

Annandale and Nithsdale Community Benefit Company



Sixth Directors' Meeting 27th November 2014 7 pm Tinwald Parish Hall

Present:

Martin Brown (Chairman)	Kirkpatrick Juxta
Richard Clarke	Kier
Maureen Johnstone	Tinwald Parish
Alistair MacFadzean	Dunscore
Murdoch MacPherson	Dalton and Carrutherstown
Richard Mann	Johnstone
Jean Purves	Moffat
Cllr. Stephen Thompson (part)	

In Attendance:

Julia Whitaker	(Ailsa Horizons)
Marilyn Elliott	(Elliott Services – taking Minutes)

Quorate:

The meeting started at 19:00

Minutes	Action
Welcome	
Martin Brown welcomed all to the meeting. Apologies for absence were given explained that John Magill had not been able to re-establish Ae Community Council. However, he is still willing to assist with working with the Academies and Colleges.	
Apologies for Absence	
David Dick, Ivor Hyslop, Derek Ivy, Nicholas Jennings, Russell Stuart	
Approval of meeting note from 5th Directors' Meeting	
Under Any Other Business, an error hadn't been spotted before the Minutes were distributed in that the bank account name was given as Annandale and Eskdale Community Benefit Company. This should be Annandale and Nithsdale Community Benefit Company. After correction of this item, the Minutes were approved by all.	
Matters Arising	
The Company has been formed as of the date of this meeting with company no. SC492185. Image of the full Companies House' Certificate will be forwarded to all. The Company has been set up with Martin Brown, Richard Mann and Jean Purves as Directors, it being easier to set up in this way and the other Directors can be added online. Agreement to the setting up has been signed by the Chair and will be forwarded with these Minutes once have been completed.	
With the Company now set up, a bank account can now be opened and Scottish Power can be informed of details once they have been finalised.	
In connection with the opening of the bank account, Jean Purves went through the bank form for completion to agree the correct answers to the following questions: Type of Organisation? – Company Limited By Guarantee What are the Company's activities? – To administer grants What are the purposes of the grants? – to distribute funds from community organisations Address? – Regd. Office – Burness Paull,– Address is 50 Lothan Road, Festival Square.Edinburgh, EH3 9WJ Key contact? – Jean Purves Date established? – 27 th November 2014 Year-end date? – 31 st March Expected annual turnover? - £300,000 Employees? – None	

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<p>Increases to turnover? – 2% per annum (index linked rise) How will income be received? – by BACS transfer Tax status? – none Details of Accountant? – to be advised Type of Account required? – Community Directplus Registered address? – Burness Paull, as above Jean Purves then handed out forms to the agreed three cheque signatories, Martin Brown, Maureen Johnstone and Richard Mann for them to complete their personal bank account details. Maureen Johnstone was concerned about divulging this information, but it was explained that it was a requirement in connection with money laundering checks made by banks. All Directors are limited to £1 liability The Bank Declaration was read out before being signed. It was agreed by all. The two people delegated are Martin Brown, Chairman and Jean Purves, Treasurer. The Chair signed the bank's declaration as agreed in the above Minute.</p>	
<p>Accountant's Tender – results</p>	
<p>No Tender has been received from Farries, Kirk McVean. Marilyn Elliott asked to contact them as her recommendation as Tender had been anticipated several weeks ago. With that one, that would make four to consider. Julia will email the Accountants' Tenders received to all.</p>	<p>MFE JW</p>
<p>SPR Agreement Finalise</p>	
<p>Julia will send an email to SPR regarding the final changes to the Agreement agreed at this meeting. SPR had agreed with MB, RM and JW that points 4 and 7 should be linked together and that assurances should continue to be sought regarding guaranteeing the £300K per year for the thelife of the windfarm. Gillian Arnott (SPR) had sent an email in Fenruary 2014 stating that the £300k per annum was based on the ROC pyment that had been agreed, not on the installed capacity. Alistair MacFadzean commented that it would be easier if the amount were the same each year. Richard Clarke believes that, if the Developers change an agreement mid-stream, that fact should be notified to the Minister responsible. Martin Brown suggested that the email should be sent immediately and Richard Clarke said it was definitely worthwhile to "fight the corner" for the amount to be confirmed at £300,000. Item 20 clause 8.2.7. – change reference from "Member" to "Board Member". Item 2 year end date will changed to 31 March. All agreed that the email should be sent. Stephen Thompson left the meeting as he had another meeting to attend.</p>	<p>MB</p>
<p>Fund Administrator's Brief</p>	
<p>Martin Brown advised amendments to be made and undertook to send the revised Brief to all.</p>	<p>MB</p>
<p>There was discussion as to whether the Brief should be sent to known Fund Administrators or whether it should be advertised on Public Contracts Scotland (PCS). Julia Whitaker advised that there was no requirement for it to be advertised on PCS as it is a private fund and not public money. Martin Brown advised that he has already been approached by Foundation Scotland. Jean Purves asked whether there would be a stated amount for the Administrator or whether it is usual for the Administrator to request a percentage of the fund. Martin Brown responded that importance will be attached to the appointment of an Administrator who will do whatever is necessary. The first applications will not be until February/March time. It was agreed to finalise the brief with the points discussed and then send out to companies identified with the ability to handle the work. Directors should pass on any information to Martin or Julia</p>	
<p>Administering first Grants to Community Councils</p>	
<p>As previously agreed, Martin Brown will collate membership and communicate with Community Council secretaries. Form A will then be finalised. A letter and Form A will then be sent for completion in order for the Community Council to receive their initial £4,000 by cheque. Once again, there was discussion around the £4,000 regarding time limits to spend, etc. and the timing of the £2,000 grants that will be distributed in August. It was agreed that there is no limit of time to spend the £4,000 but it would need to be</p>	

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<p>reported on annually so that there is a record of the spend. This would mean that it could be saved for a larger project if necessary.</p> <p>Murdoch MacPherson asked how system would apply if a Community Council had a project costing just over the £2,000. He was advised that application would then be made to the main fund and the £2,000 could still be used to satisfy smaller grants. Applications for larger amounts will be accepted as soon as the fund has been launched and will be fully advertised to communities. The number of funding rounds per annum will be decided in due course.</p> <p>The Funds' criteria for grants will be detailed on the reverse of all forms. Julia to continue to action.</p>	
Company Launch Plans and Branding arrangement	
<p>A Newsletter has been prepared, the style of which will change once the logo is introduced. Julia Whitaker will forward the draft Newsletter to all for comments.</p>	JW
<p>Martin Brown will chase schools who have not responded regarding the logo competition and will also send a follow-up communication to Duncan Bannatyne, from whom no response has been received.</p> <p>The date for the Launch cannot be set until SPR matters have been finalised.</p> <p>Ideas were taken for Dragon's Den panellists, i.e. Tommy Jardine David Thomson of Annandale Distillery (Marilyn Elliott to speak to him) David Murdoch (Curler) Anna Sloan (Curler)</p>	MFE
AOCB/Date of next meeting	
<p>The next meeting is on 22nd January 2015. Alistair MacFadzean gave his apologies as he will be away at that time.</p>	
<p>The meeting closed at 8.30 p.m.</p>	

Tasks	For
Contact Farries, Kirk, McVean regarding their Tender for Accountant	MFE
Email Accountancy Tenders received to all	JW
Email SPR with requested changes to Agreement	MB
Make amendments to Fund Administrator's Brief and email to all	JW
Email draft Newsletter to all for comments	JW
Speak to David Thomson with regard to being a Dragon's Den panellist	MFE

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Copy of email from Gillian Arnot

From: [Arnot, Gillian](#)

Sent: Tuesday, February 18, 2014 5:00 PM

To: [Martin Brown](#)

Subject: ScottishPower Renewables - Harestanes Windfarm

Hi Martin,

As discussed, here is the confirmation details of ScottishPower Renewables Harestanes Windfarm community benefit package:

- On the assumption that Harestanes receives 1 ROC ScottishPower Renewables will provide an annual community benefit package of £300,000/year, index linked for the operational life time of the windfarm
- Harestanes Windfarm alone, could see ScottishPower Renewables invest more than £8m in community initiatives in Dumfries and Galloway over the next 25 years
- Should we not receive 1 ROC, further erosion of our profits will mean that we cannot deliver this increased rate of annual community benefit
- The one off construction payment of £400,000 will be made available in 2014, when the community organisation is formally constituted and the legal agreement is signed by both parties
- If the communities require funds early for further community benefit consultation or legal fees, we will deduct this from the £400,000 and pay it directly - remaining funds will be made available when the community organisation is officially set up to receive them
- The annual community benefit payment will begin in 2015, 12 months after the one off construction payment is made and continue throughout the operational life time of the windfarm

In response to a couple of points that you raised in a previous email, we can confirm that we are installing 2MW turbines at Harestanes Windfarm and that the installed capacity is 136MW not 156MW as suggested. We have also discussed the request to connect the local communities to fibre optic cables at the windfarm to improve broadband services. Unfortunately, this is not possible as the lease permit conditions only allow them to be used for the purposes of the windfarm and the infrastructure is only permitted to be installed for the operational lifetime of the windfarm.

I will give you a call tomorrow to chat this through.

Kind regards,
Gillian

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Copy of email sent to SPR re agreement changes

From: Julia Whitaker [mailto:julia@ailsahorizons.co.uk]
Sent: 28 November 2014 15:25
To: 'Gillian Arnott'
Cc: 'Martin Brown'; 'Richard.rjkm@btinternet.com'; 'juliawhitaker@btinternet.com'
Subject: FW: Harestanes Community Benefit Agreement
Importance: High

Hi Gillian

Please find below our responses to your responses (etc!)

Most are fine but there is still a sticking point over the benefit package (points 4 & 7). The board needs more clarity and assurance that the £300K figure index linked is what they will get for the 25 years as this is always how it has been discussed.

The final point (20) is quite critical for that to be correct. The board members (directors) of the company are those legally responsible working under a code of conduct and meeting regularity. The body of the company (the ordinary members) appoint the directors who are legally responsible for the running of the company

- 1. Definition of Annual Reporting: Please clarify level of annual report. Is this audited accounts or a written report on spend and projects?** *This should be a record of spend from the funds that SPR has provided with the opportunity to note any monies that are carried over to the next year, and the reasons for this. Please see reporting template attached for the format in which SPR requires annual reporting information to be presented. **OK***
- 2. Definition of Annual Report Due Date: If annual audited accounts required please change date to reflect fiscal end of year. Change to 31 August. **AGREED Please Change again to 31 March so that it falls in line with a fiscal year. The first formal report would therefore be 31/03/2016****
- 3. Definition of Community Area: Should community council area not be more appropriate? Community Consultation area as defined by SPR was 15km radius in Dumfries and Galloway. Added within Dumfries and Galloway to area description as not all communities listed within the AN CBC Articles of Association have active CCs but can still apply for initiatives to receive funding. **OK****
- 4. Definition of Community Benefit Contribution: This was never agreed. The original payments were never offered on a per MW basis, but as a whole, starting at £100K and finally settling in £300K. see below from email from Gillian Arnot 18/02/2014 - On the assumption that Harestanes receives 1 ROC ScottishPower Renewables will provide an annual community benefit package of £300,000/year, index linked for the operational life time of the windfarm. Harestanes Windfarm alone, could see ScottishPower Renewables invest more than £8m in community initiatives in Dumfries and Galloway over the next 25 years. While the fund has been described as an annual amount it is based on the operational capacity of the windfarm. The fund would only be reduced should, for unforeseen circumstances, part of the windfarm permanently ceases to generate power. **still no guarantee that it could reduce considerably. See point 7****
- 5. Definition of Community Benefits: The M&As are more constructive in explaining the benefits and reference should be made to them as SPR agreed those purposes. Amended to include purposes as listed in the AN CBC Articles of Association. **OK****
- 6. Definition of Construction Community Benefit Contribution: SPR agreed that an advance payment for the consultant services of AH commencing 2014 for £6,250. 50% of this paid to date so this para should read means the sum of THREE HUNDRED AND NINETY SIX THOUSAND, EIGHTHUNDRED AND SEVENTY FIVE POUNDS (£396,875)**

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STERLING and the Parties acknowledge and agree that this sum equates to TWO HUNDRED THOUSAND POUNDS (£200,000) STERLING per annum for the two years of construction of the Windfarm the £3,600 figure commented on is a figure paid to AH for an historic agreement between SPR (Steven Lindsay) and AH and at no time has this been commented as coming out of the CB fund. SPR agreed to pay £3,125 to AH on behalf of AN CBC. First payment now reads £369,875. **Should read £396,875**

7. **Definition of First Community Benefit Contribution:** This clause changes what megawatt always been discussed as a generation figure for the whole farm not a MW price. The figure talked about has NEVER been per MW installed. It started at £100K and has increased to £300K but never as part of a per mw price and gives room if a turbine fails to not replace and therefore the community benefit is reduced immediately. It has been set at £300K per year but has never been set as a per megawatt price which would impinge on the amount paid if and when any turbines were decommissioned or damaged. *The amount provided is based on the capacity to generate electricity and the fund reflects this. The annual fund will only be reduced should the generating capacity of the windfarm be permanently reduced.* **What assurance do we have that this will be maintained at the current generating capacity for as long as possible? As in point 4, if the payment was on installed capacity it should remain at that figure. The reason the board are looking for an assurance that there will be a 'guaranteed' amount over the lifespan of the development is because there may be projects that span more than one year and the board do not want to be in a position to have agreed funding that cannot be fulfilled into the future. We are also reminded of the email from GA 18/02/2014 that states payment will be based on the 1 ROC payment to create an annual payment of £300K which will be index linked.**
8. **Definition of First Decommissioning Works:** AN CBC would like to see the timescale of this process being defined (e.g. such process not to exceed 2 years) This would avoid the risk that SPR start dismantling one turbine, stop paying benefit and then continue to generate electricity whilst they continue the decommissioning process at the rate of, say, 1 turbine per annum. *Within 2 months of the start of decommissioning, SPR will serve the landowner notice to decommission the whole windfarm. Based on the time taken to construct Harestanes, it is anticipated that decommissioning should take approximately two years.* **OK**
9. **Clause 2: Clarify - led to believe it would be 25 years lifespan.** *It is anticipated that the windfarm will be operational for 25 years and this is the timescales set out within the planning consent. SPR's commitment to the community benefit fund is to provided it while Harestanes Windfarm is operational and generating electricity.* **OK**
10. **Clause 3.3: Should be 3.2. AGREED.** **OK**
11. **Clauses 4.1.2 & 4.2.3: timescale needs clarification.** *Within 28 days of receipt.* **OK**
12. **Clause 4.1.4 b: This needs to be reworded to allow investments in Social Enterprises - i.e. where profits are made but must be reinvested in social objectives.** *Changed to acquire, invest in, or otherwise fund any legal entity, enterprise or project where the purpose for which such funds are to be applied would not, in the reasonable opinion of the Community Organisation, demonstrate a significant benefit to the local community.* **OK**
13. **Clause 4.1.4 c: needs clarification.** *Funds are to be awarded to a purpose or initiative that is deemed appropriate by the Board, rather than to an individual to determine how they will personally use the funds.* **Clunky but OK**
14. **Clause 4.1.4 e: This is restrictive to future investment potential.** *SPR's community benefit funds cannot be used to invest in another commercial developer / competitor's windfarm, however, the fund could be used to invest in another SPR windfarm should the opportunity arise.* **OK – best you will get i think**

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15. Clause 4.1.4: Define reasonable or add following due diligence. **AGREED. OK**
16. Clause 4.1.5: This is quite a high percentage particularly where there may be a large capital project that is over a number of years and funds become ring fenced for that. **Would like to see evidence of this from other wind farm agreements . Reduced to 60%, SPR is keen to see the majority of the funds spent annually, however, we understands that from time to time funds will be held over to deliver more strategic projects – we ask that you notify us of this and your plans. OK – best you will get i think**
17. Clause 6.1: Define Annual report as per page 4. See new definition. **OK**
18. Clause 6.3: change to reasonably require. **AGREED. OK**
19. Clause 8.2.4: Change to knowingly misleading. **AGREED. OK**
20. Clause 8.2.7: The first line should read “ANCBC or any Board member or employee/contractor of ANCBC has acted dishonestly or”. This is standard Iberdrola text. - **OK – but are I think there is confusion here. The membership of the company is made up of 2 members from each community (currently 41) so that’s 82 members. There are only 12 directors who are bound by company law to act in the best interests of the company. It would be very difficult to police 82 members who may only attend 1 meeting a year and receive regular newsletters. We reiterate that it should read board member**
21. Clause 8.2.7: What "other action" might this include? Isn't this too loose a definition? This is standard Iberdrola text that covers any action that could bring SPR, SP or Iberdrola into disrepute. **Still does not define 'other action'. If it is standard speak there must be a meaning. Our legals have advised that as this stands other action could be argued and so on balance if it is standard speak and will cause a lot of issue to change then to leave it. It is as vague to one party as to the other**
22. Clause 8.2.7: remove underscore. **AGREED. OK**
23. Clause 12.1: It would be good if this term could be strengthened to show some community commitment. ANCBC is aware that other developments when sold on have lost or had diluted their payments. **SPR will take reasonable endeavours to ensure that a new operator would take on the conditions of this agreement. The agreement is between SPR and AN CBC and we cannot guarantee on behalf of another developer that they will deliver this. We have shown a commitment to this by including it in this agreement. OK – best you will get i think**
24. SPR should be ensuring that they work to retain this as they have committed to the communities .. Harestanes Windfarm alone, could see ScottishPower Renewables invest more than £8m in community initiatives in Dumfries and Galloway over the next 25 years Taken from email 18/02/2014 Gillian Arnot. The same email of 18.02.14 also clearly states that ScottishPower Renewables will enter into a legal agreement with the Community Organisation for the operational lifetime of Harestanes Windfarm and that the annual community benefit fund will be payable from 2015 and every year thereafter for the operational lifetime of Harestanes Windfarm. **OK – best you will get i think**
25. Clause 14: Please note that the dispute resolution text has been changed.

Please change

15.2.2 in the case of ANCBC, at Lochhouse Farm, Beattock, Moffat DG10 9SG and marked for the attention of Martin Brown, Interim Chairman of the Elected Board, or to such other address as may have been notified in accordance with Clause 15.1.

change to c/o. Burness Paul LLP, 20 Lothian Road, Festival Square, Edinburgh, EH3 9WJ

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Hope those notes all make sense Gillian, but please come back to me if not. Please let us know if you want more clarification, otherwise we hope to get this signed and sealed as soon as possible

We are currently opening a bank account and will furnish you with details as we get them

Regards

Julia

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