannot be open to the public. The Secretary is to review recent meetings to see whether it would be practical for a portion of future meetings to be open to residents.*

Foundation Scotland is of the view that where money comes in to communities and is managed by them, there is always a risk of inappropriate recycling of information or of discussions at Board / Panel meetings. Often, in our experience, layers of inaccurate and inappropriate information are relayed and/or the wider context or bigger picture is not understood and/or properly contextualised.

Foundation Scotland therefore recommends that Board meetings (other than General Meetings) remain closed to non-Directors unless there are particular items which do merit the presence of non-Directors – for example, inviting an applicant group to come and talk about its project. What does require attention though, is continued efforts to open up SCBF more generally through for example, a revised membership structure, improvements to grant-making activity (see Section 4 on the Business of Grant-making) and improvements on dialogue and communication (see 2.5 below).

## ***Conflict of Interest***

Conflicts of interest are common in small communities with locally administered funds, as the small number of those involved in community activity tends to mean applicants and Directors between themselves can be family, friends, neighbours or simply someone who carries a particular local status or reputation.

The Board does follow procedures for managing Conflicts of Interest as laid down in 5.3 of the Operational Statement and which is in line with Table A, Article 83 of the Company's Articles of Association. However we are aware that historically there were issues with conflicts of interest and even one interviewee quoted instances of *nepotism and uncomfortable grant-making*. This is not unique to SCBF and it is an ongoing challenge to manage the multiple conflicts of interest that can arise in small communities with relatively low populations and even smaller numbers of individuals with the time, energy and commitment to lead community activity. We would recommend that the Conflict of Interest policy is reviewed and updated to reflect current best practice including a more nuanced acknowledgement of direct and indirect conflicts.

## ***Complaints***

The current Protocol provides for a process whereby residents can raise concerns about the management of SCBF through the SNCC. In the event of General Structure of the Company changing and the Protocol becoming redundant, Foundation Scotland recommends that a revised Complaints process about the Company's management and operations is established in consultation with the membership. This would be different to a potential Complaints or Appeals process relating to any particular awards or Board decisions on awards.

## **2.5 Company Administration**

SCBF has delegated some key tasks to external professionals to try and better achieve its objectives although it has only now sought external advice to try and improve its overall effectiveness.

Administrative support has been contracted on a freelance basis, and generally but not always fulfilled by a resident with the requisite skills. Historically this person has also fulfilled the role of Secretariat (as required under Table A, Article 99 of the governing document) for SCBF and is registered with Companies House. As such, they are also responsible for reporting to OSCR and Companies House. The OSCR public record for SCBF shows all returns had been lodged on time, as had annual returns and accounts filing with Companies House. The record of current Directors is also up to date.

The split in roles and responsibilities between Board and Secretary has been generally understood. The Secretary plays an important role in supporting the monthly Board meetings, liaising with applicants, collating and circulating applications, and administering grants. However, in the past if a decision of the Board was queried, instead of the Secretary trying to explain it, they would usually refer it back to the Board for an answer. While perhaps technically correct, this was overly formal and did not help build good community relationships. This was added to the fact that the rejection of applications were not generally adequately explained in the letters sent out.

Minutes comply with the needs of the Board, and are proposed and seconded as part of formal approval. Since almost the beginning of the Fund in an effort to improve SCBF communications with the wider community, summary minutes (originally called a report) have been prepared by the Secretary, and published in the community newsletter. Since July 2016 the summary minutes have had to be approved by the Board before publication.

The Board is also supported when required by solicitor David Eason of Harper MacLeod LLP in regard to legal matters, such as overall guidance on company and charity law. In addition SCBF has taken out personal liability insurance for directors.

It has been mooted previously at Board level to introduce the positions of paid Executive Directors. Although this was not discussed at interviews, Foundation Scotland observes that the Memorandum of Association prohibits payment to directors, other than reasonable out-of-pocket expenses. In the event of such a practice being adopted, Clauses 82 & 84 of Table A, which was removed when SCBF was incorporated, would require reinstating by Special Resolution at a General Meeting and/or reflecting in a revised and updated governing document as described above (Legal Structure and Governing Document). Moreover, since SCBF is also now a charity, any payments to Trustees or Directors would also need to satisfy the Charities and Trustee Investment (Scotland) Act 2005.

In the event of SCBF revising its Articles of Association, SCBF may wish to consider removing the requirement of a Secretary so the Company's requirements are in line with the Companies Act, 2006 which removed the requirement of a private company to have a Secretary. Directors will still be formally responsible for ensuring the legal functions previously vested in the Secretary position are undertaken but any legal obligation to appoint a Secretary would be removed. Any person or body then appointed to assist with SCBF's Administration would be the Board's Secretariat, avoiding any potential confusion or misperception that the Secretary was also a Director.

## **2.6 Profile and Communications**

SCBF has worked steadily over the years to ensure adequate information is provided to the community, to improve the openness and transparency of SCBF and build its reputation and profile.

Key communication activity within the community has included:

- For the period 2011 to 2014, an annual flyer was produced detailing the funding that had been received and grants that had been paid in the previous year and also the new grants for the following year. The flyer was distributed to every household within the Strathnairn Community Council area with the December edition of the Strathnairn Community Newsletter;
- Online information previously located at [www.strathnairn.org.uk](http://www.strathnairn.org.uk) included legal and operational documents, details of the grants available and also grant application forms. Information also included the names of Directors, dates of meetings, annual reports and approved AGM minutes. A new website <http://www.strathnairncbf.com> went live in 2016 and from which all existing public information is available as well as the additional feature of an online application form;
- Abridged minutes and other updates provided in the Strathnairn community newsletter produced every two months;
- Posters, details of Director vacancies or information about grants awarded have at various times been posted at 10 noticeboards across the community.
- Establishing a Facebook page and which now has 54 likes and 57 followers.

There have been other features introduced to try and enable effective communication, including production of FREEPOST envelopes to help with correspondence and applications and occasional open meetings to discuss the Fund with residents. We have not found located written reports from these open meetings yet, though they were referred to by some interviewees.

Despite ongoing efforts over the years to ensure the community are aware of SCBF activity – and which had improved significantly in the latter years according to most interviewees – almost all referred to SCBF’s history as being one of mixed fortunes and which means that the SCBF’s reputation remains somewhat fragile. Whilst acknowledging the significant opportunity the community benefit monies bring, many interviewees referenced a legacy of tension within the community about how SCBF runs.

As already suggested above at 2.3, recruiting and appointing of non-SNCC Directors has always been a challenge due in part to SCBF’s mixed reputation. One interviewee even quoted a sometime view of the Board as being akin to *a dragon sitting on a golden hoard* and another that the *Directors are perceived as a crippling group*. Reasonably frequently the community’s relationship with SCBF was referred to in *them and us* terms. These were harsh descriptors to hear but they do give an indication of the strength of feeling that has been around at times amongst some residents.

From its discussions with interviewees and review of SCBF material Foundation Scotland observes that SCBF does appear to have been surprisingly inward looking during its time given the income opportunity and limited experience of locally administered grant-making. Foundation Scotland has not, for example, come across evidence of the Board seeking external advice about best practice in grant-making or organising training sessions for Board members on issues such as good governance or legal structures of community groups - beyond occasional contact with neighbouring communities or lawyers.

In fact SCBF has been very self-reliant. This is a strong feature of its work to date but has meant it quickly becomes heavily reliant on the current expertise, interests, preferences or bias of current Directors rather than necessarily being supported to invest in developing a more collective identity or more substantive information and guidance about its core business of grant-making (see Section 4). Despite the ongoing communication activity as cited above, the relative sparse grant-making information appearing over the years has not helped build SCBF’s reputation and allowed for the myth and mystery about *‘smoke filled rooms’* and perceptions of cronyism and vested interests to perpetuate. Arguably this has dented the efforts of some potential applicants and Directors whilst also making for an uphill struggle for any subsequent Board to move forward from.

There is however also a sense that the Board may not have always felt confident in its role – which is understandable given the scale of funds and the inherent challenges of a locally administered fund - or in its grant making processes, and may have been worried about further criticism by some in the community for all manner of reasons. This situation may have been avoided had the Board sought external support at different times – beyond

recourse to lawyers for example who, in Foundation Scotland's experience – have limited nuanced understanding of the complexities of community fund management and grant making. Another point made was that sometimes SCBF isn't able to respond quickly enough to community feedback and that it can take two or three meetings to resolve an issue and which can generate further criticism.

Going forward and taking on board suggestions from interviewees for improving its profile and reputation, Foundation Scotland recommends that SCBF considers some of the following in the short to medium term (over the 1-2 years):

- Sharing this report or a version of it with the wider community. Certainly non-Director interviewees were keen to read the output they were contributing to.
- Scheduling occasional 'SCBF learning and development sessions' (which can of course be named/branded differently) that provide an opportunity for invited groups to feedback on project progress and/or to share learning and/or for the Board to consult with attendees about particular matters;
- Producing some substantive case studies that can be published to illustrate the (transformative) community activity it is supporting locally and build SCBF's profile. What would be important would be the voices of those helped by the awards, so that their side of the story is told. The case studies could both be published in the community newsletter and be distributed to stakeholders in the community
- Enhancing the website with more information for applicants, informed potentially by some of the recommendations under the Business of Grant-making section;
- Producing and distributing an SCBF leaflet – and which is perhaps updated annually – with information about grants available, Board meeting dates and a few headlines on impact being achieved. This could be drawn from a more comprehensive annual report.
- Ensuring comprehensive reports are prepared for wind farm/hydro owners and using these as resource material for onward communication to the wider community. Foundation Scotland could only locate some reports to Farr Windfarm Limited and none to the community providing substantive information beyond the perfunctory and formal annual report.

### 3 Strategy

In early 2016 the Board made changes to the types of grants available from SCBF. Taking SCBF's overall Charitable Purposes as the framework for analysis, this section makes comments on strategies in the light of SCBF's overall Charitable Purposes and raises some considerations about impact for the future.

Key issues that emerge include:

- A recurring tension between providing grants for individuals as opposed to groups and which can cause distraction and a degree of mission drift;
- The need for a finalised Community Plan that has a strong degree of ownership and which the wider community feels a commitment to;
- The opportunity and broad support for SCBF to invest in a salaried development officer position to take the lead on designing and managing some strategic projects that could provide wide community benefit;
- The opportunity and broad support for a community anchor organisation to be established (using the reputable Development Trust model) and that can be funded in the first instance by SCBF and become the employer of the development officer and any other potential staff.

Note, the commentary on Strategy does not take account of SCBF's financial strategy and assumes that the current financial strategy is fit for purpose.

#### 3.1 Purpose of SCBF

SCBF's purpose, as set out in its Memorandum of Association, is

- *The promotion of urban or rural regeneration in areas of social and economic deprivation and in particular in the Strathnairn Community Council area by way of all or any of the following. A list of 11 charitable purposes follows.*
- *To promote the conservation, protection and improvement of the physical and natural environment, in particular to conserve and manage for the public benefit community land and related assets in Strathnairn Community Council area.*
- *To carry out any other charitable purpose for the benefit of the public.*

The Agreement with Farr Windfarm Limited cites a preference *for proposals of an environmental, energy efficiency, tourism, recreation and local amenity nature including also any charitable purposes within the Strathnairn area.*

The Agreement with Monadhliath Energy Limited also restricts funding to the Strathnairn Community Council area but otherwise cites use of the funds in a similar vein to the Farr Agreement, namely that they are *for the purpose of supporting local environmental, educational, sporting, amenity or other appropriate not for profit initiatives within the Area of Benefit which are consistent with the principles of environmental projects, community based projects, charitable trusts, clubs and societies.*

These uses of funds are extensive and in alignment with the Memorandum of Association, (notwithstanding the earlier point about distributing funds) enabling SCBF to fund a very wide range of activities common to rural regeneration and providing a reasonable explanation as to why an extensive range of grants were formerly available and which sought to make available funds in direct response to some of the above requirements.

Notably, the Memorandum of Association does not articulate a primary purpose about the distribution of funds nor in fact is this prescribed as a specific power of SCBF's. In contrast however the Operational Statement does state that SCBF is responsible for *allocating funds to projects in accordance with the Agreements and the Memorandum of Association* but Foundation Scotland would expect to see this articulated in SCBF's governing document.

We would recommend provision for this is made more explicit to emphasise SCBF's role as a distributor of funds, rather than as an all-purpose enabler or facilitator of rural regeneration locally. This feels pertinent in the current climate with Directors and some in the wider community beginning to consider options for developing the infrastructure within the community to support the development and implementation of strategic community projects.

Related, it is worth noting that the Agreement with Monadhliath Energy Limited does seek to curtail SCBF's role in doing more than distribute funding to *Acceptable Project Applicants*. Clause 1.1 of the Definitions and Interpretation section of the Agreement defines an *Acceptable Project Applicant* as any community group etc and which, *for the avoidance of doubt, shall not include the Recipient*. This point is emphasised in the Agreement at Clause 4.1 when it is stated that *the Recipient shall not own or have a direct or indirect interest in any of the Projects to which it donates the Funds*.

The Board of SCBF has on occasion been approached by members of the community about taking forward a capital or other major project on behalf of the community, such as in 2014 a proposal to acquire the Farr Church building for community use. This has perhaps stemmed from a misunderstanding amongst some in the community as to the proper role of SCBF. Those making the approach saw an active local anchor organisation with substantial funds at its disposal, and came to the wrong conclusion. It must be said though that the Board has consistently since its inception declined to fulfil that role, and has always sought to encourage others to come forward with proposals which SCBF might be in a position to help fund.

Whilst that has indeed been the case, Foundation Scotland has nevertheless observed somewhat of a dilemma within the Board about the extent to which it gets involved with projects – either in their development, pre-application stage – or even during the application stage. Foundation Scotland understands that this proactive and engaged approach was adopted by the Board in 2015/16 as part of a greater effort to try and make SCBF more accessible to community groups, break down barriers and generally raise the profile of SCBF whilst also providing hands on support and guidance to applicants as required. Whilst this approach could run the risk of creating conflicts of interest it is an

understandable way of trying to connect SCBF better with the local community and ensure that strong applications are coming through.

Going forward Foundation Scotland suggests pulling back from a proactive focus on projects per se and instead support strategic discussion around improving the local infrastructure to better support project development and capacity building within Strathnairn (see 3.3 below). This should be done alongside an overhaul of its grant-making practice that could ensure a more robust, efficient and transparent approach. With clearer and more consistent guidance and support from a locally based paid development officer, Directors could direct their time towards their governance and strategy roles and responsibilities for SCBF, rather than for applicant projects, which are actually the responsibility of those applicant management committees, boards or teams.

## **3.2 Distribution strategy**

### ***Grants available up to January 2016***

Up until early 2016 SCBF was providing many different types of grant to the community. Successive Boards had sought to expand access to monies available by devising new grants covering an increasing range of issues considered relevant to the local community. It is clear that the Board of SCBF had responded over the years to demands from individuals within the community to fund particular types of activity, where the Board at the time saw merit in that activity e.g. the introduction of a Learning and Development Grant of up to £250 in response to a request from one particular family.

As a further example, sports awards had expanded to include not just competitions but training for competitions. On the one hand the Board has shown commendable willingness to adapt its grant categories to accommodate local demand, especially where the activity or need in question is considered to have merit. On the other hand it does highlight the somewhat restrictive nature of the original governance set-up of SCBF, where the Board needed to consider whether each new grant category might require approval from OSCR and/or a windfarm developer, and whether it could be accommodated within SCBF's original Memorandum and Articles of Association.

The Board held various feedback exercises with the community to inform its grants strategy including, for example, a Have Your Say postcard exercise in 2005, (which produced a 38% response rate), and a community surgery in 2014 involving public meetings were held in Farr and Strathnairn Halls but which no members of the community attended.

There are though restrictions placed on SCBF by the developer Agreements; for example the Monadhliath Energy Limited Agreement allows payments to individuals only in cases where there is clear benefit to the wider community, and SSE (the energy company that acquired Monadhliath Energy Limited from RES) clearly indicated in a meeting with the SCBF Secretariat in 2014 that individual grants should be paid out of the Farr windfarm

money, not the Dumnaglass windfarm annual payments. So it is perhaps fair to suggest that the issue of grants to individuals is contentious both with one of the wind farm owners and within the community and appears to have done much to cloud and confuse the reputation and profile of SCBF locally. A number of Directors themselves indicated feeling less comfortable themselves with the grants to individuals since judging them can be *fraught* and *very tricky unless we can somehow remove the personal element of it*.

By 2015 there were about 16 different types of grant available, the majority of which were for individuals and households alongside a general grant for community organisations and individuals. These included:

- **General Grants** for a wide variety of projects and causes, both for groups (both constituted and un-constituted) and for individuals.
- **Venture Grants** of up to £250 to a maximum of 20% of the applicants' costs for those planning to participate in an educational or training project organised by a recognised charity or a school/university.
- **Further Education and Training Grants** of £250 for students leaving school and going on to further education or training.
- **Supplementary home heating grants** of £350 to support local residents in receipt of Pension Credit; consideration given for payment when the cost of heating exceeds a high percentage of income.
- **Sports support grants** to help competitors in Scottish or national championships, of up to £250 to cover up to 50% of costs.
- **Learning and development grants** of up to £500 to residents who require the development of a Co-ordinated Support Plan or equivalent.
- **Renewable energy grants** to homeowners of up to £1250 for the installation of renewable energy technologies and energy efficiency measures.
- **Donations** of up to £250 for a local group or organisation planning an event which is open to the public.

In discussions with interviewees it is striking how much of an emphasis was placed on the legacy of the grants for individuals and the way changes to the current arrangement were made, though this is perhaps not surprising given the extensive period of time that the previous range of grants was in place (2006 – 2016). Amongst other community benefit funds that Foundation Scotland is familiar with it is quite unusual to see such an extensive list of ways that individuals could benefit directly from community benefit monies, irrespective of the fact that, as with SCBF, most Memorandum & Articles for locally established community benefit Trusts/Funds will allow for grant-making to individuals for charitable purposes.

However in the Strathnairn context, there does seem to have been an underpinning sense of individual entitlement to community benefit monies, exemplified in a the current SCBF 'Grants Strategy' overview where reference is made to *one of the most common comments voiced to SCBF was why funds could not be divided equally between everyone*. In some respects it is curious how and why that is or was the case after over 10 years of

implementation. Nevertheless this appears to have been a key driver for introducing the universal household energy grants from 2015.

Alongside this new grant however the Board also significantly reduced the number of other grants to individuals on the back of concerns that individual grants *had limited applicability to the majority of households in Strathnairn resulting in an unfair distribution of funds.*

### ***Grants available since January 2016***

The Board elected to refocus the funding strategy on targeted hardship and respite support for other groups or projects providing community benefit for Strathnairn, household energy and energy-efficiency grants, and large scale legacy projects. This resulted in the Board designing five different types of grants for individuals and the general grant for community groups continuing. The previous practice of awarding general grants to individual applicants if the grant did not fit within any of the other grant categories e.g. for sports equipment, or for three year support for international class athletes, was to be stopped. SCBF made a decision, in November 2015, to make these changes on a trial basis before its final decision to retain them a year later.

It appears from discussion with the majority of interviewees that despite a clear intention by the Board to secure community support (August 2015 Board Minute) through the request for feedback on the reverse of the 2016 Energy Grant Application Form, the change in strategy was not particularly well handled.

The Board however were delighted at the 70.3% response rate and the overwhelming positive response that supported the proposals as a 'fairer' way to distribute community benefit monies and that investing in larger scale legacy type projects was appropriate. There were though frequent concerns expressed that educational grants would no longer be available but the Board did not make any changes in the light of those views.

Foundation Scotland is aware of some of the challenges that the Board has had to deal with as a result of the change in Grant Strategy but is keen to emphasise the following:

- Some resident groups (such as young people and those residents keen to develop local businesses) had specific targeted grant opportunities under the previous strategy. It would seem pertinent to understand particular issues facing particular groups with a view to considering how SCBF may ensure their needs are better met. This may not necessarily mean the former grants are re-instated but could catalyse some other kind of action or service.
- There seems to be a reasonable amount of positive support to re-instate the education and training grant. It would be helpful perhaps for the Board to review its position on this aspect and whether some form of education bursary for individuals can be re-introduced, possibly slightly repackaged to include some level of commitment by the candidate to 'give something back into Strathnairn' within a

given time period (such as volunteering for a local group for example for a limited period) or provide clear reasons about why this is not feasible.

- The Board has undertaken to review its grant-making approach annually. Foundation Scotland would suggest this practice continues but that every second or third year in preparation for its annual review, SCBF could either undertake a survey of views (for example, via an online platform like SurveyMonkey – [www.surveymonkey.co.uk](http://www.surveymonkey.co.uk)) or organise a facilitated (focus group approach) discussion with some residents.

Foundation Scotland has not assessed further the grant-making to individuals since the original inception meeting on 3 October 2016 although we note that the previously quoted Grants Strategy document published at <http://www.strathnairncbf.com/grants-strategy/> does suggest that a decision to continue with the new strategy will follow this Review.

Foundation Scotland does take the view however that arrangements for funding individuals remains a risk to SCBF in the following circumstances:

- when applications are not handled well and which may be due to inadequate assessment of need;
- Director perception and/or conflicting personal matters (it should be noted that where a director applied for an individual award, then the matter was considered by the Board, with the director concerned removing him/herself from the discussion, rather than the application being dealt with under delegated powers, as would otherwise be the case – this is a proper method of dealing with such applications);
- their charitable status - particularly in relation to household energy grants, which, whilst broadly well received by residents, could be regarded as non-charitable when offered as a blanket payment and not delivered under a programme of assistance aimed at, for example, relieving fuel poverty or achieving another charitable purpose. However in this instance Foundation Scotland is reassured that at its August 2015 meeting the Board noted the need for OSCR agreement *that the energy grant would meet the charitable objective of SCBF*, and the then Chair reporting the following month that *David Adamson (OSCR Compliance) did not believe that OSCR would have an issue with increasing the energy grants and removing individual grants.*

There remains though, in Foundation Scotland's view, unclarity on grants for community groups. The Grants Strategy page on the website refers to focused support for *community based organisations such as Care in Strathnairn, the SCATA bus, the community halls and schools*. Whilst Foundation Scotland is aware that these groups have received recurring support from SCBF, it is not clear from that public information what the 'focused support' means and/or whether these named organisations are still expected to apply via the General Grants route like any other community organisation or whether SCBF provides support to the those groups on more of a commissioned basis. Foundation Scotland recommends this is clarified and/or made more explicit in publicly available information.

### **3.3 Enhancing the local infrastructure**

#### ***A Community Plan for Strathnairn***

One of the drivers for refining the types and levels of grants available appears to have been a desire on the part of SCBF to encourage a more proactive approach to community development within Strathnairn and to support projects that a wide number of people benefit from and which help ensure the sustainability of Strathnairn for future generations. This ambition has sat alongside a recurring effort and intention on the part of SNCC to produce a community plan for Strathnairn that reflects the needs and aspirations of local people and guides change and development.

Around 2011 the then SNCC mandated a sub-group (Community Plan Group – CPG) to draw up a five year community plan. The sub-group included SNCC members who were also SCBF Directors since the motivation to develop a comprehensive community plan was in the main linked to informing the best strategic use of the community benefit monies.

In 2013 a community survey was undertaken to which circa 120 people responded. This generated a wealth of feedback on key issues including how people felt about the community generally, views on community assets such as village halls, sports field and woodlands, the work of Care in Strathnairn and the general ideas of improving the facilities and services in the area. There was also a question on whether the household had benefitted directly or indirectly from an SCBF grant and what could be done to improve SCBF.

Foundation Scotland understands that some feedback was then provided to specific groups referred to directly or indirectly in the survey through the Community Planning Group. Whilst the group has met at various times since then to take actions forward - most recently in 2016 – the CPG has understandably got drawn into project level activity (e.g. broadband, defibrillators) rather than focusing specifically on the objective of producing a community plan and which is still to be developed.

Many communities which Foundation Scotland knows undertake community planning processes usually through commissioning the work to specialists who will usually take three to six months to complete the process. Whilst this runs the risk of imposing an overly formulaic approach onto a community and/or distancing the community itself too much from the process and/or not having a sense of ownership of the output, in Foundation Scotland's view there is a reasonably wide field of practitioners now available to undertake the work in a bespoke manner and at a pace to suit the community. Most critically the result is not only a common reference document that people feel engaged with and excited by, but if done well, the process can help build relations and social capital between residents and develop a spirit and momentum of interest and commitment to the wider concept of community led change that is retained long after the end of the formal planning process. Foundation Scotland would urge that that the community planning work is

completed and an output produced around which the community can coalesce and move forward.

We would also suggest that once the community plan is produced, the Board of SCBF should seek to align its grant strategy with the priorities identified in the community plan, in so far as the Agreements with the wind farm developers allow.

Most recently a series of meetings took place (in March, April and Sept 2016 according to records on [www.strathnairn.org](http://www.strathnairn.org)) by which time SNCC had agreed that formalising the community's planning and development efforts via a paid resource was a sensible way forward. This view was endorsed in Review discussions when interviewees shared a common view that investing in a paid officer to assist groups to develop and even implement the strategic level projects would be welcomed. It should be noted that the area previously had a development officer, employed as a result of funding from the Highland LEADER Programme, and who initially fulfilled the duties of SCBF's first Secretariat as part of his development officer role.

### ***A Development officer and/or a Development Trust for Strathnairn?***

In April 2016 the CPG met with a representative of Development Trusts Association Scotland (DTAS). DTAS is the national membership body for development trusts in Scotland. Development trusts are community led and owned organisations that want to bring about significant and sustainable regeneration in their communities. Many have been established as companies limited by guarantee often with charitable status or more recently as Scottish Charitable Incorporated Organisations (SCIOs).

Underpinned by a strong ethos of self-help and self-reliance and a belief that community regeneration achieved through community owned enterprise and assets helps build strong and sustainable communities, development trusts are set up by local people motivated to tackle local issues and improve the community. The range of issues that they might get involved in is therefore extensive and diverse including running childcare or youth programmes, managing housing developments, building micro renewable projects, operating transport services, owning land, restoring and repurposing old buildings, running local shops/post offices, woodland management, running a local leisure centre, and operating care services for the elderly.

Development trusts are not a legal form but do share some common characteristics:

- They are owned and managed by the local community, meaning they will be membership based with membership being inclusive of local residents within a defined geographical area and governed by a board of directors elected by the members;
- They have an explicit aim to achieve sustainable regeneration of a community or address a range of economic, social, environmental and cultural issues within a community;

- They are independent but seek to work in partnership with others;
- They aim to reduce dependency on grant support by generating income through enterprise and the ownership of assets. Trading surpluses are principally reinvested in the organisation or the community.

(reference: [www.dtascot.org.uk](http://www.dtascot.org.uk) )

There is no prescribed route to establishing a Development Trust. In Old Luce, Foundation Scotland worked with the Community Council to commission a community planning process that identified the need for an anchor organisation to help drive forward many of the community's 'big ticket' items and which are now underway supported by the capacity created through the recently established Old Luce Community Trust. In Kyle, Foundation Scotland conducted the Kyle Conversation and worked in partnership with an informal voluntary association that evolved into the Kyle Development Trust (and which in 2015, only two years after being established, was leveraging in £300,000 into the community (none of which was renewables related).

Arguably Strathnairn is ready for such an organisation to get established sooner rather than later and that was able to employ a dedicated development officer. Interviewees gave regular references to the benefits that would accrue if there was a position dedicated to taking forward significant strategic projects on behalf of the Development Trust and/or alongside or by established groups. Some interviewees also commented that whilst there is valuable activity going on there would be benefit if groups were enabled and encouraged to collaborate and which could happen better if this was facilitated rather than left to chance. A Development Trust might be well placed to help with this.

Related some interviewees commented that an impact of community benefit monies being available over the years has been to dampen local fundraising activity and the social benefits that can be linked to that – especially when it involves creating opportunities for people to come together. Establishing an organisation to catalyse and support more strategic community development initiatives could also trigger or inspire other smaller scale - but equally valuable – activity that some feel has gone into abeyance.

However whilst all those interviewed supported in principle the idea of investing in a resource to assist and support local community development, concerns were also raised about one or more of the following:

1. Could the new organisation simply not be a rebrand of the SCBF?
2. If a Development Trust cannot be an extension of the SCBF, what would the relationship be between SCBF and the new organisation?
3. If a Development Trust cannot be an extension of the SCBF then a whole team of new Directors needs to be found.
4. If a Development Trust takes a bit of time to get established why can we not proceed to contract someone on a freelance/independent basis?

To some extent these questions are not new but it is perhaps useful to have some clear objective responses to them at this point:

1. Although SCBF's current Articles would not be a barrier, the current Agreement with Monadhliath Energy Limited does prevent SCBF awarding grants to itself for projects/activity it seeks to implement. In its work with communities across Scotland, Foundation Scotland is generally cautious about pooling responsibility for administering community benefit within an operational community organisation with responsibility for 'doing' projects because of the inherent conflicts of interest that ensue and the governance issues that abound when a 'distributing' organisation in effect distributes funds to itself. Conflicts of interest may arise when the board of the grant-making body see its first priority as keeping the staff for whom it is responsible, funded and in a job, no matter what outcomes and outputs the staff may be producing, and no matter that other projects might have more merit in being awarded possibly scarce local funds. The grant-making side of the organisation can no longer be objective about monitoring and assessing the development side of the organisation.
2. In the event of a new entity being established that subscribes to the values and approach of a development trust, it would be perfectly feasible for SCBF to provide the new organisation with an agreed sum for an agreed period to establish itself operationally (covering initial set up and running costs) and to seed fund some initial projects. This might be a recurring arrangement, subject to reporting and review, but the intention should be that some of the projects generate income for the Trust and that it also levers in additional funds from other sources.
3. There is understandable caution as to whether Strathnairn can support another organisation, based on the experience of fewer people coming forward for volunteering roles in the community. Whilst this is indeed a challenge for Strathnairn, as it is for many communities both urban and rural, it does also present opportunities for residents to come forward who may be keen to do so and have the skills and interest to participate. Whilst Foundation Scotland is aware of some communities losing community councils because of insufficient volunteers coming forward, Foundation Scotland has yet to learn of a development trust that either could not be formed or sustained because of limited community support.

However there may actually be organisations within Strathnairn already that have the potential to transform to become a development trust. Any existing community project could become a service of a new development trust, releasing those established trustees – should they so wish – to engage with the wider work of a development trust whilst also retaining oversight of the original project or service they were responsible for.

4. The challenge of commissioning someone in the short term to proceed with the nuts and bolts of establishing a development trust could be overcome. For example:

- i) An established constituted group/organisation could contract the role for a limited period of time – for example – six months, and during which time the actual Trust would be established. The role would then transfer to the Trust which would either continue to contract the person on a freelance basis, buying time for the Trust to get up and running on project activity in the first instance or the Trust could immediately become an employer. Unless the organisation was well placed itself to transform into a development trust, it would be understood by all concerned that the local organisation was simply providing the institutional vehicle through which a development officer can be commissioned to establish a development trust. (Foundation Scotland would caution against the SCBF being the vehicle through which the role is initially commissioned. Not only does the Monadhliath Energy Limited Agreement prevent this but Foundation Scotland is of the view that SCBF itself needs to better separate itself from implementation activity (see next Section) and this would not assist with that shift); or
- ii) For an agreed limited period SNCC could commission the role on a freelance basis<sup>4</sup>. Whilst this would also have a 'messy' element, given the role of the SNCC as SCBF's current sole member and from which it would require a grant to implement the arrangement, there is no restriction on SNCC receiving a grant from SCBF nor on commissioning activity. Foundation Scotland has direct experience of supporting a community council in another Highland Council area in this way whereby the community council operated as the vehicle through which a freelance practitioner was commissioned to establish a Development Trust. The community council established a short term management group equivalent (and which in Strathnairn's case could be the established CPG) to serve as an initial body to which the role was accountable; or
- iii) The CPG could, relatively quickly, constitute itself and rebrand itself as Strathnairn's Development Trust, secure a grant from SCBF and commission a development officer.

It would appear that the time is ripe to try and pursue the twin tracks of investing in a paid resource to develop the many projects that have already been identified<sup>5</sup> within the community survey and also establishing a community organisation that can work with local groups and other residents to maximise Strathnairn's many assets.

Irrespective of how a paid development officer resource is best set up for Strathnairn, it is important to acknowledge concerns expressed by some interviewees about how SCBF has formerly approached the issue of paying local people for fulfilling local posts. It was felt

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<sup>4</sup> Although SNCC could not engage or contract with someone in its own name, the office-bearers of SNCC as its trustees could do so in their own names as trustees. Liability for any loss or debt incurred would rest with those office-bearers, not with SCBF as the funder, but they would have a right of relief from SNCC's funds, where available.

<sup>5</sup> From various CPG notes and Review discussions examples include development of Farr and Daviot Community Halls, development of Daviot Playing fields and Farr Community café, improving infrastructure for walking and cycling and progressing broadband developments.

that on occasion in the past there has been a perception by the Board that SCBF should not be expending funds on local salaries and that, as with the role of an SCBF Board Director role, activity that was *for the community and by the community* should be delivered in a voluntary capacity. Whilst there will be many who disagree with this attitude a number of interviewees did cite such a perception and that it had led to feelings of discomfort and tension.

Going forward it may be helpful if SCBF, informed by some further discussions with representatives of local groups, provided guidance on its position on funding salaries to enable everyone to be clear what its position is. This would help clarify uncertainty on the part of the applicant whilst also ensuring that decisions made by SCBF related to salaries did not risk being perceived as at best ill-informed or at worst overly personal.

## 4 The Business of Grant-making

In a rather old but useful publication, the Grant-making Tango (Baring Foundation, 2004) Julia Unwin notes that *high quality grant making is an attempt to make the relationship between funders and funded a productive one for both parties*. SCBF has been making awards since 2006, under a framework that has evolved over the years but which has been informed primarily by local understanding and ideas about grant-making. Whilst efforts have been made to develop an overall approach that is fit for purpose, and certainly much Director time has been expended on faithfully seeking to achieve this, Foundation Scotland's conclusion from undertaking this review is that SCBF's grant-making policies and processes need to be better understood, trusted and accepted by members of the wider community. An extreme indication of this was provided by an interviewee who referred to a group that is ready to apply but which does not feel sufficiently confident in SCBF's processes to apply. So it is less a matter of risk of refusal but more an uncertainty about the actual process to secure an award.

With a keen awareness that ensuring the right type and amount of information is requested, provided, assessed and recorded is quite a complex undertaking, in the following section we try to describe where some of the strengths and weaknesses of SCBF's current approach and suggest areas of improvement.

One caveat however. We are aware that with SCBF's revised strategy there may be less 'lower value' applications coming forward so acknowledge that in the light of that there may be understandable reservations about making changes to the extent being suggested below. However we took the view of trying to ensure SCBF had a stronger and more robust approach to grant-making per se, irrespective of any particular grants strategy in place now or in the future.

### 4.1 Application Process

#### *Frequency of awarding grants*

SCBF has an impressive track record of running the General Grants programme on a rolling basis and therefore enabling groups (and formerly individuals too within this category) to apply at any time. Whilst this has generally worked well, there was a suggestion in interviews that the current arrangement might disincentivise groups who may actually respond better if there were a series of deadlines for general grants. This would also mean that the Board could plan to dedicate certain meetings to General Grants and reserve other meetings for other SCBF Business including consideration of other individual applications.

It is noteworthy that the Board initially planned to meet four or five times per year, including after the AGM, then in 2008 that was changed to six times per year, and the volume of business meant that the Board was soon meeting monthly, with interim meetings between the scheduled meetings. At one point the intention was that awards would be dealt with at every second meeting, with the Board's more strategic and

operational issues being dealt with at the other meetings. However we now understand that following the review in 2013 referred to below, they are now considered at the next suitable Board meeting, so long as the application has been received in good time for the individual Directors to read the application in advance and raise any queries of the applicant through the Secretariat. We do recognise that this has the merit of giving a swift response to applicants.

Foundation Scotland is aware of other community bodies with a similar role to SCBF where they have reviewed their meeting arrangements and opted to separate out some of the grant-making activity from other wider company business. The general effect has been positive – for both applicants and the Board.

Whilst the transition from an open programme to advertised closing dates was a significant step change – and indeed resisted by some community representatives and even directors initially – community groups have found that the closing dates are helpful and provide some milestones through the year around which to plan. Directors feel that meetings are more efficient as they are more focused and that when the meeting is focused on grant-making then they tend to consider applications more equitably because they are looking at a number of applications across the board rather than on more of a piecemeal basis month by month. We would suggest that a previous SCBF Board had also previously come to that conclusion, as detailed above.

### ***Improving transparency***

The grant application process, whilst known to Directors, is not set out for applicants other than a statement that *an applicant may be invited to the Board meeting to discuss their application*. Foundation Scotland understands that the process being followed follows the outcome of proposals by a sub-group of the Board that in 2013 considered openness and transparency. It recommended that applications are received by a certain date in the month, that the Secretariat checks them for eligibility and shares these with the Directors who then have a week to consider them and raise any questions on missing information or clarity. The Secretariat then seeks clarity on any questions raised and shares these back with all Directors prior to the meeting. If the applicant does not respond, the application will still go to the Board but which may require further information for a decision to be made.

The intention is that Directors arrive as informed as possible to enable more efficient decision making. However applicants, especially perhaps those applying for the first time, are not given information about what to expect when making an application other than that they may get invited to a Board meeting. They do not know, for example, the cut off time in the month for a grant to be considered for the next Board meeting and which we understand has moved from the end of the month to the end of the first week in the month.

Although the Board meeting dates are now included on the SCBF web-site, they do not appear to be publicised via the community newsletter. Consequently applicants cannot be certain, until closer to the time, as to when exactly they will receive a decision. This may impact on their planning and in turn decision as to whether to apply. It is recommended that guidance material is developed that provides clear information about when applicants can expect a decision.

### ***Application guidance***

Interviewees commented on a lack of guidance and which means applicants have very limited knowledge about the criteria on which their application is being judged. On the grants strategy page of the website the only guidance on criteria for groups is that they are aimed at providing community benefit for Strathnairn. On the page titled Community Groups the guidance is simply that:

*Community group grants are available to any organization which consists of a reasonable majority of Strathnairn residents, has open access to all of the target population for that group and has an identifiable relevance to the wider Strathnairn community.*

*The group must be non-religious and non-political and if a charitable organisation, then need to be established and located within Strathnairn and carry out charitable activity solely for the residents of Strathnairn. Fundraising events in support of non-eligible charitable organisations would not qualify as being a Community Group.*

In the 'How to Apply' section and on the application form itself the guidance given is:

- *The General Grant is available to community groups or for projects which have future long term benefit for the community (known as legacy projects).*
- *If applying on behalf of a group or organisation the most recent set of accounts must be submitted with this application.*
- *A full cost breakdown for a project must be provided including details of proposed purchases, funds raised from other sources, and other non-monetary contributions.*
- *Apart from in exceptional circumstances the Board expects that a financial contribution is raised by the applicant organisation.*
- *Applicants may be invited to attend the Board meeting to discuss their application.*

As an experienced grant-maker, Foundation Scotland is very aware that applicants often do not read accompanying guidance notes. However if a funder makes them available at least they are reassured that they have sought to be as clear as possible about what is expected from an application and the level and type of information that is being requested. In addition, the funding body can be very clear about the priorities any application must meet, any restrictions on funding, how their application will be assessed, when they can expect to hear back and what the reporting requirements are likely to be.

Comments were also made about there being no minimum or maximum grant size operated by SCBF at present and all group applications, irrespective of value, type of

applicant (constituted or unconstituted, incorporated or voluntary association) or type of project apply on the same application form. Foundation Scotland strongly recommends this arrangement is reviewed and could provide guidance and ultimately templates to assist with this process. Of note was reference by a number of interviewees for more bespoke application forms relative to the size of the grant request and which may be a way of encouraging more applications. We would encourage such a demarcation to enable a more balanced approach to grant-making.

For noting, we are aware that the Board is currently considering a proposal for larger grants. We would suggest that if the Board opts to follow many of the recommendations in this report many of the concerns raised in that paper could be addressed.

In reviewing the grant-making material and discussions with interviewees, a few other areas of guidance surfaced that it would be helpful for SCBF to clarify:

- The period of the grant offer. Many funders will expect grants to be expended within a 12 month period unless it is for a multi-year award.
- The status of retrospective grant-making and whether SCBF will consider supporting activity that has already taken place and taking into account whether costs have been incurred or not. Foundation Scotland has picked up some inconsistency on this.
- The status of multi-year funding. In its revised strategy SCBF has been clear about providing *focused support for community based organisations such as Care in Strathnairn, the SCATA bus, the community halls and schools*. Foundation Scotland understands this to mean a recurring annual grant, subject to an application being received each year. What is not clear however is if and when any other organisation might fall into this category of 'targeted support' or what it takes to be recognised as such. Multi-year funding could be introduced more explicitly as an option, enabling groups with larger projects that may include for example capital spend and/or salaries, to plan better, through allowing multi-year awards. It could also increase their opportunities to attract other funding, enabling more investment into the area;
- How many times a group can apply for a grant and in what timescale;
- What kind of policies or permissions are required for particular projects in different contexts;
- The nature of and the amount of quotes to be supplied (if any) for different levels of expenditure;
- If certain types of projects (e.g. over a certain value or capital projects involving refurbishment or development of buildings) require more robust supporting information like for example, a business plan or more detailed budgetary information such as cash flow projections.

Foundation Scotland has devised various other documents beyond the Guidance for Applicants – and to help communicate key Fund information. Two examples are a Fund Framework, sometimes described as a more detailed and comprehensive Application Guidance, and a Fund Q & A which is more of a quick overview of what a Fund offers. As part of the intention to continue improving communication, some kind of similar

supplementary information may be helpful to consider producing for SCBF once Review recommendations have been considered.

### ***The application form***

Whilst most interviewees felt the application form was straightforward there were some concerns expressed that it was so open that the accompanying lack of guidance made it quite challenging to know how to best present an application and what level of detail to provide. Other funders were quoted that for example, provide a suggested word count for some questions and/or ask for more detail about the group, its track record and/or the project.

It was felt in some instances that a more detailed application form can be very helpful especially for the groups that don't expend much energy applying for grants precisely because it requires them to usefully reflect on their work and activity in a way they may not always do. For noting, after the new website was introduced some interviewees said they could not access a form and did not know about the new website. Another interviewee indicated problems with uploading documents once the website had been found.

Foundation Scotland has compiled a list of observations of what we considered gaps in the application form and can provide these if Directors are interested to receive them. Our approach to application and guidance material has been refined over many years of dedicated grant making and is applicable or adaptable to many contexts. We acknowledge there is always a balance between information needed for a Board or Panel to make an informed decision on applications, whilst also ensuring applicants are not put off by the amount of information requested (or length of the form) or the application process. However we would like to suggest our observations and suggestions might help improve the quantity and quality of General Grant applications coming forward from groups including for larger legacy projects. We also suggest the observations are considered in light of our proposal to ensure more robust and comprehensive assessment of applications, described in the following section.

Our observations reflect what we regard as the minimum information required for diligent grant-making, but acknowledge that there will always be some applicants who have a different view! Equally there will always be groups that find any application process quite daunting so if changes are subsequently made to the application form then those anxieties will not necessarily go away but may need to be better supported through for example, assistance from a development officer and/or provision of training or coaching from other organisations such as Highland TSI.

## 4.2 Assessment and Decision Making Process

### *Assessment*

While noting a general view amongst Directors that applicants are treated fairly and proportionality and Directors are mindful of barriers and seek to reduce them, interviewees who had also been party to group applications had mixed experiences of the application and wider grant-making process.

For example, at times the grant-making was felt to be more an iterative process of discussion and negotiation, rather than a clearly defined, objective and time limited application - assessment - decision process, which applies equally to all applicants. This was frustrating at times for applicants who variously felt the correct or adequate information was provided but not always sufficiently digested or understood by Directors, resulting in follow up queries and subsequent delays in awarding of grants. In contrast other applicants found a process of 'assessment by negotiation' helpful and at the end of the day valued Directors' inputs which they felt helped shape a stronger project plan.

In terms of assessment, Directors then make their own assessment of each application and they bring their considerations and responses to the Board meeting. We are not aware of a particular structure to the Board discussion when each application is then considered. Foundation Scotland is aware of a range of alternative approaches to assessment undertaken for locally managed community benefit funds and where decision making can be particularly challenging, especially in the context of small rural communities where people will generally know each other as neighbours, family, friends or simply acquaintances. In some instances Directors are required to score applications across a range of criteria, and the combined score (up to 100%) is used to determine whether or not an application merits funding.

Foundation Scotland uses scoring systems on occasion for some high volume grant making programmes. However, there is an inherent tension between, on the one hand, trying to achieve an objective score on which award decisions can be based, and, on the other, use of a more qualitative assessment and discussion that can more easily capture the nuances in an application. Of course, where applicants (and the wider community) are seeking some kind of assurance that the process is objective, the former approach seems on the face of it most attractive while the latter approach is more open to criticism. However, we are aware that use of scoring matrices can be formulaic, miss many nuances or qualitative considerations that need to be taken into account in award making, and ultimately can lead to inappropriate decisions. Conversely, a more narrative approach to assessment can work well, if award making policies are clear, transparent and applied consistently.

Another approach is where applications are independently assessed and assessment reports are provided to the Board in advance of their meeting. The focus of the Board discussion is then about points of insight or query related to the assessment and what

additional local knowledge, information or insight Directors can bring. The independent recommendation serves as a starting point for decision making. This is the practice developed by Foundation Scotland and which has been tried and tested in many diverse community contexts and which is undertaken by assessors well versed in project management, governance of voluntary groups, and rural development issues. Its value is in bringing an independent perspective into a decision making process where relationships and history can often impinge on responses to applications even in instances when Directors seek to work very objectively. Foundation Scotland's assessment report pulls together all the key information into one place for ease, reducing volunteer time required from the Board. Since every applicant receives the same 'treatment', including a short phone interview, community groups can be assured of a consistent approach. Whether or not it opts to discuss the option provided by Foundation Scotland, we suggest SCBF does give consideration about how its approach to assessing and decision making can become more efficient and effective, both for themselves as Directors and for applicants.

### ***Decision making***

We would also urge the Board to be confident that it always captures publicly defensible reasons why an application is or is not awarded funding. When an application is refused the Secretariat should leave the Board meeting fully understanding the reasons for the refusal. Good practice is for either the motion to refuse to be drafted in such a way as to allow these reasons to be communicated to the applicant, or for the Secretariat to summarise the reasons for refusal back to the Board after the decision so that these can be confirmed by the Board. These reasons can then go into the Board minutes and rejection letters in a bid to help applicants understand the Board's decision and improve their future applications. If the Board intends that the particular application before the Board is rejected, but that it would be keen to see a fresh application resubmitted in a different way, then that should be made clear in the rejection letter, and if there are positives to the application, then these should be highlighted.

## **4.3 Post Award and Record Keeping**

### ***Post award***

When Directors have approved an award the Secretariat notifies the awardee by letter confirming the grant award and any conditions attached to it. Where the cost is not invoice based the cheque will be issued at the same time if there are no outstanding conditions to be met. When an award is not made a letter is issued briefly explaining the reasons behind the decision. Awardees are asked to either email the Secretariat or sign and return a copy of the award letter, as confirmation that the awardee has received the cheque.

To date the number of grant refusals has been very low as a proportion of the overall number of applications. We suspect however, as can be the case, the time spent dealing with the fall-out from such refusals will have been disproportionate.

Foundation Scotland would suggest that SCBF's post award procedure is particularly light touch. Most importantly it does not normally include a step whereby the applicant actually accepts in writing the grant offer and any associated conditions, only that the cheque has been received. A notable exception recently was for the Farr Play Park, which was for a grant of up to £81,500. There is therefore often no contract as such between the parties and the grant can be classed in effect as a donation and for which the applicant does not necessarily have any obligations towards SCBF. Three further omissions at this point include:

- SCBF missing out on further promotion and publicity by not setting out any requirement that the applicant fulfils certain obligations to promote and publicise the award. (SCBF had previously required grant recipients to display SCBF support where possible and sports support grants recipients were also asked to make visits or presentations in the two primary schools);
- SCBF not setting out any requirements about feedback or evaluation;
- SCBF not setting any requirement for funding to be returned if the project does not go ahead, or if the any of the grant is not needed for the project. In 2011 Strathnairn Community Renewable Energy did return £1,372.75 from an award made when it closed down, even though the grant conditions did not require it to do so.

Foundation Scotland would suggest that as part of an overall commitment to further improve its grant-making SCBF develops a standard set of terms and conditions that are issued to all applicants as part of the post-award process. These standard terms and conditions could include aspects such as the length of the grant, publicity requirements, and monitoring and evaluation requirements, and which an officer of the applicant organisation is required to sign. A more extensive set of terms and conditions could be applied to higher value and large capital projects that usually reflect greater levels of risk. There are various other aspects to administering grants that Foundation Scotland did not spot as standard practice within SCBF, including for example, a protocol or template for varying grants, withdrawing grants, or even a clear, consistent approach for recording details of grants awarded (see record keeping below).

### ***Monitoring and evaluation***

A critical gap in SCBF's grant-making process though is feedback from grantees. We suggest that monitoring invites applicants to evidence outcomes and achievements delivered with the grant, and captures learning about project delivery. Such information will enable SCBF to better report to its member/s, the wider community and the companies with whom they have Agreements. During Review discussions a number of interviewees expressed surprise and disappointment that nothing was particularly required in terms of feedback. Whilst some project progress or impact is obvious for all to see (the new kitchen in the Farr Hall, for example) there are other matters related to the project that will be less obvious and that can provide useful learning and insight for other groups – if feedback can

be shared – and/or the Board itself. Certainly a number of interviewees felt that requiring and then sharing feedback from groups would help build local capacity and interest in community activity and the work of the SCBF and help to quietly build SCBF's reputation generally. In addition it sets an expectation for continued contact with SBCF, whether for an interim update or only an end of project report, and emphasises a principle around accountability which Foundation Scotland believes is particularly important in the context of community benefit funds given their distinct localised character.

### ***Record keeping***

Foundation Scotland has spent some time investigating the grant records kept by the former Company Secretaries. Record-keeping has been done by way of Excel spreadsheets, and it appears that since around 2010 there has not been a master spreadsheet updated regularly containing all the records of all grants awarded, paid out, and occasionally returned. Annual spreadsheets have been used with worksheets detailing bank account movement, cash flow, investment from start, investment value, income, expenditure, bank reconciliation, a detailed statement of account (including details of the various grants paid in that financial year), and a grant summary.

These records are perfectly suitable for ensuring that investments are supervised, and managed, cash flow is managed, and proper reports are prepared for Board meetings, and details supplied to SCBF's accountants for audit purposes. However they make providing summary reports of the actual grant-making and its impact, across more than one year, difficult to provide. For example, how much a specific organisation or individual has obtained during the lifetime of the Fund can only be compiled manually. Foundation Scotland has been unable to devote the time within the scope of this Review to calculate funds distributed across these various – and likely other – funding strands. It could though be a useful exercise to undertake in the event of SCBF wishing to compile an accurate picture of all funds ever distributed. Going forward, SCBF may wish to consider purchasing some suitable software to assist with a more efficient approach to grant management and financial administration.

In addition SSE indicated in 2014 that it would like to see:

- an equal split of long term legacy projects and maintenance projects;
- for 50 – 70% of the total funds being spent currently;
- individual grants to be paid using the Farr Windfarm funds, not the Monadhliath Windfarm funds
- Where general grants are offered, there is a sole windfarm funder for the project

In October 2015 it advised that it does not want annual payments to be used for energy grants at this time but asked that SCBF contribute to SSE's own review of grants due in March 2016. It confirmed that the initial disturbance or commissioning payment could be used to fund energy grants.

It will therefore become more important that suitable financial management systems are put in place to ensure that SSE's requirements are adhered to by the Board, and that proper reporting systems can be implemented to enable reports to be made to all the funders and to the Board, without significant additional work being required.

## 5 Recommendations

### Governance

#### *Legal Structure and Governing Document*

1. Retain the status of being a company limited by guarantee with charitable status.
2. Update the Articles of Association to bring it in line with the Companies Act 2006, whilst at the same time amending any provisions as a result of this Review.
3. Recommend to Monadhliath Energy Limited to that the clause relating to Monadhliath Energy Limited itself having membership of the Committee is removed in a revised Agreement with Monadhliath Energy Limited.
4. Dismiss and/or update the Protocol and Operating Statement in line with decisions about the Company's general structure and Articles of Association following this Review.

#### *Membership*

5. Discuss with the SNCC the benefits of dissolving its responsibility as sole member of SCBF in favour of opening membership of SCBF to be more directly inclusive of residents and/or resident and groups and organisations.
6. Should the Board agree to a change in the current membership structure, consult with the community about this opportunity and what membership options or classes (if any) may be most suitable and sustainable within Strathnairn.

#### *Directors – Board Composition and Director Appointment, Terms, Roles and Induction*

7. Any changes to SCBF's Articles of Association clarifies SNCC representation on the SCBF Board.
8. Any changes to SCBF's Articles of Association also clarifies position of Directors on the Board who are also Community Councillors but duly elected by members to serve rather than being appointed as SNCC Board representatives.
9. Any changes to SCBF's Articles of Association reflect a refreshed position on Director terms of office including length of service and retirement.
10. Any changes to SCBF's Articles of Association reflect the process by which Directors are appointed, taking account of a revised Membership structure.
11. Should this feel too drastic a change, another option could simply be to retain the arrangement of SNCC as sole member but change the Articles of Association to allow for the election of non SNCC Directors by a public vote.
12. Undertaken occasional audits of Director skills in a manner that does not appear overly exclusive or professional.
13. Review any previous induction activity and develop a simple but meaningful induction programme for new Directors.
14. Develop a role description for an SCBF Director and relevant Officer positions.

15. Clarify whether in future SCBF is to have a named Treasurer.
16. Consider removing the Secretary requirement.
17. Commit, for the next two years in the first instance, to an annual Board review beyond only reviewing grant categories.

### ***Policies***

18. Review the value and impact of the current Respect & Dignity Policy.
19. Review the Code of Conduct and how it can be used more actively as a tool when conducting Board business and for learning and development.
20. Review the Conflict of Interest policy to reflect current best practice including a more nuanced acknowledgement of direct and indirect conflicts.

### **Profile and Communications**

21. Sharing this report or a version of it with the wider community.
22. Scheduling occasional 'SCBF learning and development sessions' (which can of course be named/branded differently) that provide an opportunity for invited groups to feedback on project progress and/or to share learning and/or for the Board to consult with attendees about particular matters;
23. Producing some substantive case studies that can be published to illustrate the (transformative) community activity it is supporting locally and help build SCBF's profile.
24. Enhance the website with more information for applicants, informed potentially by some of the recommendations under the Business of Grant-making section.
25. Produce and distribute an SCBF leaflet – and which is perhaps updated annually, possibly drawn from a more comprehensive annual report.

### **Strategy**

26. Update the Articles of Association to include a specific purpose of SCBF as a distributor of funds, rather than as an all-purpose enabler or facilitator of rural regeneration locally.
27. Seek to understand particular issues facing particular groups with a view to considering how SCBF may ensure their needs are better met. Initial target groups could be young people.
28. Reinstate the Education and Training Grant or some version of it.
29. Clarify the types and levels of available grants to groups.
30. Continue to review its grant-making approach annually but include in this every 2<sup>nd</sup> or 3<sup>rd</sup> year some kind of community survey to inform the annual review at that point.
31. Work with SNCC and the CFG to ensure a Strathnairn Community Plan is completed, possibly through an external commission but with a clear output around which the community can coalesce and move forward. Foundation Scotland would suggest that commissioning and external consultant will accelerate this task being completed.

32. Assuming the plan is undertaken before November 2017, ensure SCBF's grant strategy going forward is aligned with the priorities identified in the community plan in so far as the Agreements with the wind farm developers allow.
33. Meet with SNCC and any other interested community organisations to agree an arrangement for appointing a Development Officer based on options described in this Review and any others that may emerge.
34. As part of wider work on improving guidance for applicants, draw up guidance on paying salaries for locally based staff.

## **The Business of Grant-making**

### ***Application Process***

35. Consider piloting a series of closing dates for group applications.
36. Consider programming Board meetings to focus on specific aspects of governance, strategy or grant decisions, taking account of the point above.
37. Compile information (written and/or visual) to better describe the grant application process. Ensure this is reflected in all relevant communications.
38. Develop comprehensive Application Guidance material.
39. Consider developing some kind of supplementary information about SCBF and grant-making opportunities and processes etc as part of an intention to continue improving communication with and for the wider community.
40. Consider revising the Application Form/s so it becomes a better planning tool for groups and enables better assessment of the project and group.

### ***Assessment and Decision Making Process***

41. Consider how assessing and decision making can become more efficient and effective.

### ***Post Award and Record Keeping***

42. Considers purchasing some suitable software to assist with a more efficient approach to grant management and financial administration.
43. As part of an overall commitment to further improve its grant-making SCBF develop a standard set of terms and conditions that are issued to all applicants as part of the post-award process and a more extensive version for higher value and large capital projects.
44. Develop a fuller suite of grant making material including grant variation and grant withdrawal forms to assist with a more consistent practice being applied going forward.
45. Develop proportionate feedback/monitoring forms and which grantees are required to complete at the end of the project or at agreed intervals detailed in their offer letter.

46. Assess current financial management systems to ensure that reporting requirements to Developers are adhered to.

## 6 Conclusion

The overall purpose of the Review is to **review the governance and grant-making aspects** of SCBF to ensure that it is **fit for purpose** and sustainable for the long term. Ultimately Foundation Scotland is keen to provide a report that can enable the Board and the wider community to have confidence that the **impact of community benefit funds** flowing through SCBF can be maximised for the Strathnairn area.

Whilst at times the commentary and findings may appear critical our intention is to **help find workable solutions** based on practice and learning from other similar settings. We are aware however that every community is distinct and what works in one place is not directly transferable to another.

Despite ongoing efforts over the years to ensure the community are aware of SCBF activity – and which had improved significantly in the latter years according to most interviewees – almost all referred to SCBF’s history as being one of **mixed fortunes** and which means that the SCBF’s reputation remains somewhat fragile. Whilst acknowledging the significant opportunity the community benefit monies bring, many interviewees referenced a legacy of tension within the community about how SCBF runs.

Neither of the current Agreements with the wind farm developers set out an expectation that SNCC should have a specific role within SCBF and the Articles of Association of SCBF simply stipulate that any representatives appointed by SNCC to the Board should not be in a majority, following advice from OSCR prior to SCBF’s registration as a charity. Therefore **there is no legal requirement for SNCC to actually be SCBF’s only member.**

Based on the views of interviewees and considering wider practice around good governance of community benefit funds, Foundation Scotland recommends that **the Board does change the general structure** of SCBF so that any resident within the Area of Benefit of the Fund can apply to become a member of the company.

This could help address the challenging matter of Director appointments and overall Fund reputation, enabling members to then vote for Directors in line with procedures as set down in revised Articles of Association. Should this feel too drastic a change, another option could simply be to retain the arrangement of SNCC as sole member but change the Articles to allow for the election of non SNCC Directors by a public vote. SNCC’s other powers however would remain.

**A number of other related suggestions are made for improving** SCBF’s overall functioning including defining **Director roles**, reviewing various **company policies**, planning the annual programme of **Board meetings** and improving **communication with the wider community.**

Going forward Foundation Scotland suggests **pulling back from a proactive focus on projects** per se and instead **support strategic discussion** around improving the local

infrastructure to better support project development and capacity building within Strathnairn. This should be done alongside an **overhaul of its grant-making practice** that could ensure a more robust, efficient and transparent approach.

With **clearer and more consistent guidance** and support from a **locally based paid development officer**, Directors could direct their time towards **their governance and strategy roles and responsibilities for SCBF**, rather than for applicant projects, which are actually the responsibility of those applicant management committees, boards or teams.

## Appendix 1: Interview Questions

Director or Former Directors - Clarify Director history, associations with SCBF, skills & interests

Group representatives: - Clarify track record of engagement with SCBF

- What was your perception and experience of SCBF before you got more involved as a Director or applicant?
- What is your view/understanding of the relationship between SCBF and SNCC?  
What are the strengths and weaknesses of this membership arrangement and if you think this set up needs changing what would those changes be?
- Directors only: What aspects of governance need reviewing or strengthening? For example, what is your view on how Directors are identified?/
- What is your view on the application process and/or what is your experience of it?
- Do you have comments on the award-making process?
- What is your view about how SCBF communicates with applicants and awardees and where is there room for improvement?
- What difference do you think SCBF funds are making? What could be done to increase impact?
- What could be done to enhance the Fund's profile/visibility?
- Do you agree with the overall direction and grants strategy? Are there any gaps or opportunities?
- There is a view that a paid Development officer could be of value to the community. There is also a view that a new organisation – a Development Trust – may be appropriate for the community's future and could be the employer of this new officer. What is your view on these ideas and what are the benefits/risks?

## Appendix 2: List of Interviewees

Paul Robinson	Director
Isobel McQueer	Director (Chair)
Ian Hunt	Director
Scott MacDonald	Director
Sally Moore	Director
Pauline Thompson	Director
Christine McPherson	Director
Mark Burton	Director
Mike Fitzgerald	Director (Chair)
Trevor Colbourne	Director
James Murray	Community Council (Chair) & former Director
Peter Christie	Community Council (Hon. Sec)
Doug Meiklejohn	Former Director (Chair)
Carol Smith	Former Secretariat
Caroline Tucker	Community Newsletter Editor
Representative	Farr Hall
3 representatives	Care in Strathnairn
Representative	Strathnairn Community Transport
Representative	Strathnairn Music Initiative
Representative	Friendship Group
Representative	Community Woodlands
Representative	Fearnag Growers
Representative	Toddlers - Playgroup

## Appendix 3: General Grants (community groups) 2006 – 2016

### 2005-06

Daviot School Board	£14,800
Farr Baby & Toddler - Arts Sessions	£500
Farr Baby & Toddler - Play Box	£900
Farr Feis	£2,900
Farr Hall computer/projector	£1,387
Farr Hall Marquees	£3,000
Farr Nursery	£4,300
Farr School Board	£17,200
Meallmore Lodge League of Friends	£2,712
SCWP - Puppet Show	£500
Strathnairn Seniors Lunch Club	£1,000

### 2006-07

Boleskine Camanachd Club	£1,500
Care in Strathnairn	£13,000
Daviot Primary School	£3,150
Farr Nursery School	£1,229
Farr Primary School	£7,990
Feis Farr	£1,948
Friends of Daviot School - Playpark	£15,132
SCATA - Bus Passes	£248
SCATA - Revenue Funding	£4,000
SCATA - Tyre	£100
SCWP	£2,246
SNCC	£800
Strathnairn Farmers Association	£250
Strathnairn Hall - Insulation	£17,839
Strathnairn Hall - Painting	£750
Strathnairn Hall - Sound System	£2,307
Strathnairn Heritage Association	£1,500
Strathnairn Seniors Lunch Club	£1,000

### 2007-08

Boleskine Camanachd - Mower	£17,252
Care in Strathnairn	£18,000
Daviot Primary School	£4,700
Farr Community Hall - Floor	£2,967
Farr Feis	£1,620
Farr Gala - Sound System	£375
Farr Hall - Changing Facility	£70,000
Farr Hall - Grass Cutting	£4,794
Farr Nursery	£1,697
Farr Primary School	£9,974
Farr School & Nursery Supporters	£245
Meallmore Lodge League of Friends	£1,206
SCATA - Bus Passes	£947
SCWP	£1,800
SCWP - Dark Scotland	£1,763
SNCC - Copier	£800
Strathnairn Farmers Association	£2,750
Strathnairn Farmers Association	£1,500
Strathnairn Hall - Land	£15,000
Strathnairn Hall - Tables	£730
Strathnairn Heritage Association	£3,155
Strathnairn Seniors Lunch Club	£1,000

### 2008-09

Care in Strathnairn	£15,000
Care in Strathnairn/SCW	£300
Daviot Church	£5,000
Daviot Primary	£5,060
Farr FEIS	£1,620
Farr FP Church	£2,075
Farr Gala - Sound System	£431
Farr Hall - Grass Cutting	£3,646
Farr Hall - Monday Club	£250
Farr Hall - Shelters	£6,000
Farr Nursery	£1,768
Farr Primary	£10,266
Farr United Football Club	£2,365
SCATA	£5,202
SCATA - Bus Passes	£1,617
SCEP	£1,190
SCW - Administration	£2,100
SCW - Paths	£7,638
SNCC - Copier	£800
Strathnairn Farmers Association	£1,500
Strathnairn Seniors Lunch Club	£1,400

2009-10

Boleskine Camanachd	£2,000
Care in Strathnairn	£5,000
Care in Strathnairn	£18,000
Daviot Primary Garden	£580
Daviot Primary School	£5,263
Farr Feis	£1,200
Farr Hall - Judo Mats	£5,177
Farr Hall - Grass Cutting	£4,956
Farr Nursery	£1,770
Farr Primary School	£11,220
Farr United	£1,200
SCATA - Bus Passes	£2,051
SCRIP	£1,000
Strathnairn Community Hall	£4,956
SCWP	£2,100
Strathnairn Farmers Association	£1,500
Strathnairn Hall	£600
Strathnairn Seniors Lunch Club	£1,400

2010-11

Care in Strathnairn	£10,000
Daviot Primary School	£3,400
Farr Baby and Toddler Group	£382
Farr Gala	£524
Farr Hall - Grass Cutting	£5,480
Farr Primary School	£10,505
Farr United	£1,100
Summer Activity Week	£320
SCATA - Bus Passes	£2,038
SCWP - Puppet Show	£250
SCWP - Running Costs	£2,050
St Paul's Episcopal Church	£9,688
Strathnairn Farmers Association	£2,500
Strathnairn Farmers Association	£1,500
Strathnairn Hall	£6,000
Strathnairn Seniors Lunch Club	£1,000

2011-12

Boleskine Camanachd Shinty	£1,250
Care in Strathnairn	£15,000
Daviot Church	£5,022
Daviot Primary School	£3,500
Diamond Jubilee Gala	£3,500
Farr Hall - Goals	£244
Farr Hall - Grass Cutting	£5,300
Farr Nursery	£940
Farr Nursery	£1,005
Farr Primary School	£10,505
Farr Primary School	£9,476
Farr United	£1,100
Highland Budokan Judo Club	£412
SCATA - Bus Passes	£2,645
SCATA - New Minibus	£5,000
SNCC - Community Plan	£1,500
Strathnairn Farmers Association	£1,500
Strathnairn Seniors Lunch Club	£1,200
Summer Activity Week	£1,033
SFA - Vintage Rally	£750

2012-13

Care in Strathnairn	£10,000
Care in Strathnairn	£11,200
Daviot Primary School	£1,700
Farr Baby and Toddler Group	£736
Farr Hall - Grass Cutting	£5,300
Farr Hall - Monday Club	£200
Farr Nursery School	£1,507
Farr Primary School	£8,257
Farr United	£1,100
Highland Budokan Judo Club	£1,000
SCATA - Bus Passes	£1,268
SCATA - Minibus	£5,000
Strathnairn Hall	£3,960
Strathnairn News	£2,000
Strathnairn Seniors Lunch Club	£1,500
Summer Activity Week	£835

2013-14

Care in Strathnairn	£5,000
Daviot Primary School	£4,900
Farr Feis	£250
Farr Hall - Grass Cutting	£5,400
Farr Nursery School	£3,052
Farr Primary School	£2,985
Farr Primary School	£9,900
Farr School & Nursery Supporters	£650
Farr School & Nursery Supporters	£197
Highland Budokan Judo	£1,000
SCATA - Bus Passes	£1,508
SCATA - Minibus	£11,971
SCC - Community Plan	£800
SCWP	£0
SFA - Vintage Rally	£750
SFA - Vintage Rally	£2,810
St Pauls Episcopal Church	£4,500
Strathnairn Hall	£1,000
Strathnairn Heritage Association	£150
Strathnairn News	£3,200
Strathnairn Seniors Lunch Club	£2,250

2014-15

Care in Strathnairn	£1,000
Care in Strathnairn	£3,000
SNCC - Community Action Plan	£290
Daviot & Dunlichity Church	£4,000
Daviot Primary	£7,300
Farr Hall	£5,400
Farr Nursery	£3,052
Farr Primary	£13,445
Feis Farr	£700
SCATA - Bus Passes	£1,703
Strathnairn News	£600
Strathnairn News	£3,800

2015-16

Care in Strathnairn	£9,600	SCATA - Bus Passes	£549
Farr Baby and Toddler - Playpark	£186	SCWP	£584
Farr Community Hall	£250	St Pauls Episcopal Church	£100
Farr Community Hall - Free Use	£7,000	Strathnairn Music Initiative	£15,440
Farr Community Hall - Goals	£800	Strath Farmers	£3,429
Farr Conversations	£110	Strathnairn Hall	£3,000
Farr Hall - Grass Cutting	£6,200	Strathnairn Indoor Bowls Club	£1,000
Farr Playpark	£4,866	Strathnairn News	£4,350
Fearnag Growers	£1,250	Strathnairn News	£4,175
Fearnag Growers	£6,764	Strathnairn Seniors Lunch Club	£2,500
Lucky2BHere - Defibrillators	£8,000	Summer Activity Week	£1,109

Key

*SCATA = Strathnairn Community Access & Transport Association*

*SCEP = Strathnairn Community Energy Project*

*SCRIP = Strathnairn Community Renewable Energy*

*SCWP = Strathnairn Community Woodland Project*

*SFA = Strathnairn Farmers Association*

*SNCC = Strathnairn Community Council*

## Appendix 4: Legal Questions

- 1. We are considering a number of possible changes including increasing the number of members, changing the Director Retirement arrangements and possibly introducing paid Executive directors. What would the process for making these constitutional arrangements?***

The Memorandum of Association (clause 5) prohibits payment to directors, other than reasonable out-of-pocket expenses. As a result of legislative changes described below, the Memorandum would not require to be changed.

The Articles of Association currently provide at clause 83:

*The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the holders of debentures of the company or otherwise in connection with the discharge of their duties.*

This would not require amended. However clause 82 of the standard Articles of Association (Table A) has been removed. This would have provided that:

*The directors shall be entitled to such remuneration as the company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.*

Changes to the retirement arrangement of directors would only involve changes to the Articles of Association. There is no requirement for any change to the Articles of Association to permit there to be an increase in members of SCBF, although currently the Board of SCBF needs to approve any new members. If that veto provision is to be removed, that would require a change to the Articles of Association.

Any changes to SCBF's Articles of Association must be considered and approved by the board and then approved by the members by a special resolution (needs approval of 75% of the membership). This resolution can be passed by a written special resolution under the Companies Act 2006 or at an Annual or Extraordinary General Meeting. The Board then notes that the resolution has been passed and resolves to send a copy of the resolution to Companies House with the new Articles and the relevant forms, which must be carried out within 15 working days.

However matters are slightly complicated by the fact that SCBF was registered with its Memorandum and Articles of Association prepared under the Companies Acts 1985 and 1989. When the Companies Act 2006 came into force, the provisions in the Memorandum of Association of each company registered at that time were deemed to be transferred to the company's Articles of Association. This change took place

automatically, with no action needed on the part of the company. However, what this now means is:

- the whole Articles of Association will need to be updated to reflect this provision if filings with Companies House is going to be made in relation to other changes to the Articles of Association, as the Articles of Association have not been changed since this legislative provision came into force in 2009;
- a full copy of the amended Articles of Association will need to be filed with Companies House, and this should include the provisions which are deemed to have transferred from SCBF's old Memorandum of Association. To satisfy this requirement, the relevant provisions from the old Memorandum should be attached to the Articles of Association (as an appendix), or alternatively a copy of the old Memorandum is supplied indicating the provisions which are now deemed incorporated in its Articles of Association (by marking it up in manuscript). Failure to comply with this provision is an offence.

Consultation will need to take place with the Office of the Scottish Charity Regulator (OSCR), as the Charities and Trustee Investment (Scotland) Act 2005 sets out when charity trustees (or in this particular case the directors of SCBF) can receive payment from the charity for services provided to it. A charity must not pay charity trustees, and people who are connected to them, unless the charity can satisfy the conditions set out in the 2005 Act. All these criteria must be met:

- there is no restriction to the payment in SCBF's memorandum and articles of association;
- less than half the total number of SCBF directors are getting paid (directly or indirectly) from the charity;
- there is a written agreement between SCBF and the director;
- the written agreement sets out the maximum amount to be paid, and
- the SCBF directors are satisfied it is in the interest of the charity for the services to be provided by the director for that maximum amount.

More detailed information is available from OSCR at:

<http://www.oscr.org.uk/charities/guidance/guidance-and-good-practice-for-charity-trustees/remuneration-paying-charity-trustees-and-connected-persons>

**2. *If the number of members is increased from just Strathnairn Community Council, presumably the MOA and AOA would need to be rewritten to cover appointment of new directors, agreeing auditors etc?***

Only the Articles of Association would need to be rewritten due to changes brought in by the Companies Act 2006, as explained above. If there is any intention to increase the number of directors (as opposed to members), OSCR has previously advised that for SCBF to retain its charitable status, the number of directors appointed by Strathnairn Community Council (SNCC) must be less than half the total number of

directors. The Articles of Association would need to be amended to cover any change in the balance of directors between SNCC-appointed and others, or in relation to the appointment of directors, but not otherwise.

- 3. *There are at least 7 different ways in which the Community Council can be dissolved - not all of which the Community Council has control over. Once dissolved what happens to the Fund?***
- 4. *The Articles of Association, Clause 4 state "A member may at any time withdraw from the company by giving at least seven clear days' notice to the company. Membership shall not be transferable and shall cease on death." It appears that should Strathnairn Community Council (SNCC) be dissolved, The Highland Council (THC) does not become the new member. A company limited by guarantee cannot have no members. So can SCBF continue? Or does it have to be wound up?***
- 5. *A Community Council is an unincorporated body - it has no legal identity. It cannot enter into contracts. How is possible for such an organisation to be the sole member of a limited company? Does the law assume that individual councillors are acting as Guarantors? Is their liability limited? If SNCC cannot act as guarantor then the Fund has no legal members. Are directors then committing an offence by portraying the Fund as a limited company?***

Answer to questions 3, 4 and 5.

These are all interrelated. It is a requirement of company law that a company limited by guarantee is formed with at least one member or guarantor. The responsibility of that member or guarantor is to make payment of the specified sum (for SCBF that is £1) towards the assets of the company in the event of the winding up of the company. The members/guarantors do not actually hold or own shares in the company as these days there are no shares issued in a company limited by guarantee.

The first question is whether membership of the company could be classed as an asset? The answer to that is no. By way of comparison, in bankruptcy provisions in England and Wales, and in sequestration provisions in Scotland, such membership is not considered an asset for disposal as part of the bankrupt's estate.

SNCC is the only member of SCBF. The scheme of establishment for community councils adopted by The Highland Council makes provision (Clause 13.1) at the dissolution of a community council whereby *all assets remaining, subject to the approval of The Highland Council, after the satisfaction of any proper debts or liabilities shall transfer to The Highland Council who shall hold same in Trust for a future Community Council representing that area.* If membership of SCBF is not an



a specific change requiring notification, or as an annual filing), then this would not be brought to its attention. Companies House in Scotland informally advises that if a third party was to bring this to its attention, it would be dealt with on a case-by-case basis by its Companies Act breaches team. Further written investigation can be carried to Companies House out if required. A similar query has been submitted to OSCR as to what its approach would be, but a written response is still awaited. Both queries were made on a theoretical basis, without any reference to SCBF being made.

- ii. The company ceases to be in existence, and its assets then have to be distributed in accordance with its dissolution provisions for SCBF that provides at clause 8 of the Memorandum of Association that:

*If upon the winding up of the company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the company, but shall be given or transferred to some other charitable institution or institutions (whether or not such institution or institutions is or are a member or members of the company) having objects similar to the objects of the company which shall prohibit the distribution of its or their income and property (including profits, if any) to an extent at least as great as is imposed on the company under or by virtue of clause 5 hereof, such institution or institutions to be determined by the members of the company at or before the time of dissolution.*

An obvious objection to this provision being applicable is that if by the last member being removed, the company automatically ceases to be in existence, then there is no chance for any member to nominate any subsequent institution to receive the assets. Nor indeed is there any member to make such nomination.

Under section 1012 (1) of the Companies Act 2006, when a company is dissolved, all of its property and rights pass to the Crown. This is known as "bona vacantia". It may be possible for a company to apply to be restored to the register and, if this is successful, the company comes back into life, bona vacantia ceases to exist and the asset belongs to the company once again.

- iii. The office-bearers of SNCC continue to act as trustees for the sole purpose of holding the membership of SCBF, and their trusteeship is independent of the existence of SNCC. This interpretation, though only applicable temporarily, can be supported by the provision in the Highland Council scheme of establishment for community councils at clause 13.1 which provides that:

*If the resolution is supported by a majority of those persons present and qualified to vote, and is subsequently approved by The Highland Council, the Community Council **shall be deemed to be dissolved** and all assets remaining, **subject to the approval** of The Highland Council,*

*after the satisfaction of any proper debts or liabilities **shall transfer** to The Highland Council.*

What this clause provides is that notwithstanding the fact that the community council has been dissolved by use of the word "deemed", in respect of the assets The Highland Council still requires to approve the transfer of the assets, and thereafter the assets must be transferred. For example, you could have a meeting to dissolve the community council on 1 October, the Highland Council approves the transfer of the assets on 14 October, and the assets are transferred on 30 November. Clearly the office bearers of the community council must continue to hold the assets as trustees for the community council until the transfer is effected, especially in the case of heritable property.

At clause 13.4 of the scheme of establishment, it provides that:

*Where for any reason, the number of Community Councillors falls below HALF the maximum permitted membership in this Scheme The Highland Council may, by suspending the Constitution of the Community Council, cause the Community Council to be dissolved.....*

This implies that the community council would be dissolved when at the appropriate committee of The Highland Council having the necessary powers a resolution to dissolve the community council has passed, the dissolution would take place instantly. However, in these circumstances notification would be given to the existing community councillors, and to the community at large of such a resolution, and it is customary for local authorities to give community councils time to co-opt additional members in such circumstances. It is not the case that if someone was to resign or die bringing the membership of the community council below the required numbers, that that automatically would dissolve the community council at that point.

***Is the liability of the office bearers of SNCC limited?*** The liability of the office bearers SNCC would be limited to the £1 liability which SNCC has undertaken as being a member of SCBF. This would be a joint and several liability amongst the office bearers. In general as office bearers of an unincorporated voluntary association (here SNCC), the liability for any debts or liabilities of the community council is open-ended. That is generally why liability insurance is arranged through the local authority for community council members, but it is something that members of an unincorporated voluntary association should be aware of before accepting office as an office bearer.

***Are directors then committing an offence by portraying the Fund as a limited company?***

No. This is not an offence but clearly the position is unsatisfactory, even if the problems envisaged are currently somewhat theoretical in nature. It may be that SCBF decides in the light of the wider review being carried out of its governance

arrangements that more widespread changes are needed to its Articles of Association. However at the very least, changes should be made to deal with the issues highlighted here. It is suggested that either:

- i. provision is made allowing the transfer of membership from SNCC to another suitable body, whether it be the Highland Council or another organisation in the area (perhaps to be determined by a public meeting), or to identified individual(s) as trustees, until SNCC is refounded;
- ii. provision is made for there to be two members of SCBF, both SNCC and the chair of SNCC. The chair of SNCC would hold the membership on behalf of the community of Strathnairn, rather than as a trustee of SNCC. Alternatively, you may choose to have another identified individual rather than the chair of SNCC e.g. a local authority councillor;
- iii. provision is made for the directors of SCBF from time to time to also be members of SCBF by virtue of their election as directors. This solution is not recommended as then the directors of SCBF would be accountable to themselves as well as to SNCC (with the directors of SCBF having the majority of the memberships) for the actions of the SCBF board, and in the light of recent difficulties at the 2016 AGM, public reaction would unlikely to be positive.
- iv. provision is made opening up membership to every resident within Strathnairn, on written application to the Secretariat, as recommended in the main Report.

**6. *Clause 10 of the Articles of Association states "On a show of hands every member being an individual present in person and every member being a corporation being present by duly authorised representative shall have one vote. On a poll every member present in person or by proxy or by duly authorised representative shall have one vote. " Can this be interpreted to mean that the Fund is compelled to ignore votes of members who are unincorporated i.e. SNCC?***

An unincorporated voluntary association such as SNCC does not have a separate legal personality. However, there are many statutes which assume that they do. For example, in the Interpretation Act 1978, Schedule 1, *person* is defined as including *a body of persons corporate or unincorporate*. The Scottish Law Commission considered the position in detail in 2009:

<https://www.scotlawcom.gov.uk/files/3312/7989/7412/rep217.pdf>

We do not feel that this provision requires votes of members who are unincorporated to be ignored, but if the Articles of Association are to be amended, then this provision could be usefully clarified at the same time.

7. ***Currently the SCBF's area of operation is defined as being coincident with the Strathnairn Community Council's area. SNCC's boundary is a political boundary defined not by the community but the Highland Council (THC). It is prone to change, and would change for reasons not under the control of the SNCC, SCBF, or our community. How do we protect ourselves against such potential changes? How best we define the SCBF's area of operations in terms that are independent of the SNCC's.***

The Farr windfarm agreement between Farr Windfarm Limited and SCBF provides that the community benefit funds are to be spent within the *Strathnairn area for the benefit of the residents of Strathnairn*. The Dunmaglass windfarm agreement, between Monadhliath Energy Limited and SCBF defines the area of benefit as *the Strathnairn Community Council area as defined by the unitary authority of the Highland Council*. The Funds provided under this agreement are to be used for *a grants programme within the Area of Benefit*.

In respect of Farr, then we would suggest that it is for SCBF to determine the boundaries of Strathnairn, and if there is any doubt about that interpretation, then it could be checked with Farr Windfarm Limited. Neither Highland Council nor SNCC has a role in determining the boundaries for these community benefit monies.

In respect of Dunmaglass, SCBF may wish to approach Monadhliath Energy Limited with a view to having the area benefit defined as *the Strathnairn Community Council area as defined by the unitary authority of the Highland Council **as at the date of this Agreement***'. That is a fairly common provision in respect of other community benefit fund arrangements elsewhere in Scotland. That is a matter between Monadhliath Energy Limited and SCBF.

Although strictly speaking SNCC does not have a role to play here in making any such adjustment, it would be politic for a consultation to take place at an early stage.

If SNCC continues as the member of SCBF, then that is fine so long as the boundaries of the area of benefit of SCBF and of SNCC are congruent. However, if the community council boundaries locally are adjusted you will have two possible scenarios:

- more than one community council covers the SCBF area of benefit. In these circumstances consideration would need to be given as to whether all the community councils covering the SCBF area benefit should become members of SCBF, and if so whether some form of proportionate basis relating to the land mass or population each community council covers would be necessary for calculating the number of directors, fund distribution, etc;
- the new area which SNCC covers encompasses a larger area than the SCBF area of benefit. In the circumstances consideration would need to be given as to whether or not nominees from SNCC to sit on the SCBF board must reside within the SCBF area of benefit.

**8. According to the Articles of Association (AOA), members only cease to be members on death. There is apparently no power to remove members? Do we need to include such powers?**

As presently the only member is SNCC, and currently there is no explicit provision in the Articles of Association relating to the expulsion of a member, with the current membership there is no point in making such an amendment. If the membership is amended to encompass a broader range of members, then such a provision should be included in the Articles of Association, if such a power is desired. It would not be for the directors to remove a member from the register of members (other than administratively on death or on notification from that member of their wish to terminate their membership), but for the membership in General Meeting, if the desire to do so is fuelled by the conduct of a member.

**9. Should a Community Complaints Procedure should be part of the AOA?**

No, this is an operational matter rather than a structural governance matter. SCBF would have more flexibility in making changes to such a procedure if it was a stand-alone document, for example with no requirement to make any notification to Companies House. It is not customary to have such a procedure in Articles of Association.

**10. Minutes. In the Community Newsletter, we provide a cut down version of the minutes. Presumably, if the Board wanted to, Clause 100 could be modified to include some statement to the effect that the directors will release approved minutes of the meetings, but also give directors the power to redact items that are deemed to violate the Data Protection policy, commercially sensitive, or any other reason?**

This is not necessary. Neither shareholders in a private limited company nor members in a company limited by guarantee have any right to inspect the minutes of the board of directors, unless the Articles of Association give them that right.

Members are entitled to inspect:

- records of member resolutions and minutes of general meetings;
- the company's statutory registers (e.g. registers of members, directors, secretaries, and charges) – although any request to inspect the register of members must be made for a *proper purpose*;
- directors' service contracts and any directors' indemnities;

They are also entitled to receive a copy of the company's memorandum and articles of association.

Members of the public who are not members of the company have no right either to inspect minutes of the board of directors, although it is considered good practice for

community companies limited by guarantee to publish minutes, subject to data protection considerations, as a sign of transparency and accountability.

**11. Five of the current SNCC councillors are also directors of SCBF (3 appointed by SNCC). Given that the 5 directors would not be able to vote at SNCC on matters relating to SCBF, other than resignations, how does SCBF protect itself against possibly perverse decisions being made at SNCC by a minority of Community Councillors? Is an increase in the number of members the best route?**

SNCC may have up to 9 members per The Highland Council scheme of establishment. Its quorum for meetings is 4 members. The Articles of Association of SCBF provide that there shall be a minimum of 4 directors, but no maximum number is set.

In any discussion at SNCC of matters relating to SCBF, each member of SNCC with an interest in SCBF e.g. as a director, must declare an interest under section 1 of the "Code of Conduct for Community Councillors" under the scheme of establishment. Depending on the nature of the interest, the community council member concerned may have to withdraw from the meeting, but if the discussion relates to the overall strategy or policies of SCBF rather than is in relation to any particular individual application or other specific matter, then it is likely that the nature of that interest would permit the community council member to continue to participate in the community council proceedings.

The rights of members in a company limited by guarantee is restricted to:

- removing a director from office by calling a general meeting with at least 28 days' notice in writing to all members and directors. At this meeting, the director concerned has the right to put her/his case, either verbally or in a written statement. If the voting members then pass a resolution to remove her/him by a simple majority (51%), then s/he must stand down. The same type of resolution and rules must be used if an auditor is to be removed;
- obtaining a copy of the Memorandum and Articles of Association;
- inspecting the Register of Members on reasonable notice during normal office hours;
- calling a general meeting if the directors refuse or fail to do so, as long as members with 10% of the voting rights sign a request to the Secretariat to call the meeting;
- receiving a copy of the audited accounts and annual report at least 3 weeks prior to each AGM;
- protection against "unfair prejudice" – that is, from being harmed or oppressed by directors' actions or failures to act, where the members concerned are in a minority;

- on behalf of the company, raising court action against individual directors who misuse their powers or fail in their duties and cause the company to lose money or resources as a result.

It is not really possible for SNCC as the member of the company to direct the board of SCBF in operational matters. It can repeatedly force directors to stand down and elect directors more amenable to its taste in the hope that they might be more inclined to comply with the wishes of SNCC in operational matters. It cannot resolve at an SNCC meeting that SCBF should do is something and then instruct the board of SCBF to carry it out.

However, as set out in the main Report, the best route would be an increase in the number of members, via opening membership up to the wider community.

**12. *We have recently revised our Grant Strategy to significantly reduce the number of grants offered (in line with DE meeting in 2015). We continue to work on the assumptions that we are precluded from giving grants for political or religious purposes, or for fundraising for charities which operation outside of Strathnairn and whose activities are not focussed on Strathnairn. Can these assumptions be confirmed?***

The agreements in respect of Farr and Dunmaglass wind farms sets out the basis for restricting grants to applications that benefit the residents of Strathnairn. It would be possible to award a grant to an organisation based outwith the area of benefit, and which carries out activity outwith the area of benefit if it is for the benefit of the residents of Strathnairn e.g. where young people from the area need to go to an activity outwith the area as one is not available within the area and the application comes from the host organisation.

Section 7 (4) (c) of the Charities and Trustee Investment (Scotland) Act 2005 sets out that a body whose purpose is to advance a political party is not charitable. As SCBF is a charity, all the grants it makes it must be for a charitable purpose so a grant for a political purpose is not permitted. Section 7 (2) (c) of the Charities and Trustee Investment (Scotland) Act 2005 provides that *the advancement of religion* is a charitable purpose. The Farr windfarm agreement contains no restriction on the use of funds for religious activity, whereas the Dunmaglass wind farm agreement in Clause 4.2 prohibits use of the funds for projects *deemed by the Company to be for the furtherance of political or religious objectives*.

Therefore in summary, SCBF cannot award any money in furtherance of party political activity or activity designed to support a political party or the programme specifically associated with a political party. SCBF cannot award money from the Dunmaglass windfarm monies in furtherance of religious activity, but may do so from Farr windfarm monies.

