# EAST NAIRNSHIRE COMMUNITY ORGANISATION (SCIO) – ENCOMM SC049756

RECORD OF DECISION MAKING PROCESS REGARDING FORM OF COMMUNITY BENEFIT

SUMMARY: To place on written record at February 2020 how the present Trustees arrived at the decision to take the offer of a single lump sum in settlement of Community Benefit from the impact of the Tom nan Clach wind farm development.

BACKGROUND:

The developer of the Tom nan Clach wind farm situated on land owned by Cawdor Estate was a company called Nanclach Limited (in which Lord Cawdor's Family Trust held a 25% share). A Memorandum of Understanding (MoU) dated 27 October 2015 was signed between this Company and representatives of the six community bodies due to receive benefit. This included Bill Evans, the then secretary of East Nairnshire Community Council (ENCC).

Under the MoU, bodies separate to the Community Council were required to be set up and the total level of benefit was set at £5000 per MW(39) = £195,000 per annum. East Nairnshire would receive £25786 in the first year and subsequent years would be uplifted by RPI. [OPTION AP – ANNUAL PAYMENTS]

ENCC established a SCIO registered with Office of the Scottish Charity Regulator (OSCR) in November 2019 as detailed above (ENCOMM). The Trustees at the time of writing (self-appointed under the OSCR set up guidance) are Linda Henderson (Chair)(LH); Peter Arris (Treasurer)(PA); Sue Rhodes (SR) and Martine Scott (MS).

In an email of 20 December to LH from Fiona Milligan of Infinergy (the initiator company), Project Manager, an offer was put that "Greencoat" (Greencoat UK Wind – 75% shareholders since July 2019) would make a single payment of £320,000 at an early date to replace the annual payments arrangement. This was a calculation based on Present Value ("the value of the all the future cash flows to date and discounted to reflect the upfront payment"). On challenge this figure was uplifted to a final offer of £340,000 by email on 23 January 2020. [OPTION UP – UPFRONT PAYMENT]

The decision to be made by the Trustees on behalf of the Community, then, is considering our own circumstances, what would be the better route to take while being within the Constitution of ENCOMM, the guidance and regulation of OSCR and good governance practices, for the future benefit of East Nairnshire residents and their geographical area.

The latest figures for the East Nairnshire area as defined is a population of 588 over 173sqkm – a density of 3.1 (low). The only figure we have for households is 241 from the Berryburn Wind Farm papers. We believe with recent new houses at Little Mill and Ardclach it is now likely to be 250 plus. The largest concentrations of houses at Ferness, Ardclach and Little Mill are each below 20 houses so there is no recognised cultural centre within the area although there are two community halls at Ferness and Fornighty. Historically Ferness is known as a village. It feels hard at times to draw people together but there are activities going on even if they feel "below the radar"! There are unique challenges for this sparse, entirely rural community.

FIGURES:

Put simply and with no other consideration the figures are:

OPTION AP – 25 X 25786 uplifted for RPI, say 2% & compound, gives a total of £661,000 funds coming into the Community.

OPTION UP - a single amount of £340,000 which is around 51% of total AP reflecting loss of monetary value over 25 years.

OTHER FINANCIAL CONSIDERATIONS:

1. It is the wish of the donor company, of ENCOMM and of OSCR to see money put up for charitable purposes being spent. However, it is a tenet of accounting that there be a distinction between "income" – the money that drives the wheels – and "capital" – the money or assets held for longevity which can be made to work to produce income. The nature of income is that it is repeating and has some regularity.

   So the OPTION AP is giving us income. It is possible for the Trustees to make a decision to capitalise an element of this and "put it by" but it would be difficult to do this with all of those payments over a number of years or indeed all of the payment in any one year.

   The OPTION UP is giving us a lump of capital and giving us the opportunity to generate income from it. It is feasible and acceptable to draw down some capital as it is needed if the income is insufficient to meet demand although this may have a knock-on effect of reducing future income EXCEPT that the capital fund itself can grow in value. That is a balance we would discuss with the fund managers through Foundation Scotland (FS) – see below.

Therefore, it is unsophisticated and misleading to compare total income over such a long period with a capital sum.

2. Holding funds. Under the Financial Services Compensation rules it is unwise to hold more than £85,000 in any one financial institution. If ENCOMM wished to "keep things simple", bank its annual payment and push out relatively small sums to local projects, or say even a £50,000 grant to a larger scheme it may find itself within a relatively short time having to open separate bank accounts. If the Trustees capitalised an element it would be wise to hold that capital separately and prudent to invest it for a balance of growth and income. It becomes less simple.
   With a single capital sum the possibility is available to run a current balance in the bank of up to £85,000 while investing a large sum to a managed fund (see later). This requires overview but is actually simpler to manage as volunteers – we get professionals to do it for us.

3. Financial risk. Apart from the FCS rules whatever we do with any surplus money is subject to some level of risk balanced by a level of reward. In our circumstances where we have not yet identified a multitude of projects knocking on our door it is most likely that there will be surplus funds. If we use "safe" banking institutions within the FCS levels the likely return at present is below 1%.
   The risk of investing in a managed fund is that elements of that fund can fall in value as well as rise in value. Over a long-term view (say 10 years) growth can be more like 10%.

4. Corporate risk. Greencoat Wind UK PLC is a FTSE250 listed company. At the time of writing and using the This is Money website for information GC is capitalised at £2 billion with low

borrowing and healthy dividends. It started to make its money from the old government subsidy regime but TnC operates within the new regime, which allows companies to own the means of generation while speculating on the future price of the electricity it is selling into the distribution market. GC now owns 35 wind farms throughout the UK. It looks like a very healthy, cash rich business. However the contract to sell its electricity (a Contract for Difference – CFD) is for 15 years. When these CFD contracts end we have no idea what a company such as GC will do – sell up / renegotiate / disappear / and what regulatory environment we may be in. What then happens to our OPTION AP for the next 10 years? The only stricture in the contract is that if the wind farm is sold GC will make its best efforts to secure the ongoing payments (clause 2.3 draft contract – email from FM 03/02/2020 – "community benefit is not a legal requirement or conditioned to the wind farm, so it's entirely voluntary on the part of Nanclach (and every other wind farm). When a project is sold however, community benefit will already be a well-established 'cost' in the financial model, so it's unlikely the new purchaser would remove it."

This is a risk separate to the balance of financial risk (basically bank interest against unit trust income/growth). This risk exists only with OPTION AP.

<u>OTHER CONSIDERATIONS</u>

1. The Trustees discussed the idea of "legacy" and how future members of the community, other Trustees may live in very different times and have a different view on the kinds of projects that would benefit us within our charitable aims. Even if all payments are made for 25 years at that point they will cease. OPTION UP offers the possibility of developing the legacy beyond 25 years for future generations ourselves from day one. It would be like planting new woodland.

2. The Trustees discussed the sense of community confidence. Is taking on an amount of £340,000 in one sum too scary with limited knowledge and experience? Is it easier to bide that annual amount and spread it out as best we can while we have it? What expertise is out there to help us?
   The answer to this last question is rather a lot. ENCOMM has already become members (provisional) of Development Trusts Association Scotland (DTAS), itself a charity with a large community of members with lots of experience in community funding and engagement. The Trustees invited the local representative, Rory Dutton, to address them and introduce just a small part of what they offer.
   In addition there is Local Energy Scotland specifically helping with Community involvement in their own renewables projects; Foundation Scotland, also a charity, who can offer hands on help in managing both funds and projects and SCVO supporting volunteers in the charity sector (membership applied for).

   There is help out there for identifying need; community engagement in this process and building this confidence. There is also funding available to buy in professionals to carry out community development and engagement studies. We are not alone!

   LH had a telephone conversation with Tom Black of Foundation Scotland who outlined the idea of an endowment fund which builds on the idea of legacy. Briefly, through FS it is possible to invest a lump sum with their chosen and trusted fund managers (checked out by PA who has knowledge of this financial market). The lump sum buys units in a unit trust fund with a broad spread of investments balanced for risk. It is open to us draw down sums at any time and appears to offer very good returns in a flexible and well-established environment. The fund manager company will charge a fee (before paying any income but not yet established) and FS take a fee of 0.4% of the value of the fund annually, so £400 for each £100,000 of value.

ANALYSIS BETWEEN OPTIONS

See SWOT analysis table below.

DECISION

Considering all the information available to us; discussions and questions put to the Company through FM and to DTAS and FS and review of publications produced by them; other informal conversations with the Chair of Cawdor and West Community Benefit Organisation SCIO the Trustees are of the opinion that ENCOMM would best serve its Community by taking OPTION UP.

ANALYSIS BETWEEN OPTIONS

1. OPTION AP

<table>
<tr><td>STRENGTHS</td><td>WEAKNESSES</td></tr>
<tr><td><ul><li>Steady known income at set dates, forecastable, making budgeting easier</li><li>Feels a little more manageable where community has not had this experience before (except for specific fundraising)</li><li>Is inflation proofed for 25 years</li><li>Low initial audit demands & costs but may build</li></ul></td><td><ul><li>If a large spend required would have to agree an accumulation with Nanclach unless borrowing at greater cost. May cause delay</li><li>Multiple bank accounts may be needed</li><li>Restricted level of additional income from Bank interest and restricted possibilities with investing accumulated, capitalised surplus(while FS endowment is acceptable the Nanclach contract restricts “speculative investment”)</li><li>While not being spent funds are not working for us.</li></ul></td></tr>
<tr><td>OPPORTUNITIES</td><td>THREATS</td></tr>
<tr><td><ul><li>Borrowing ahead with guaranteed income stream to repay loan</li></ul></td><td><ul><li>Contract does not guarantee future payments. Payments are voluntary. Change of ownership could terminate. GC, current owners of Nanclach, have a contract break at 15 years.</li><li>Charity accounting regs kick in re accumulation of unspent funds</li></ul></td></tr>
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2. OPTION UP

<table>
<tr><td>STRENGTHS</td><td>WEAKNESSES</td></tr>
<tr><td><ul><li>Certainty at start of journey - known amount of capital from Day 1</li><li>Ability to fully control own funds & develop income, expenditure & ongoing investment strategy</li><li>Socially responsible investment possibilities</li><li>Far greater capacity for post 25 year legacy planning</li><li>Far better returns of income/growth possible so more money in medium and longer term.</li></ul></td><td><ul><li>Endowment fund return may not be as expected especially over a short term</li><li>To begin with it feels like less money, overall</li><li>High initial audit demands & costs but may reduce</li></ul></td></tr>
<tr><td>OPPORTUNITIES</td><td>THREATS</td></tr>
<tr><td><ul><li>A large pot available for an, as yet, unidentified project but can let imaginations & passions fly.</li><li>Borrowing against fund</li></ul></td><td><ul><li>Very unlikely to happen with FS route but entire loss of fund</li></ul></td></tr>
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