

10.00am, Thursday 20 August 2015

Appointments to the Board of Edinburgh Community Solar Co-operative

Item number 7.1
Report number
Executive/routine
Wards

Executive summary

The purpose of this report is to ask Council to appoint up to three representatives to the Board of Edinburgh Community Solar Co-operative - a local community benefit society. The proposed scheme has been the subject of reports to the Corporate Policy and Strategy Committee and more recently to the Transport and Environment Committee.

Links

Coalition pledges	P1P15, P33, P50, P53
Council outcomes	All
Single Outcome Agreement	SO4

Appointments to the Board of Edinburgh Community Solar Co-operative

Recommendations

- 1.1 It is recommended that the Council appoint three elected members to the Board of Edinburgh Community Solar Co-operative (ECSC).

Background

- 2.1 In December 2013 the Corporate Policy and Strategy Committee approved the signing of a Memorandum of Understanding (MoU) between the City of Edinburgh Council and the Edinburgh Community Solar Cooperative (a local community benefit society) for the development of a community owned Solar Photovoltaic Scheme on 25 Council buildings.
- 2.2 In January 2015, the Transport and Environment Committee considered a progress report which provided further details on the feasibility, operations, funding and risks of the scheme. On 26 February 2015 in consultation with members of the Transport and Environment Committee, under delegated authority the Acting Director of Services for Communities agreed that the Council should progress with the Edinburgh Community Solar Cooperative (ECSC) proposal.

Main report

- 3.1 Following the Council's agreement to progress the scheme, ECSC have secured financial support from CARES (Community and Renewable Energy Scheme) and has entered the project delivery phase.
- 3.2 ECSC plan to raise £2.4m through a community share offer which is due to take place in early autumn 2015. Promotion of the scheme to the public will include the sites identified to receive the panels.
- 3.3 The ECSC Board is currently made up of 8 members with provision for an additional 3 spaces reserved for Council representatives. Further details are provided in appendix 1.
- 3.4 The Board will oversee delivery of the solar photovoltaic project and the distribution of any related community benefits that may result over the next 20 years or more.

- 3.5 Heads of Terms between the Council and ECSC have recently been agreed and the contract (Service Level Agreement – SLA) which defines respective responsibilities and benefits between the Council and ECSC is currently being progressed with a view to being settled in advance of the share offer launch in the autumn.

Measures of success

- 4.1 Appointment of three elected members to the Board of Edinburgh Community Solar Co-operative. Delivery of the solar photovoltaic project in line with ECSC Business Plan timelines.

Financial impact

- 5.1 There is no direct financial impact to the Council arising from the recommendation in this report. The solar photovoltaic project will in due course provide energy cost reductions for the council buildings receiving the panels. In addition community benefits will occur as part of the installation of the panels and in the distribution of any profits generated by the scheme.

Risk, policy, compliance and governance impact

- 6.1 The SLA will set out the liabilities, risks and benefits to the partners for the operation of the scheme over the next 21 years.
- 6.2 The Council's appointments to the ECSC Board will comply with Council Practice in relation to Appointments to External Organisations.

Equalities impact

- 7.1 Not applicable.

Sustainability impact

- 8.1 Appointment of elected members onto the Board of ECSC will help:
- advance the Council's contributions to the Climate Change (Scotland) Act 2009 public sector duties,
 - contribute to the delivery of Sustainable Edinburgh 2020 objectives, in particular the advancement of vibrant flourishing communities, social and economic wellbeing and an efficient and effectively managed city; and
 - contribute to the development of cooperative societies as part of the Cooperative Capital Framework.

Consultation and engagement

- 9.1 Discussions on the formation, governance and operation of the ECSC have been ongoing between ECSC and the Council over the last two years.

Background reading/external references

[Edinburgh Community Solar Cooperative](#), Transport and Environment Committee, January 2015

[Edinburgh Community Solar Cooperative Proposal](#), Corporate Policy and Strategy Committee, December 2013

[Edinburgh Community Solar Cooperative website](#)

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Links

Coalition pledges	P15 - Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors. P33 - Strengthen Neighbourhood Partnerships and further involve local people in decisions on how Council resources are used P50 - Meet greenhouse gas targets, including the national target of 42% by 2020. P53 - Encourage the development of Community Energy Cooperatives.
Council outcomes	All
Single Outcome Agreement	S04 - Edinburgh's communities are safer and have improved physical and social fabric
Appendices	Appendix 1: ECSC Guide for Directors



Directors Pack

Edinburgh Community Solar Co-operative

General Data

Solar Locations: Community buildings across Edinburgh. Final list to be determined subject to planning consents and signed grid connection agreements

Administration Address	Registered Address
Edinburgh Community Solar Co-operative Unit 26, Trinity Enterprise Centre Furness Business Park Barrow in Furness Cumbria LA14 2PN Email: info@edinburghsolar.coop Website: www.edinburghsolar.coop Registered Number: 32277R	Edinburgh Community Solar Co-operative C/o - Friends of the Earth Scotland Thorn House 5 Rose Street Edinburgh EH2 2PR Email: info@edinburghsolar.coop Website: www.edinburghsolar.coop Registered Number: 32277R

General Co-op Data

Co-op established: 2014
Projected returns to members: Capped at 5% rising with RPI
Capital investment by Co-op:
Marketing:

Share offer launched: End September / Early October 2015
Share offer closed: Expected December 2015

Summary

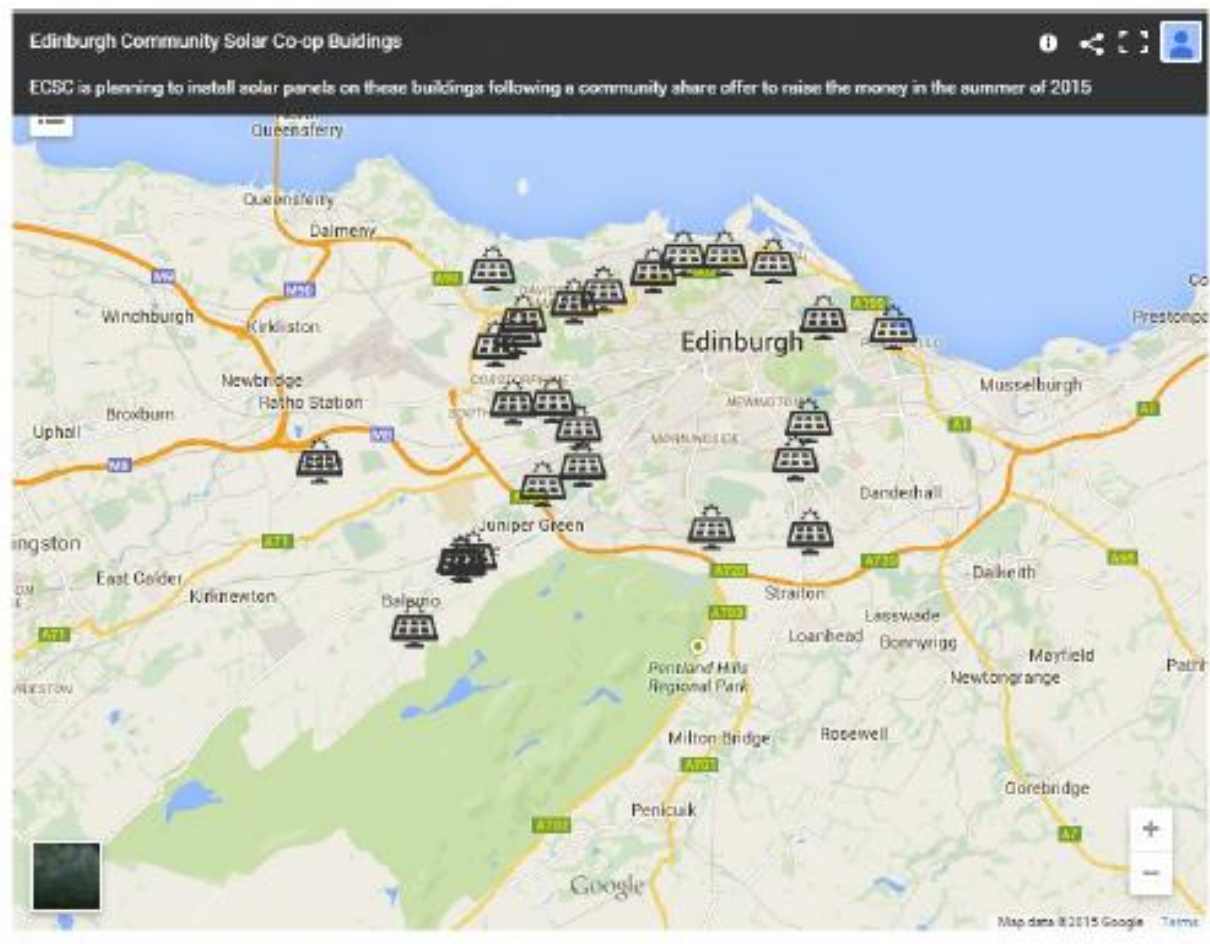
After 5 years of trying to deliver a range of urban community renewable energy projects the Edinburgh Community Energy Co-operative, the predecessor of ECSC, decided to re-think its priorities and strategy. The directors decided that a large scale solar photovoltaic (PV) project on Edinburgh roofs would offer the best chance of delivering a viable co-operative energy project within the city. Edinburgh is low on the league tables of installed PV of any city in the UK and it is perceived that this is because many people live in tenement flats, with no access to the roof. ECSC will offer Edinburgh residents the chance to collectively own solar panels and do something positive about climate change, benefit financially while at the same time helping those in the city who live in fuel poverty and possibly can't afford to invest. With Government incentives for community ownership, project scale and recent

reductions in the cost of panels, roof mounted solar PV arrays are now a viable business model. Even this far North

An approach was made to the City of Edinburgh Council and a Memorandum of Understanding was agreed. This allowed us to investigate a solar PV project on suitable public buildings. With support from Co-operative Development Scotland and Energy4All a new community solar co-operative was created to investigate the opportunity. We then applied to CARES for funding to investigate the proposal which allowed us to survey 47 eligible buildings. Following a series of surveys by Onsite Generation, the list was refined to the 25 we are currently progressing.

The intention now is to raise project capital from Edinburgh residents with a public share offer. By offering a capped return on share interest to members of 5% per annum and returning capital as we go, the co-op generates a surplus profit for community benefit. This is a model which has proven to work successfully in other cities throughout the UK and Europe.

Location of the Solar Projects



This list of buildings is subject to change. The live list can be found at https://www.google.co.uk/maps/@55.9279331,-3.2512671,12z/data=!3m1!4b1!4m2!6m1!1szU4QxUyXJrE.kp0RoL_KSbiw

Industrial and Provident Societies

What is an Industrial & Provident Society?

An industrial and provident society is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, and is registered under the Industrial and Provident Societies Act 1965.

The FSA is the registering authority for societies which register under the Industrial and Provident Societies Act 1965 (I&P Act 1965). Companies House carry no information on an IPS other than its name & registration number. An annual return with details of the directors and financial information must be submitted to the FSA.

Further information can be found on the FSA website

http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/Societies/index.shtml

IPS Update Sep 2010:

Following recent amendment to legislation, IPSs now fall under the new Co-operative and Community Benefit Societies and Credit Unions Act 1965, enacted in April this year.

Recent legislation changes effective from 8th January 2012:

Maximum Shareholding

The LRO (Legislation Reform Order) removes the limit of £20,000 on the interest in non-withdrawable shares issued by an industrial and provident society that may be held by an individual member.

Year Ends

Flexibility for societies to choose their own year ends.

Provision of copies of rules

A society may charge for supplying a copy of its rules to any other person from 10p to £5. This increase also applied to a member who has previously received a copy of the society's rules.

Members under 18 Years

A society may have a member who is under the age of sixteen years. Additionally it states that if a member is aged sixteen years or above, they may enjoy all the rights of a member, be able to execute all instruments and give all receipts necessary to be executed or given under the society's rules, and be a member of the society's committee or board.

The above applies unless the society's rules provide to the contrary (e.g. a society may decide to keep the minimum age for board membership at 18 in its rule book).

Dissolution

An easier route to dissolution for "dormant" societies.

Publication of unaudited interim accounts

Societies to publish unaudited interim accounts provided they are clearly identified as unaudited and published alongside a society's most recent audited accounts.

Co-operative Principles

- Open Membership
- Democratic Member Control
- Economic Participation for/by all Members
- Autonomy and independence
- Provision of Education, Training & Information
- Co-operation among Co-operatives
- Community Concern

Edinburgh Solar Community Co-op Rules in Brief

We refer to directors as Board members.

- Maximum individual or company investment (by law) £100,000, minimum investment £250. However, another co-op can invest more than £100,000
- One member one vote regardless of the number of shares held.
- Rule 7.1 ~ Must give members 21 days notice of AGM.
- Rule 7.1 ~ A General meeting can be called at the request of 10% or more of the membership.
- Rule 7.2 ~ AGM has to be held within 7 months of the year end (year end December).
- Rule 9 ~ Rules can only be amended at the AGM followed by registration with the FSA.
- Rule 11.2.a ~ Not less than 3 and no more than 7 Board members.
- Rule 11.2.b ~ The Board can elect up to two additional Board members as a representative of another company such as another co-op or Energy4All so long as they are a member of Kilbraur.
- Rule 11.2.b ~ A Director must be 18 years or over to join the Board.
- Rule 11.7 ~ One third of the Board retire each year by rotation and can stand for re-election.
- Rule 13.1 Share Capital ~ £1 ordinary shares.
- Rule 14 Transferable Shares ~ Share can be transferred to another member subject to Board approval. Transfer can mean sale, gift or mortgage.
- Rule 15 Withdrawable Shares ~ shares can be withdrawn after 5 years from registration of Rules subject to Board approval and no more than 5% of total share capital in any one year. Death or bankruptcy share can be withdrawn immediately.
- Rule 17.1.a ~ Co-op can borrow up to £10million.
Founder Members –

You should familiarise yourself with the full set of Rules (see Appendix A).

Trading Shares & EIS Tax Relief

The trading of shares can be carried out under Rule 14.

Annual General Meetings (AGM)

Each year the Co-op will hold an AGM for the following purpose:

- Approve minutes to last year's AGM
- Approve accounts
- Appoint the auditor
- Approve the distribution of surplus funds.

Any member has the right to put forward a motion at the AGM. The Co-op will write to all members requesting any motion is received by a certain date to allow for the inclusion in the agenda. This does not mean to say that all motions will be included. Any motion(s) received will require approval by the Board. In general, most members tend to send in questions/suggestions rather than actual motions.

Duties and Liabilities of Directors

Duties and liabilities of directors of Industrial and Provident Societies

Appointment and Removal of Directors

Every Industrial and Provident Society must have a board of directors more commonly known as the committee. Although an Industrial and Provident Society must have at least three members there is no minimum number of directors required - any minimum will be specified in the rules of the society. However every society must have a secretary.

Appointment

There is no statutory procedure for the appointment of directors - the procedure for the appointment of directors will be prescribed in the rules of that society. The Financial Services Authority is only concerned to see that, at the time of registration of a new society or upon amendments to the rules, the society is run democratically. The rules of a Society will lay down the number of directors, and the length of term of office. Details of society's officers must be kept in their register of members and included in the society's annual return to the registrar.

Disqualification

Again there are no statutory rules concerning the disqualification and removal of directors from the committee of an Industrial and Provident Society, aside from that no one less than 18 years may be an officer of the society or be a committee member. The grounds for disqualification and removal will be set out in the rules of the society, so for example, the rules of a society may disqualify undischarged bankrupts, and people of unsound mind who are incapable of managing their own affairs, from acting as directors.

Powers and Duties of Directors

Powers of Directors

The powers of the committee will be set out in the rules of the society. Usually the rules provide that the committee has all the powers to manage and conduct the business of the society. The rules of the society will also set out specific powers that a society has, i.e. it will state that a society has the power to borrow, to take on leases etc. The rules will set out the procedures a society must adhere to. The rules of the society therefore contain important information about the management of the society and it is essential that the directors are familiar with their provisions, so that they can carry out their duties in the correct manner.

The Duty of Skill and Care

In carrying out your role as director you are expected to show levels of skill and care commensurate with your particular skills and experience. This means that if by profession you are an accountant or a solicitor, you are expected to show a greater degree of expertise than someone without such a professional qualification.

Fiduciary Duty

The director of a society owes a fiduciary duty first of all to the society of which she/he is a director and not to the individual members of that society. This essentially means that the director of that society must always act in the best interests of the society *as a whole*, and not of themselves or of one particular section of the membership with which they may be associated.

Interests in Contracts

If a director has an interest in a contract that the society wishes to enter into, for example s/he is a director of a company that is going to provide a service to the society, if she/he fails to advise the society of this interest, then the society has the following remedies - it can decide to set aside the contract and recover any loss from the director or it can decide to go ahead with the contract and recover any profits that the committee member may have made from the transaction. In such a situation the committee member has a duty to provide full information about the contract to a general meeting of the society which will decide whether to exercise its rights to recover profits. However, if the rules of a society deal with this situation then the procedure set out in the rules should be followed. Usually, a director would be required to declare his/her interest to the

committee and would not be allowed to vote on the issue of the contract. If the rules of the society make provision for this and the correct procedure is followed then the society cannot challenge the transaction or claim the directors' profits.

Misuse of Property or Information

A director must deal with the assets of a society in accordance with the society's interests. If a director is in breach of this duty then the society can recover any loss from a director in breach through the courts in the normal way. Industrial and Provident Societies also have a cheap and easy alternative to this - they can recover money or other property misappropriated with an order from the magistrates court (with or without the director gaining a conviction for a criminal offence).

Liabilities of Directors'

Directors of Industrial and Provident Societies are protected by the concept of limited liability. This means that when the society goes into liquidation or is wound up with outstanding debts, they will not have to contribute to the assets of the society above the amount of the value of the shares they hold (usually a nominal sum). This protection may be lost in certain situations.

Personal Guarantees

If a society approaches a bank or other financial institution for a loan, it is common practice for them to ask that the directors give personal guarantees, particularly if the society of which they are a director does not have many assets. Giving a personal guarantee is the equivalent of taking out a personal mortgage, and the director will not be protected by limited liability.

Wrongful trading

The court can order the director of a society which has gone into insolvent liquidation to make a contribution to the assets of the society, if it appears that she/he knew or ought to have known that the society was going into insolvent liquidation, but took no steps to try and avoid it. The court may make such an order even if the director didn't know the society was going insolvent. The crucial test is that she/he *ought* to have known.

Fraudulent trading

If it can be proved that directors have carried on trading with the intent to defraud creditors, the court has the power to order a director to contribute to the assets of the society. Unlike limited companies, there is no power to bring criminal proceedings against directors of Industrial and Provident Societies for fraudulent trading.

Liabilities to third parties

A director of a society can be personally liable to a third party in these situations:

If she/he signs a cheque which doesn't contain the full and proper name of the society,

If she/he doesn't make it clear she/he's signing as an agent of the society,

If the third party has the impression that the contract is being made personally with the director and not with the society,

If she/he makes fraudulent or negligent statements to the third party which that person subsequently relies on,

If she/he acts outside his/her area of responsibility without the authority of the board of directors (a concept known as "breach of warranty").

In each of these situations any debt which follows and which remains unpaid will be considered to be the debt of the director and she/he may be sued for payment.