

Muirhall Energy Presentation to Community Leads

26th October 2022

at South of Scotland Office, 4-6 North Bridge Street, Hawick TD9 9QW

Please note - these Minutes are not a *verbatim* transcript of the discussion, but they present an overview of the topics and questions raised during the evening.

Present:

Muirhall Energy – Sarah McIntosh (SMc), Mhairi Frain (MF), Jamie Leslie (JL), Carol Douglas (CD)

Ward Councillors – Stuart Marshall (CllrSM), Watson McAteer (CllrWM), Clair Ramage (CllrCR)

Community Councillors – Denholm – Gwen Crew (CllrGC), Will Roberts (CllrWR), Hawick – French Wight (CllrFW), Hobkirk – Ron Swinton (CllrRS), Newcastleton – Barbara Elborn (CllrBE) Jim Lewis (CllrJL), Southdean – Philip Kerr (CllrPK) UT&BW – Walter Douglas (CllrWD), Jeff Martin (CllrJM), Scottish Communities Can – Gordie Campbell (GC)

Apologies: Emma Clarke Burnfoot CC, H&H Ward Cllr Jane Cox

Sarah McIntosh, Managing Director of Muirhall Energy welcomed everyone and thanked them for attending this preliminary discussion. Sarah included an on-screen presentation, a copy of which is attached to these Minutes.

Why are we engaging with Communities about vehicles for delivering Community Investment and potential Shared Ownership funds so early given that, should planning permission be granted, the Teviot project will take 8-10 years to come to fruition?

Experience at Crossdykes Wind Farm demonstrates that early engagement works best to get these vehicles in place. Identifying a suitable model for Crossdykes communities funding delivery took more than 4 years to agree and establish but we now have that template which other communities may choose to follow. We would also like to establish an agreement in principle with the Communities in the Teviot project area to protect their interests.

Q –CllrJL What does MEL usually do with its projects? For instance, Crossdykes was sold shortly after it was opened. What was the reason for that?

A. The reason for selling Crossdykes was simply to raise capital for future projects. The business plan going forward is to build and operate future projects.

Why are we suggesting the Communities consider a Company Limited by Guarantee instead of the Memorandum of Understanding (MoU) system used in the past?

MoUs were previously used but proved unsatisfactory on several levels and required unpicking, which proved complex and burdensome. MEL now considers it is more efficient and transparent for the Communities to work together without the need for MoUs, particularly in the case of the Teviot project where 12 Community Council areas are involved. A CLG would provide a 'one-stop-shop' for interactions between MEL and the Communities and allow the Communities the opportunity to support each other with shared knowledge and expertise. It is now considered to be best practise in the industry to work in this way, particularly considering the large sums of money involved.

How does the Crossdykes CLG work?

The Board of the CLG comprises 2 representatives from each Community Council in the area involved. Crossdykes has 5 Community Councils, so the CLG Board comprises 10 Community Councillors, nominated by their Community Council. The CLG receives all the Community Investment funding – £7k per megawatt installed. For Crossdykes this amounts to £320,000 per annum. Current estimated figures from Teviot Community Investment payments indicate £2.86m per annum. Funding applications are invited, and decisions made by the Board require a majority in favour to be passed.

There is flexibility within the CLG to accommodate changes in circumstances. For instance, Canonbie & District Community Council will join the Crossdykes CLG when Hopsrig and Loganhead WFs are commissioned. It is expected existing CLG resources would be ring-fenced for the original 5 CCs but these decisions ultimately sit with the Board of the CLG.

As shown on the illustration, a **Company Limited by Shares (CLS)** subsidiary, in this instance Crossdykes Community Services Ltd, was required to hold shares from the 5% shared ownership. The CLS is only required as a tax-efficient vehicle for Community shared ownership and is not necessary for Community Investment monies.

Should the Communities consider establishing a CLG for Teviot, MEL strongly recommends they take independent advice from corporate lawyers and financial advisors with experience in the sector which will expedite the process. Several of those present have experience of working with legal and financial companies in similar circumstances and declared themselves confident to proceed with that suggestion.

Q CClrPK – pointed out that there will be 3 Community Councils cycles before Teviot is built out.

CClIrPK requested more insight into the structure MEL is suggesting. SMC said MEL is not asking CCs to sign up for shared ownership at this point, only to consider the principle of establishing the CLG. The example of Pines Burn community benefit was mentioned, which has not worked in the Communities favour following a change of ownership. MEL wishes to disassociate itself with such practises and cites the problems resulting from that poor experience as a good reason to proceed with the CLG.

It was observed from the floor that multiple wind farms may be coming on stream in the near future so Community Councils will have many issues to consider. **SMC** re-iterated that the proposal for a Teviot CLG is purely to establish the principle.

CClIrBE noted that the SCIO for Pines Burn was not established early enough but if it had been in place, the CCs might have avoided the problems they’re experiencing at the moment. **CClIrBE** was worried about funds diminishing as time passed and therefor the CCs need to agree a way forward sooner rather than later to avoid potential degradation of funds.

CClIrPK Confirmed that CCs could receive their Community investment funding via the CLG arrangement **SMC** had described i.e. the parent company which would have an agreement with the Teviot Special Purchase Vehicle (SPV). The SPV would hold all the developments assets such as land and grid agreements, contracts with obligations etc also contained within that ‘box’, if such agreements are in place.

A question about the proposed £500,000 Initial Investment Fund came from the floor. If the grid connection is delayed for Teviot, when would the IIF be triggered? JL replied that the IIF would be triggered at start of construction. MEL is optimistic we can bring forward grid connection from the currently quoted 2033 date. The project is expected to take around 3 years to/

/construct and is anticipated to achieve financial close in 2028. MEL would then push on to begin construction 2029/30.

CCllrWD asked if Crossdykes Community Benefit Ltd is only dealing with community investment?

A. Crossdykes Community Benefit Ltd receives all community investment funding – around £320,000 per annum – but also receives and distributes the profits from shared ownership via the Crossdykes Community Services Ltd subsidiary.

Will Hopsrig and Loganhead WFs be open to shared ownership and at what level? How will the profit be distributed if another Community Council joins the CLG?

A. The CLG is flexible enough to allow another CC to join and to continue to receive funds should any CC fall into abeyance. Funding decisions are up to the Board of the CLG, but MEL will encourage the Crossdykes CLG to take up to 10% shared ownership of Hopsrig & Loganhead Wind Farms.

CCllrPK asked why we wouldn't just use the SCIO structure from Pines Burn? CCs know how they work.

A. SCIOs are difficult to use for shared ownership. **CCllrBE** agreed a SCIO is not good for shared ownership and stated that her instinct would be to go with Burness Paull for guidance, considering their sector experience. Burness Paull advised MEL and the Crossdykes Communities that a CLG worked best for this scenario with a subsidiary set up to buy the shares. It was also very tax efficient. Although MEL offered the funding for the Crossdykes shared ownership purchase, it's anticipated that 3rd party investors would find such a scheme an attractive proposition, particularly those wishing to demonstrate their green credentials. The suggested Company and subsidiary structure also keeps assets and liabilities separate. **SMc** said that when Hopsrig & Loganhead are commissioned, Crossdykes CLG can re-use the existing subsidiary or create another one, as they prefer. These companies can grow exponentially if the opportunities present themselves.

GC – Mentioned that the community in Fintry used a similar model some 15 years ago and opined that such discussions could plant seeds in the mind for what could be achieved if communities work collaboratively. Discussion ensued. It was re-iterated that there was no obligation for a CC to participate but it was easier for the developer to deal with one entity representing the Community for the Community to put their ideas forward in a constructive and structured way via that entity.

SMc said she would be happy to share anonymised data from Crossdykes with the CCs.

MF – Mentioned that fund details were decided by the CCs and that MEL was keen not to place undue restrictions on how funding could be used. If there was a CLG for Teviot these rules would apply.

CCllrBE – was keen to get an agreement in principle with restrictions as usually pertain, for example no religious or political promotion or campaigning, investing in armaments, funding matters which fall under the Local Authority competence etc.

JL commented that we have all seen WFs placing onerous restrictions on how funds can be used which is very frustrating for Communities and doesn't allow them to use their funds for major investment or significant projects.

CCllrJM – please clarify – the structure on the screen includes the community benefit.

CCllrPK How does it work if 4 CCs which don't want shared ownership, but others do. That would be difficult to decide.

SMc Explained that CCs who are not supportive of wind farms are not excluded.

CCllrJM – if funds are going to the CLG? Where's the risk?

CCllrPK- anticipated shared ownership would cost IRO £50/60m for Teviot and explained risk.

SMc explained that Quayle Munro had given advice to the Communities on the back of the financial model MEL prepared. Shares were sold at a highly discounted price to the CLG. Communities could be reassured that Quayle Munro had gone through the detail the agreement with a fine-toothed comb.

Comments from the floor observed that recent turbulence in financial markets would suggest that caution was advised; that interest rates have an effect etc. **JL** remarked that though Power Purchase Agreements were low at Crossdykes the model still worked. It was observed from the floor that there may be a lot of hesitancy as Communities are understandably risk averse.

A. Even though Teviot is a few years off we still need to get an agreement in principle.

Discussion continued around the Crossdykes example and how funding could be raised for community shared ownership. **SMc** said the Community were offered a valuation at a discounted rate and that, although MEL had funded the 5% shared ownership at Crossdykes, that other funding possibilities existed, such as the Scottish Investment Bank or venture capital. The combination of renewable project and community investment ticks many boxes and so is very attractive to green investors.

Q about whether 5% shareholding was a typical shareholding and whether the Teviot WF company would operate an open book policy.

A. It depends on the structure at the time. Crossdykes Community Shared Ownership shares of 5% were non-voting shares. Comment from the floor was that the Community would probably want visibility even though they held non-voting shares. **SMc** said they would still have visibility and indeed at Crossdykes they were part of the decision-making process when the project was sold. **SMc** then moved the discussion from detail to 'big picture stuff' and re-iterated that it was important to have an open discussion now. Comment from the floor was that CCs usually have very limited fiscal responsibility but that was now changing hugely. MEL observed that there were skillsets present in the room who were very well able to represent the interests of the community. It was noted that shared ownership decisions would be for the second 'round' of three CCs before development, should consent be granted, so that decision was not an immediate priority.

Next steps –

CCllrBE suggested an agreement drafted by Burness Paull on behalf of the community.

CCllrWD said he had been told that the reason the community decided to sell their interest in Crossdykes was that new owners raised doubts amongst the Community about the structure of the new company. **SMc** refuted that assertion unequivocally but undertook to speak to Nick Jennings for clarification. This has since been cleared up. There was further discussion about Community investment funding from Teviot being spent without consultation, with funding for Borders College and various sponsorship agreements already in place. **MF** said that was not the case and was able to reassure the audience that all money invested in Borders College and local sponsorship was funded by MEL, not Teviot WF. There has been absolutely no erosion of Community investment funds and the quoted figure of £7k per megawatt installed capacity was in place and would remain so.

Q from the floor Which CCs fall into the Teviot catchment?

JL listed the 12 CCs (see final sheet for the list) and explained the rationale for including them was that Teviot WF will produce a large Communities pot so MEL wanted to include communities who might not otherwise receive such funding in order to deliver maximum benefit. It was re-iterated that, ultimately, it is up to the Board of the CLG to decide how funds are distributed

CCllrBE Did Crossdykes have an administration fund attached to it?

A. **SMc** No. Such a decision is up to board and CCs control who administers the fund. MEL was asked for our opinion, and we were happy to offer support. **CCllrBE** observed that 3rd sector arms are different in each Local Authority which can lead to difficulties in administration.

CCllrGC – commented that there was a lot of detail to consider and that she found herself in a moral dilemma. How do we square the huge amounts of money involved with an individual suffering fuel poverty? Doesn't the cost of these developments drive up the cost of energy?

SMc answered that the money we can generate demonstrably leads to financial advantage for the communities near the developments. Currently global gas prices dictated the price of electricity to the consumer. If gas and electricity pricing can be decoupled, then the cost of electricity should drop, although that is a matter for the Westminster Government who have reserved powers over energy.

JL observed that some WFs don't benefit from current high energy prices as they're under contract at a previously agreed lower rate. Delivering cheap energy locally is something we've tried very hard to achieve but it's very problematic with many administrative hurdles and restrictions to negotiate. Comment from the floor that **RES** had experienced something similar at Highlee. The situation across the UK was volatile currently with many changes of policy in recent weeks but it was hoped this might settle down with the appointment of a new Prime Minister (Rishi Sunak).

CCllrWR – asked if the committed £7k per megawatt installed capacity would rise if energy prices went higher?

A. Yes, that payment is index-linked (RPI).

CCllrWR observed that talking about levels of money takes the focus away from the structure.

SMc said she would share the template from Crossdykes and share contact details of Quayle Munro and LES, Burness Paull etc with the group. If the CCs were minded to proceed, then MEL would provide seed funding to cover any consultancy expenses and cost of independent advice. MEL wants to help facilitate this process.

CCllrJM – said he represents a community that doesn't support the project and he doesn't want to appear supportive. He seeks reassurance that these theoretical discussions have no bearing on that position. **JL** reassured **CCllrJM** that the Community Investment commitment is not a material consideration in the planning process and that a Community Council's involvement with this preliminary discussion would not affect their ability to object, or negate an objection, in any way.

CCllrWD –said he doesn't want their involvement to appear in the Press.

Q from the floor - How can MEL guarantee the community investment funds going forward?

A. This agreement allows MEL to put in place a direct contract between the Teviot Wind Farm company and the Communities to ensure the Communities will be getting the money.

The example of Pines Burn was raised again. The reply was that should Teviot WF be granted consent and then be constructed; an established funding agreement cannot be altered. All conditions of planning consent must be fulfilled. It was observed that EnergieKontor did things differently and transferred assets out when sold. MEL doesn't use that model.

CCllrBE – requested the discussion move on as it was getting late.

Lessons learned – the earlier the principle of the corporate structure is agreed and established, the better.

Current market volatility gives **CClIrPK** pause. **SMc** said that the project is too far off to make an informed decision, but we hope this process will be eased by ongoing legislation.

Comment *en passant* that Millmoor can't offer shared ownership as the developer needs 4 permissions from the Irish Govt and currently only have 2. It was noted that shared ownership is not offered everywhere.

SMc reiterated that the CCs should consider the seed funding offer in order to progress. There are no consequences for the CCs in taking up this offer from MEL's perspective. MEL doesn't want to impose time limits, but we would like to move this on. MEL appreciates it's quite a big ask but if we could arrange to hear from CCs sometime early in the New Year that would be helpful. We can have a further discussion once those present have had a chance to discuss it with their communities. We will proceed slowly and at a pace everyone is comfortable with. Meeting again also allows MEL to share information on how the project is progressing.

MF said that MEL would value the input from Communities to inform what we do and how we do it, should the wind farm be consented. To do so, it's important that the CCs work with us. Can we work together to achieve the best outcome?

CClIrWD – asked if Teviot WF gets the go ahead –and CCs took up the offer of shared ownership - what sort of figure would that investment be for 10% shared ownership?

A. MEL can't give figures at this stage as there are many variables which may come into effect between now and construction, but that MEL would strive to make the shared ownership offer as attractive and affordable as possible, as we had done at Crossdykes.

Q from the floor about MEL seeking new investors. Is there any clarity on the type of funds who might be interested and what level of investment does MEL anticipate?

A. MEL can't say what will be offered at this stage and the outcome depends on investor types. What is important is preserving the culture at Muirhall and those present can be assured the team is staying put. Expressions of interest have been invited via KPMG.

The issue of MoUs was raised again but **SMc** re-iterated that a better arrangement was to disburse funding collectively under one roof. **CClIrBE** dismissed the idea of MoUs and said this is an offer on the table for community benefit funds and communities can decide everything. Suggested we ring-fence the discussion so the legal process can be shared with confidence and an umbrella agreement put place to accept the funds once they're available. That would then be legally binding.

In conclusion, it was felt that it had been a constructive discussion and it was good to get other perspectives.

SMc thanked everyone for attending and hoped it gave all the Councillors food for thought. We look forward to taking the discussion forward in the New Year.

Further information

Acronyms

CLG – Company Limited by Guarantee. This company does not hold shares.

CLS – Company Limited by Shares. A subsidiary CLS is formed if the CCs opt for Shared Ownership.

HoLo – Hopsrig and Loganhead, the next 2 projects which form the Crossdykes cluster.

IIF – Initial Investment Fund. A fund established by MEL, available at commencement of construction

IRO – in the region of

KPMG - a multinational professional services network

MEL – Muirhall Energy Ltd

MoU – Memorandum of Understanding

PPA – Power Purchase Agreement. A PPA is a purchase contract between the company which generates electricity and the buyer, typically a provider such as Octopus or Scottish Power, which runs for 7-10 years although that can vary.

RES – Renewable Energy Solutions Ltd, an independent renewable energy company

SCIO – Scottish Charitable Incorporated Organisation

SPV – Special Purchase Vehicle. Each project has its own funding SPV.

Advisors

Burness Paull LLP – an independent commercial law firm

Quayle Munro - an independent mergers and acquisitions advisory firm

Johnston Carmichael – independent chartered accountants

Community Councils within the scope of the Teviot WF proposal (ie they fall within 15k of a turbine)

Burnfoot

Denholm & District

Eskdalemuir

Ettrick & Yarrow

Hawick

Hobkirk

Langholm, Ewes and Westerkirk

Lilliesleaf, Ashkirk & Midlem

Newcastleton

Southdean

Upper Teviotdale & Borthwick Water

Upper Liddesdale & Hermitage