

Annandale and Nithsdale Community Benefit Company



**5th Directors' Meeting
23rd October 2014
7 pm Tinwald Parish Hall**

Present:

Martin Brown (Chairman)
David Dick
Derek Ivy
Maureen Johnstone
Alistair McFadzean
Murray MacPherson
John Magill
Richard Mann
Jean Purves
Russell Stuart
Kirkpatrick Juxta
Closeburn
Kirkmahoe
Tinwald Parish
Dunscore
Dalton and Carrutherstown
Ae Village
Johnstone
Moffat
Heathhall

In Attendance:

Julia Whitaker
Ivor Hyslop
Marilyn Elliott
(Ailsa Horizons)
D&G Council
(Elliott Services – taking Minutes)

Quorate:

The meeting started at 19:00

Minutes	Action
Martin Brown welcomed all to the meeting.	
Apologies for absence	
Richard Clarke, Nicholas Jennings, Cllr. Stephen Thompson	
Approval of meeting note from 4th Directors' Meeting	
➤ Agreed by all	
Report from Procedures Group	
➤ Time today will be spent on the Agreement received from Scottish Power. ➤ Julia Whitaker, Martin Brown and Richard Mann visited the Solicitor and discussed the possibility of the organisation becoming a Scottish Charitable Incorporated Organisation (SCIO) rather than a Company Limited by Guarantee followed by application for charitable status. The Solicitor agreed but advised that this would delay the setting up of the company due to changes that would be necessary to the Memorandum and Articles of Association, so therefore recommends becoming a Company limited by guarantee initially. A change over to a SCIO could be made at a later stage when it would need ratification by both ANCBC's and SPR's Solicitors. ➤ Discussion took place around the wording that has been used by SPR regarding payments to be made. From the beginning, Harestanes has always been agreed as a 136mg installed capacity windfarm with £300k per annum being paid out as community benefit. However, SPR have changed this in their wording to a per megawatt payment. This could cut the amount paid in community benefit if, e.g. one of the turbines failed or the Government requested one or more turbines to be switched off. It is known that developers now look more closely at agreements made. However, there has been no conversation with SPR and the Agreement sent is not in agreement with previous conversations. In answer to Derek Ivey's request to know who will challenge SPR, it was stated that the challenge will be made by Ailsa Horizons and the Chairman. SPR has also not mentioned the term of the Agreement. This needs to be in accord with the advice originally received from SPR as regards terms and payments previously agreed. Russell Stuart pointed out that if the Agreement is not in accord with the original agreement, this might create problems for future sustainability, some with which John	

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<p>Magill agreed. Derek Ivy queried whether SPR saw the letters that were sent to all 30+ communities and was assured that this was the case by Martin Brown. Mentioned during the page-by-page queries, but also highlighted here is the fact that there is not agreement to SPR Agreement no. 4.1.4.b. as there is no mention of the 25 years and the wording around the fact that decommissioning could effectively begin at any time. It is possible that the 2020 renewables vision of the Scottish Government regarding windfarms might change and therefore ANCBC needs to ensure that the Agreement is in accord with previous agreements</p>	
<p>➤ The Agreement is now addressed on a page-by-page basis:</p> <ul style="list-style-type: none"> ○ Page 3 no changes 	
<ul style="list-style-type: none"> ○ Page 4 "Annual Report" – fiscal year ending 31/3 or annual 31/7. May operate under terms now and change in future. Solicitor's advice will be taken. Ivor Hyslop pointed out that the wording around decommissioning is not clear. Check also to be made by what is meant by Annual Report as one month is a tight timescale. This is therefore a point for clarification. 	
<ul style="list-style-type: none"> ○ Page 5 "Community Benefit Sums" – the M&As are more constructive in this regard and reference should be made to them as SPR agreed those purposes. 	
<ul style="list-style-type: none"> ○ Page 6 "Installed Capacity" – all the while turbines are in place payments will relate to them. John Magill is concerned that this is a final draft and that SPR will wish it to be signed as is with little room for change. 	
<ul style="list-style-type: none"> ○ Page 7 no changes 	
<ul style="list-style-type: none"> ○ Page 8 The legal terms used in item 2.2.2. will be addressed by the Solicitor. ○ 2.2.4. relates to clause 12 ○ 3.4 to be removed as, from the way it is worded, decommissioning could commence a few years into operation. Julia Whitaker agreed and said it needs to be clear with SPR that the Agreement, mainly when mentioned, was to be 25 years and occasionally for 20 years. D&G Planning Department could take issue with a change in timing. 	
<ul style="list-style-type: none"> ○ Page 9 4.1.2. – "promptly" requires clarification ○ 4.1.4.(a) "entertainment" refers to funds being retained for Board "jollies". ○ 4.1.4.(b) to be changed as restricts use of funds e.g. for a Community Shop. ○ 4.1.4.(c) – this is to ensure that the funds do not end up in the hands of only one person. There are Community Councils where decisions are only made by one person. This is an issue for clarification. ○ 	
<ul style="list-style-type: none"> ○ Page 10 2nd paragraph – add at end "Due diligence has been applied." ○ 4.1.5 – 70% is deemed too high. Julia Whitaker knows of another location that probably has the same stipulation and will check on this. Funding should be able to be rolled over for future funding. 	
<ul style="list-style-type: none"> ○ Page 11 SPR can be present at Board meetings. This also allows for 2-way conversations. 	
<ul style="list-style-type: none"> ○ Page 12 standard wording 	
<ul style="list-style-type: none"> ○ Page 13 8.2.3. Query raised regarding what happens if benefit is going outwith the area. Julia Whitaker advised it can only be of benefit for those within the Harestanes' area. If there were, e.g. a group of 52 undertaking something but only 2 of them were from the area, then 2/52 would have to be calculated to be the benefit. ○ 8.2.4. The first line to read "ANCBC provides SPR with materially misleading or knowingly inaccurate information." 	
<ul style="list-style-type: none"> ○ Page 14 8.2.7. The first line should read "ANCBC or any Board member or employee/contractor of ANCBC has acted dishonestly or" ○ 8.2.8 – remove ○ 9.1 - remove 	

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<ul style="list-style-type: none"> ○ Page 15 12.1. – needs strengthening that community benefit is maintained by purchaser. ○ 13.1. – Remove the words “relevant part” from the penultimate line. ○ 13.2. – Addition needs to be made regarding some degree of notice being required. 	
<ul style="list-style-type: none"> ○ Page 16 14.1/2. – 14.2. clarifies independence of parties within 14.1. Identify who “parties” will be. ○ 15.2.2. – Martin Brown’s details were used in this section as an interim solution. It will be changed to the Registered Office marked for the attention of the Chairman once the company has been set up. 	
<ul style="list-style-type: none"> ○ Page 17 no changes 	
<p>There will be no quick resolution to this. Russell Stuart asked whether there should be a small working group to carry it forward. Martin Brown advised that it would continue with the group already working with the Solicitor, i.e. himself, Julia Whitaker and Richard Mann. John Magill intimated agreement with this.</p>	
<p>➤ Any Other Business</p>	
<p>Martin Brown suggested that, to save time once the Agreement has been agreed and signed, that a Co-Op Bank Account be opened. Derek Ivy expressed the view that an account could not be set up as a Limited Company minute could not be supplied. Julia Whitaker explained how this is possible and suggested there should be 4 signatories, 2 of whom are required to sign all cheques.</p>	
<p>Those present agreed the following signatories and the name for the account below.</p>	
<ol style="list-style-type: none"> 1. Jean Purves Treasurer 2. Martin Brown Chairman 3. Richard Mann 4. Maureen Johnstone 	
<p>The account is to be opened in the name of Annandale and Nithsdale Community Benefit Company. The 4 named people above are to supply information as follows to enable the opening of the account:</p>	
<p>Name</p>	
<p>Address</p>	
<p>Previous address if moved within last 3 years</p>	
<p>Date of birth</p>	
<p>Any change of name or name by which known in the last 3 years.</p>	
<p>Application form templates – there were no major queries. Form A would be completed initially then form B that will have detailed instructions appended.</p> <p>Maureen Johnstone queried whether all does have to go through Community Councils. Martin Brown advised that, to make a change now would mean going back to the beginning of all negotiations. If a Community Council has ceased, it can be reinstated after 6 months. This situation refers to Ae Village/John Magill who is attempting to have a Community Council reinstated but meanwhile is not a Board Member but has been co-opted in relation to the work he undertakes with schools.</p>	
<p>The Branding exercise is going ahead and invitation to participate has been sent out to 6 schools within the Harestanes’ curtilage. There will be a time limit applied in due course. A named contact in schools has to be established. All future dates will be ruled by the setting up of the company. Martin Brown and John Magill are to liaise on this.</p> <p>As the launch, branding and Dragons’ Den idea are all to happen together the date cannot yet be set and St. George’s Hall booking for 21st January will be cancelled.</p>	
<p>John Magill asked whether there was a better way for emails to be distributed. Julia Whitaker advised that in due course there will be a website with a Directors’ Area.</p>	
<p>Alistair MacFadzean asked about tenders received from Accountants, etc. Julia Whitaker informed that decision had been made to go with Burness Paul Solicitors. Out of 12 Accountants to whom the tender documents were sent, only 1 has quoted. There were one or two others with queries. Derek Ivy suggested going back to them along the lines of needing further quotes so that free competition should be shown. (Day after meeting, Marilyn spoke to Farries, Kirk, McVean in Dumfries who she and several others</p>	

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had recommended. They checked back through emails received in August and had not received the invitation.)	
Date of next meeting: 27 th November 2014. Derek Ivy and Russell Stuart gave their apologies in advance for this.7	

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