

Guidance for communities

on participating in the shared community ownership voluntary protocol

This guidance note has been prepared at Community Energy England by members of the Shared Ownership Taskforce to assist community groups interested in partnering with developers under the shared ownership [voluntary protocol](#) in renewable energy projects. It links to information on the shared community ownership website www.SCO-RES.uk.

This guide is specifically aimed at community groups (often addressed in this guide as 'you'). Similarly we refer to the developer as 'he' (though it may of course be a she – or more likely a substantial company) – and we have drafted separate guidance [here](#) to help him.

Benefits of Shared Community Ownership

The shared ownership initiative should significantly increase the capacity of community energy in the UK and brings many benefits to community participants as summarised [here](#). It also brings [benefits](#) to the commercial participants.

You should therefore respect the value that your partner brings to your joint projects – and vice versa.

Understanding the needs of your partner

The renewable energy industry has made impressive progress in the UK in recent years, increasing the contribution of electricity from renewables from under 3% in 2003 to 15% in 2013. This has been achieved despite a very challenging political environment in which there have been frequent, often extreme, changes in incentive mechanisms and other regulations.

Shared community ownership is a new approach which project developers are now exploring on a voluntary basis. This reflects the widely supported desire to advance community energy and, if implemented effectively, can deliver significant mutual [benefits](#). Understand however that some developers may reasonably be concerned that such added complication to the development process could bring further uncertainty and delay to their projects.

As community partners, you should be sympathetic to this standpoint. In particular, you can substantially reduce the perceived risks by demonstrating to the commercial partner that you are in principle able to:

- Engage constructively in consideration of different participation options;
- Reach timely decisions on heads of terms for collaboration agreements;
- Demonstrate an understanding of the financial resources which you might reasonably be expected to bring; and
- Mobilise the local support and any manpower and other resources which you are expected to bring to the project.

Much of this can readily be achieved by advance preparation within your community enterprise so that you are ready to engage on the substantive issues as soon as you are in contact with the developer.

Many developers are reliant on external funders to bring projects to fruition. Don't be surprised therefore if your partner can't always make decisions directly, but needs to refer to an *éminence grise* in the background.

Advance preparation

Firstly familiarise yourself with the [voluntary protocol](#), so that you can assess what opportunities it offers for your group, and read the full Taskforce report if you want more context and background.

Before engaging in any commercial projects in your area, you can consider what types of scheme you would like to participate in. This includes, for example, decisions on renewable technologies of interest; the geographic boundaries; any physical, planning, design or land use considerations; and the level of financial contribution you would consider desirable.

Once you have identified those parameters, you can register your requirements using one of the links [here](#) and will then be put in touch with commercial developers with projects which fit within your identified parameters.

If your community group is not yet incorporated, consider what type of enterprise structure to adopt (there is further guidance [here](#)). You can enter into discussion and negotiation with commercial developers before becoming legally constituted, but be aware that by the time agreements need to be signed you will need to have an incorporated body (a society, company, partnership or charity), which can enter contracts.

Community enterprises which are already incorporated should consider whether they intend to collaborate in the shared ownership project directly (through their existing entity); or whether they intend to establish a separate subsidiary or special purpose vehicle to undertake the community share of the project.

Finally, you may want to give advance consideration to the shared ownership and other participation options which would be most attractive to you and your members, especially as some [government incentives](#) may only be available under certain ownership models. Nonetheless, you should avoid taking a rigid stance at an early stage and be prepared to show flexibility in discussions with developers.

If you are intent on pursuing a genuine shared community ownership approach (and this may not always be the case - see [below](#)) you should seek to define first estimates of:

- The upper and lower range of the financial contribution which your enterprise might be able and willing to supply;
- The capital repayment approach and level of financial return which you would need to offer to community investors in order to secure this level of capital;
- Whether you would wish, and be able to, raise debt and/or other financing;
- The intended use of any surplus (after investor distributions) to community funds and any other applications; and
- Preferences for the use of community benefit funds generated by the community share of the project.

In some instances commercial developer may ask you to be involved also in deploying the community benefit funds generated by his part of the project. However, this may not always be the case and therefore it does not need consideration at this stage.

Opening discussions

Ideally, project developers should open discussions with local community groups very early in the project development process. At this stage, they may have defined the location, technology and scale of the project; but not much else.

Assuming that the developer has not yet obtained consent for the project, you will be able to add substantial value to his project by mobilising local support for the planning application.

At this stage it is therefore worth advancing as far as possible the terms for collaboration, so you can commit wholeheartedly to promoting the project.

At this time you should also study the proposed project design; contribute your suggestions for any improvements; and highlight any concerns which might adversely affect the planning outcome. This review should consider not only the generating plant itself but also the cable routes to the grid connection point.

Be aware that the developer will wish to maintain flexibility over the design and other aspects of the project so that he is able to accommodate future changes including planning conditions, new technology, and environmental improvements. Many developers subcontract the construction of the plant itself to a so-called EPC (engineering procurement and construction) contractor; and they will wish to retain the flexibility to select the most expedient and cost-effective equipment and contractors when the time for construction comes.

All of this means that, though you may have an agreement in principle about the form of collaboration, many things are likely to change during the development process; and you should be ready to accommodate variations in the partnership agreement accordingly.

It is helpful to keep track of discussions by minuting meetings, and if appropriate signing up to a Memorandum of Understanding (MoU) when possible. Although not legally binding, this summarises the outline agreement without restricting future flexibility. Some projects can take a considerable time to come to fruition, and a MoU will provide reassurance to both partners, particularly in the case of a change of personnel.

Community ownership

Your participation in the project is likely to include a number of different aspects, which may include support for the planning application (as discussed above), a share of the ownership, and maybe [other options](#). Under the shared ownership protocol, the developer is obliged to offer you at least one route to genuine [shared community ownership](#). You are not obliged to take up this option, but if you choose to do so, he must deliver it.

If you opt for a shared ownership option you will need to raise the capital to acquire your share. Depending on the size of your participation, and the ownership model you agree on, it might also be appropriate for you to negotiate a role in the governance of the project (for example seats on the board or any management or partnership committee).

Accepting community ownership

There are several reasons why communities might not wish to enter a genuine shared community ownership agreement. Choosing the best option for you is an important decision, needing careful consideration.

Consider:

- Is shared ownership preferable to one or more of the [non-ownership options](#)?
- Do you feel comfortable undertaking the steps required to raise the necessary financial contribution?
- Do you have any reservations about the project, the developer, its management or its viability? Have you raised these concerns with the developer, or an intermediary?
- Do you have, or can you acquire, the resource to participate constructively in the project in light of the community's other priorities?

If you decide not to progress with shared community ownership, you should advise the developer accordingly, and he is then entitled to continue with the project without financial

investment from the community. You may still agree to pursue [other participation options](#) in the project. Additionally or alternatively you might want to encourage him to make it possible for individual investors to participate in the project (as shown on the right [here](#)), even if there is no investment through a community group.

Conducting negotiations

Your commercial partner may well be more accustomed to conducting this type of commercial negotiation than you are. You should not allow this to put you on the defensive.

The important thing is to decide which of the preferences you have selected [above](#) are essential, and which are in the 'nice to have' category. Your commercial partner will have done the same; and will otherwise be mindful of his duty to achieve the best financial return for himself and his backers.

Be aware that he is likely to need to obtain the agreement of his funders to all aspects of the agreement which he makes with you. Feel free to ask questions so you can fully understand the financing process and considerations for the developer and funders. Finance providers are on the whole sensible (if cautious) participants and should not resist meeting your reasonable requirements.

Shared ownership agreements

There may be several stages in the legal agreements about your participation in the project.

Once the main elements have been agreed, it is very likely that you would be expected to sign a so-called 'Heads of Terms' with the developer. If an early-stage Memorandum of Understanding was signed, the Heads of Terms will build on this document. This may or may not be legally binding at this stage; and you should ensure that the document specifically says whether or not that is the case. If it is not binding, you are free to change your mind, without repercussions; but so is the developer.

If the heads of terms are legally binding you would be well advised to consult your lawyers before they are signed. It is likely that in any case the commercial developer will take legal advice on this document.

The next stage would be to draw up a full legal contract based on the heads of terms which have been agreed. Lawyers will definitely be involved at this stage. One or more legal agreement(s) will cover all aspects of the collaboration. If a shared ownership arrangement has been agreed, the contract will specify upper and lower limits on your participation and the corresponding levels of financial contribution. Assuming that you have not at that stage yet raised the money required, you need to ensure that the agreement contains acceptable provisions in case the investment is not forthcoming.

'Financial close' is the terminology for the moment when the investment monies are paid and the provisions of the agreements become effective. Some, maybe most, shared ownership projects will have a single financial close, when both the commercial and the community investors participants will make their investment. It is possible that some projects will have separate financial close dates for the commercial and the community investments.

Delivering on your undertakings

In addition to any financial investment, as discussed above, you are likely to have other obligations under the shared participation agreement. These obligations will be entirely project-specific depending on what you have agreed; you should be aware of these requirements and ensure that you have the necessary manpower and resources to meet your commitments.