Guidance for developers

on complying with 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 commercial developers to engage with community groups under the shared ownership voluntary protocol for renewable energy projects. It links to information on the shared community ownership website www.SCO-RES.uk.

This guide is specifically aimed at project developers (often addressed in this guide as 'you'). Similarly we refer to community group(s) as 'they' – and we have issued separate guidance here to help them.

Benefits of Shared Community Ownership

The shared ownership initiative is designed to encourage increased deployment of renewable energy systems and can bring further benefits to developers as summarised here. It should also accelerate the uptake community energy projects in the UK, and generate specific benefits for the community 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 community energy sector in the UK is relatively underdeveloped compared to leading markets like Denmark and Germany. However, activity levels have risen significantly in recent years and community energy enterprises now regularly undertake multi-MW projects.

Community enterprises are not-for-profit organisations motivated primarily by the social and environmental benefits, which they generate; rather than the financial returns. Many, for example, utilise the income stream from renewable energy projects to invest in energy saving or alleviate fuel poverty.

Historically, most community energy groups were led by unpaid volunteers. Increasingly however, some organisations employ executive staff and/or make modest payments to their directors. Either way, you should not assume that just because they are volunteers, they are 'amateurs'. Many community groups include people with high levels of expertise and professionalism. Ask around your own company; you may well find some of your staff are involved with community energy groups in their spare time.

You should be aware of two by-products of this more social, less commercial, approach to business:

- Many members of social enterprises also have separate paid employment. They will therefore tend to have a substantially lower level of manpower (and financial) resource to deploy on the project than you do.
- Social enterprises are typically more democratic and less stratified than commercial businesses. This can lead to a more inclusive, and therefore slower, decision-making process. On the plus side, the level of buy-in is typically stronger once decisions have been made.

Don't assume that all this means community groups have insufficient appetite or capability for large-scale projects. Westmill Solar Co-operative, for example raised £18m in just a few weeks, of which the £12m debt element was the first significant investment by a local authority pension fund in a UK renewables project.

Corporate structure

To reflect this social ethos, community energy enterprises are more likely to be incorporated as societies, rather than industrial companies. Societies are registered and regulated by the Financial Conduct Authority (not by Companies House). They are governed by their rules, in many respects similar to your articles of association. There are two types of society; co-operative and community benefit societies; but we needn't go into the differences.

Alternatively some community energy enterprises may be constituted as charities and others as community interest companies. CICs are registered at Companies House but regulated by a separate Regulator of Community Interest Companies. Make sure your lawyers and funders are aware of the corporate structure of your partner and any implications thereof.

Advance preparation

Familiarise yourself with the voluntary protocol, because you are the main party responsible for compliance thereunder; and so that you can assess what opportunities it offers for your business. Read the full Taskforce report if you want more context and background.

Ensure your planning consent and grid connection offers are flexible enough to accommodate community participation. Because the final details are unlikely to be fully defined when you apply, sample wording to include in your applications is offered here.

Shared Community Ownership

Bearing in mind that you will be expected under the protocol to offer shared ownership to the community if that is what they wish; give early consideration to what types of shared community ownership approach best suit your business model.

You will undoubtedly wish to check this for yourself with your lawyers and funders, but the following brief assessment outlines Community Energy England's first thoughts on the models listed in the protocol:

- Split ownership offers the advantage that you end up with a stand-alone project which differs from pure commercial developments only in that there is a neighbouring community project.

  The primary disadvantage is that there is a need for some duplication of equipment which can add to the overall project cost. The participants will also need to make arrangements for any cross- or mutual-access and connection provisions that may be required by the overall project design.

  The split ownership approach will be the one which qualifies for the 5+5 MW tariff approach proposed by DECC following the community Feed-in Tariff consultation.
- The joint venture approach is in principle very straightforward in that it should have minimal impact on the project design and realisation. It may be the easiest if you intend to retain ownership of the projects in the longer term.

  If, however, you undertake projects on behalf of infrastructure funds, or sell them before or after construction, this approach could be less attractive because of the complexity of having an additional (usually minority) co-owner in the project.
- The shared revenue approach similarly makes minimal demands on the design and implementation of the project. If you wish to sell the project, the details of the shared revenue agreements will need to be disclosed to purchasers; but may prove less of a disincentive for them than a joint-venture agreement.

These are not the only options. It may be advantageous to develop, either independently or with others, your own innovative alternatives, which meet the requirements.

Other participation options

In addition to considering your preferences for shared community ownership models, you should plan what other approaches you would be prepared to discuss.

It may well be in everyone's interests that you adopt one of these other approaches, if your community partner does not wish to enter into an ownership agreement, for example for one of the reasons listed below.

While this preparation will be invaluable, you should avoid taking a rigid stance at an early stage and be prepared to show flexibility in discussions with communities.

Opening discussions

Ideally, you should open discussions with local community groups as soon as you have defined the location, technology and scale of the project.

Finding suitable community groups

Your routine site selection procedure probably includes identification of local groups, which might be supportive of renewable energy projects. Discussions with land-owners can often also identify active local communities. Any of these may well be prospective shared ownership partners.

If no partners have yet become apparent (and even if they have), you should record details of the project at the links shown here. If you want to widen the search for partners more broadly, contact other intermediaries.

If none of these avenues delivers any community groups open to discussion of shared community ownership, then you have fulfilled your obligation under the voluntary protocol. You need only provide details of the outcome on the register and can continue to develop your project alone.

If you find several prospective partners, you have the freedom to decide which one (or more) you wish to enter more detailed discussions with.

Prospective collaboration themes

It is useful to table, early in the discussions, a list of all the prospective partnership activities between yourselves and the community partner. Alongside shared ownership and other participation approaches, be sure to talk about the assistance you would like to receive from the community – support for your planning application, for example. It may also be worth considering whether they would be a good organisation to manage the community benefit contributions your project will deliver.

Be prepared to share your initial proposed system designs; with their local knowledge, your partners might make suggestions to enhance the scheme and its prospects for consent. If you can’t adopt all their suggestions, explain your reasons.

In discussing shared ownership, give your partners a clear indication of the upper and lower limits for their investment. Be as flexible as you can and note the approach suggested in the voluntary protocol and the comments below.

Community ownership

The eventual agreement with the community enterprise may comprise a number of different aspects, which may include their support for the planning application, a share of the ownership, and maybe other options.

Under the shared ownership protocol, you are obliged to offer and deliver at least one route to genuine shared community ownership, if that is what the community wants. Depending on the level of participation, and the participation model agreed on, it might also be appropriate to offer a role in the governance of the project (for example seats on the board or any management or partnership committee).

Accepting or declining community ownership

There are several reasons why communities might not wish to enter a genuine shared community ownership agreement, including:

- A preference for one or more of the non-ownership options;
- Uncertainty about their ability to raise the necessary financial contribution;
- Reservations about the project or its viability; or
- Lack of resource to participate constructively in the project in light of other priorities.

If your community partner(s) all confirm that they do not wish to take up community ownership, you have fulfilled your obligation under the voluntary protocol. You need only provide details of the outcome on the register and can continue to develop your project alone. In consideration, you may agree to pursue other participation options or offer to individual investors the chance to participate in the project (as shown on the right here), even if there is no investment through a community group.

Conducting negotiations

You probably don’t need any guidance on this topic.

Remember that your community partner is used to reaching agreement by consensus, rather than negotiation. It is also important to decide which preferences are essential, and which are in the 'nice to have' category, so that you can reach a fair outcome in the middle ground.

Shared ownership agreements

It is likely that, until template contracts are developed (as is expected in the future), you and your lawyers will take the lead on contractual documentation. Do encourage the community to retain suitable professional advisers so that they are properly represented. The community group can be expected to be a very collaborative partner in the project, so you can perhaps avoid excessively tortuous legal provisions that might be necessary elsewhere.

Give consideration to the fact that they will probably need to raise their investment contribution through some sort of public offer; so avoid contractual requirements, which would make that difficult.

Raising the community investment

Community energy groups have recently had good success rates in their fund-raising activities, and should be well placed to achieve their share of the capital in well planned projects. If you can structure your project finances to allow them some margin for either over-subscription or shortfall, that will improve the prospects of success.

If the community were to fail to raise its contribution in the time agreed, you can complete the project alone, having fulfilled your obligation under the voluntary protocol. Again you should provide details of the outcome on the register.

More optimistically though; the investment is achieved and you will together deliver a shared ownership project in accordance with the voluntary protocol.

Just enter the details on the register and await the plaudits!