

Minutes ECC Directors meeting 25th July '24

Present: Joe Kalaher, Kenny Mackinnon, Sara Twaddle, Phil Ashhurst, John Lowrie, John Boyle, Alistair Danter

Apologies: Billy Shanks, Sandra Wilson, Roddy Macfarlane

In attendance: Calum Gillies

1. Declarations of Interest:

Kenny Mackinnon – has been invited to quote for shop demolition

John Lawrie – continues to work for part of a UK Government unit which includes security of the UK energy supply. The work does not involve any direct contact with any of the wind turbine suppliers involved in projects on Skye and only deal with HMG.

2. Minutes of meeting 6th June '24 – approved, proposed JB, seconded KM

3. Matters arising:

3.1 Karen's Track opening – AD summarised programme. Meeting agreed to get quotes for refreshments from Filling station and Relish. Promotion to be via ad in WHFP, Newsletter + local posters. ACTION AD.

3.2 Governance training for Directors, DTAS officer to visit + meeting on 5th Sept will be dedicated to awareness and training for all Directors for governance matters. ST stressed importance of attendance at session

3.3 Directors Liability ref paper 1 (annexed) prepared for ECC by Burness Paull acting on behalf of DTAS. Board noted paper + fact that current Directors liability covered by Ltd Liab status of ECC with Directors liability limited unless proven to have acted in a fraudulent, reckless or negligent manner. Current Mem and Arts (Clause 7.1) provides that ECC can effect insurance of all kinds specifically including indemnity insurance in respect of directors and employees. Meeting agreed to take out additional Directors liab insurance in light of fact that ECC will be a) involved in projects with significant sized budgets in coming years b) Further windfarm developments with increased benefit funding including share options will increase levels of income + annual turnover. AD has received a quote of £147 p.a for indemnity up to £1 million to be added to existing Public Liab insurance held with RMK group. ACTION AD

3.4 Shop Tax + Non Dom rates now been resolved, payment for '24 effected, this will be reimbursed on a proportional basis once the building has been demolished.

3.5 Water rates – shop – AD reported that ECC is being requested to pay a standing charge for water. We are disputing the payment given that water is

include in Council tax which has been paid. As far as we are aware there is only one water supply to the building.

4. Development workers reported (annexed)

- Meeting noted + approved report
- In relation to purchase of additional land Directors agreed 'one last shot' to complete purchase. AP to contact sellers lawyer + give a deadline for acceptance + completion. If deadline passes ECC will withdraw the offer + manage development without the additional land.

5. Community slipway updated report (AD)

- 3 sites identified – Meeting agreed most northerly to be inappropriate
- 3 accesses identified – Meeting agreed most northerly inappropriate due to road access / visibility issues + construction issues as route is directly next to a burn
- Remaining 2 sites require negotiations with Campsite and Flashadder / Kildonan Common Grazings both entities are supportive in principle but have concerns that will need to be addressed.
- Remaining 2 access routes are:
 - A) Via a private apportionment
 - B) Via campsite

Both supportive in principle but have concerns that will need to be addressed

- Slipway site covered by The Common Grazings have rights up to the High level water mark, below HWM negotiations required with Crown Estates + possible the Edinbane Estate – to be clarified.
- Contacts have been made with the Crown Estate, AD meeting relevant officer shortly.
- It has been confirmed that a slip way would require relevant permissions from; Planners; Marine Scotland; Crown Estate

6. Finance matters – AD

- Meeting noted current spend vs budget (annexed)
- Following submission of annual accounts to Co.s House + OSCAR as agreed in '23 ECC will now change accounts + move to Campbell Stuart MacLennan. ACTIONS AD to ensure all outstanding payments completed to current accountant. ST to write to current accounts thanking them for their support confirming ECC's move to another firm in light of growing support needs of the co. in light of project and funding developments.
- VAT – VAT adviser has confirmed that ECC can register as an 'intended trader' in advance of expenditure even if this may be a few years away. This would

enable ECC to claim VAT back on demolition fees and professional fees in the lead up to planning, fund raising and actual build. This will require confirmation of actual plan. Meeting agreed to proceed in principle BUT hold off until a) Situation with purchase of additional land is clarified b) Figures associated with business plan + operating model for shop is complete
ACTION AD to inform VAT adviser.

- AD hours for period Jan -May '24 - 43 hours. For period June – Current meeting 29.5 hours
- OSCR have confirm receipt of annual submission

7. Move to Bi annual payments – Vattenfall have proposed a shift to Biannual payments for ECC and Struan to assist both organisation with proposed developments of larger projects. Meeting agreed minute of variation (annex 3)
ACTION AD to confirm with Vattenfall

8. Skye Trusts / Conference Training event AD & ST unable to attend, volunteers requested – JB + JL accepted, ACTION AD to pass on registration details

9. Windfarm updates

- AD + ST attended a joint 3 Trust workshop with Lawyers Harper Macleod recruited to advise the group on development of an appropriate vehicle to take shares in the approved Wind2 Ben Sca development. The agreement to set up the organisation does not create any liability for any of the parties. If set up and activated the Co. will have its own ring fenced liability
- Muirhall have confirmed the benefit/ investment fund split between Struan + neighbour communities as 40% Struan, 40 near neighbours, 20% Skye wide fund
- Muirhall reported that THC have informed them that they will be opposing the Ullinish 2 development. (Ullinish 1 – 11 turbines is already consented)

10. Newsletter – Directors requested to send AD any comments of draft asap, newsletter to include location of defibs

11. Funding applications – Sara Oussdain 4th year Uni fee support – agreed, Defib maintenance application to come + Directors agreed to review via Email.

12. AOCB

- 12.1 ST to prepare paper for next meeting covering AGM, Remembrance service + Xmas dinner

12.2 AD requested that those directors who recently received dedicated ECC email addresses activate them asap. It is hoped that by the next meeting all communications will be via dedicated ECC emails. This is an important security / governance issue Action ALL

13 DONM 29th Aug '24

Annex 1

Paper 1 Directors Liability – Advice received from Burness Paull acting on behalf of DTAS

1 **GENERAL POSITION & ARTICLES OF ASSOCIATION OF ECC**

The extent of a director's liability to third parties is largely dependent upon the legal structure of an organisation. Where an entity is incorporated (as in the case of ECC), the liability of the directors is generally limited to instances in which they are found to have acted negligently, recklessly or dishonestly and have caused loss or damage to the company. This includes circumstances where they have breached their directors' duties or where, for example, they have been involved in wrongful trading.

The liability of *members* is limited to the amount they have contributed to the company. This is reflected in article 77 of the articles of association. As with many other companies, the contribution specified for members of ECC is £1.

Clause 7.1 of the Schedule to the articles of association provides that the company may effect insurance of all kinds and specifically includes indemnity insurance in respect of directors and employees. It would be entirely reasonable for the board to take out this type of insurance which may provide additional comfort to the directors as they embark upon various large-scale projects.

2 **DUTIES OF DIRECTORS**

2.1 *The Companies Act 2006*

The Companies Act 2006 codifies the duties imposed upon directors. The Code sets out general duties, based on the common law and therefore, previous case law remains relevant. The duties are contained in Section 170-177 of the Companies Act 2006.

The general duties are:

- to act in accordance with the Company's constitution and only exercise powers for the purposes for which they are conferred;
- to act in the way they consider in good faith, could be most likely to promote the success of the Company for the benefit of its members as a whole;
- to exercise independent judgment;
- to exercise reasonable care, skill and diligence;
- to avoid conflicts of interest;
- not to accept benefits from third parties; and
- to declare interests in proposed transactions or arrangements with the Company.

In addition to the general duties under company law, directors are also subject to a number of other obligations from various other pieces of legislation. The following are a couple of examples:

2.2 *Health and Safety at Work etc. Act 1974*

The Company is under a duty to safeguard, so far as reasonably practicable, the health and welfare of its employees. Failure to comply could in extreme cases result in liability for the directors.

2.3 *Environmental legislation*

Directors should be alert to their duties under environmental legislation. Recent environmental legislation has expanded the range of offences for which a director may be liable if it is proved that an offence has been committed with his “**consent, connivance or neglect**”.

3 **INSOLVENCY CONSIDERATIONS**

3.1 *Insolvency Act 1986*

A director of an insolvent or near-insolvent company may, in certain cases, be personally liable for the debts of that company.

The following paragraphs summarise the legal obligations and liabilities of a director of an insolvent or near-insolvent company:

3.2 *Duty to act bona fide in the Company's/creditors' interests*

Where a company is insolvent (or even of doubtful solvency) the directors are under a duty to consider the interests of creditors first.

3.3 *Wrongful Trading*

Once a company has gone into insolvent liquidation, a director may be required to make a contribution to the Company's assets if the liquidator or third party claimant can prove that before the start of the winding-up that person knew or ought to have concluded that there was no reasonable prospect of the Company avoiding insolvent liquidation.

The only defence open to a director is that he took every step that he ought to have taken with a view to minimising the potential loss to the Company's creditors. This assumes that he knew or ought to have known that there was no reasonable prospect that the Company would avoid insolvent liquidation. The onus is on the director to prove this defence.

A director is deemed to know facts which ought to have been known or ascertained by a reasonably diligent person having (i) the general knowledge, skill and experience that can be reasonably expected of a person carrying out the functions of a director and (ii) the general knowledge, skill and experience that the director does in fact possess.

Once liability is established, the court can order the director to “**make such contribution (if any) to the Company's assets**” as the court thinks proper. If a court makes a declaration under these provisions, it may also make an order to disqualify the director from being in any way concerned in the management of a company for a minimum period of two years.

4 **PROTECTION FROM LIABILITY**

4.1 *Indemnity and Insurance*

Under the Companies Act 2006, the basic position is that a Company cannot exempt or indemnify its directors for liability for negligence, default, breach of duty or breach of trust in relation to the Company. Exceptions are made for (i) the provision of insurance in respect of such liability, and (ii) indemnities against liability incurred by the director to a person other than the Company or an associated company. In practice it is usual for a company to maintain insurance policies for this purpose.

Any indemnity made under those exceptions must not include any indemnity against any liability incurred in defending criminal proceedings, or in respect of any criminal fine or regulatory penalty.

Annex 2

EDINBANE COMMUNITY COMPANY

DEVELOPMENT WORKER BOARD REPORT – June/July 2024

1. Edinbane Links Path

- Currently consulting with THC Roads and Planning (we will need an amendment to existing PP) on redesign and new crossing on A87
- Highland Council Roads interested in pricing the construction, which may give us the best option
- Possibility of Paths for All capital funding for construction, also interest from Hi-Trans.

2. Edinbane Shop project

- ECC's solicitor still pursuing offers to purchase land to front of shop from Highland Council, and additional land for car-parking from croft No. 16.
- THC has confirmed that Prior Approval for demolition of shop building is not required, so we can proceed on the basis of the method statement submitted.
- KDP has been appointed to oversee the demolition, ensure statutory requirements are met (demolition warrant and Health & Safety regulations). We will get prices in August.
- Application submitted to Highland Council's CLLD fund for 50% of demolition costs (estimated £25,000)
- If the contractor confirms it is possible, we will seek to remove roof sheets intact for collection by local interested parties (on the basis of sealed bids)

3. Village Centre scheme

- Planning application for village green improvement has been approved, now looking at potential funding sources for the works.

4. Coishletter Housing

- Highland Council have now purchased the site at Coishletter from former developer owners.
- Council is keen to work with the community to see a range of housing options considered.
- Meeting held with Communities Housing Trust and Highland Council to discuss way forward with housing development at Coishletter.
- Agreed to work on a 3-way Memorandum of Understanding setting our joint working arrangements and roles/responsibilities of partners
- Agreed to start with community-led master-planning exercise for whole site looking at long-term development in phases
- ECC/CHT to organize a refresh of the local housing needs survey done in 2015 to inform master-planning work

Outline Minute of Variation re. Edinbane and Struan Community Benefit Agreement

• **Parties**

- VWPL;
- Edinbane and Communities Company Limited (SC318756 (formerly known as Edinbane Community Company) (“Edinbane Community Co”); and
- Struan Community Trust.

• **Recitals**

- Insert a recital to explain the rationale for moving to payments once every 2 years eg
 - *Whilst the current practice in relation to onshore wind farms in Scotland is for the generator to make annual community benefit payments, the Operator intends to accelerate payment to Edinbane Community Co and Struan Community Trust by making a single payment every second year with each payment covering two years’ worth of community benefit payment. In so doing, the Operator’s intention is that this will help Edinbane Community Co and Struan Community Trust to fund larger and/or more community projects within their respective community areas earlier than might otherwise be the case if annual payments were made. The indexation adjustment mechanism in the Agreement is also intended to ensure that Edinbane Community Co and Struan Community Trust are placed in no worse a position than they would have been (from an indexation perspective) were payments to each of them to be made annually.*
 - *With effect from [30 June 2025] VWPL will make payments every second year (instead of annually) totalling twice the Annual Payment (save for the payment due on the Final Payment Date which will be for just the Annual Payment) – together, where applicable an indexation adjustment payment*

• **Clause 1.1**

- **Annual Payment** – leave as is and say in a new cl 2 that on every Payment Date (other than the Final Payment Date) VWPL will pay twice the Annual Amount;
- In definition of “Index Linked”– define RPI (all items) as the “Index”. NB might be worth tweaking the definition of “Index Linked” to refer to the

base RPIa as 223.6, being the May 2010 value which seems to have been used in the spreadsheet (subject to any rebasing etc).

- Insert new definition of “**Indexation Adjustment Amount**” *means an amount (£) calculated as follows:*

$$(A+B) \text{ minus } (A \times 2)$$

where:

A means the value of the Annual Payment calculated in respect of the Payment Date immediately preceding the relevant Indexation Adjustment Date; and

B means the value of a notional Annual Payment calculated as at the relevant Indexation Adjustment Date.

- **Indexation Adjustment Date** - need new definition - ie [30] June 2026; [30] June 2028; [30] June 2030; and [30] June 2032;
- **Payment Date** - delete current definition and define it going forward by reference to fixed payment dates out to the 2033 end date of the Com Ben Agt – i.e. “Payment Date” means [30] June 2025; [30] June 2027; [30] June 2029; [30] June 2031; and [30] June 2033.
- New definition of **Final Payment Date** – [30] June 2033.
- **Payment Period** – delete definition
- **New clause 1.4** – references to “Annual Payment” in clauses 3 onwards include refs to the x2 payments plus Indexation Adjustment Amounts
- **Clause 2** – delete (nb might just delete cl 2.3) -- and replace with new clause that provides for:
 - **On each Payment Date (other than on the Final Payment Date)**
VWPL will pay --

- Edinbane Community Co an amount equal to twice the Edinbane Share; and
- Struan Community Trust an amount equal to twice the Struan Share.
 - Each such payment represents the Edinbane Share and Struan Share due in respect of 12 months immediately following the Payment Date and an accelerated payment of the Edinbane Share and Struan Share for the year thereafter.
- **On Final Payment Date** – VWPL to pay --
 - Edinbane Community Co an amount equal to 1 x the Edinbane Share; and
 - Struan Community Trust an amount equal to 1 x the Struan Share.
- **Indexation Adjustment Amount will be calculated on each Indexation Adjustment Date** and
 - where such amount is a positive number it shall be paid in addition to the Annual Payment(s) payable on the Payment Date next following the relevant Indexation Adjustment Date – in the proportions 11/18 to Edinbane Community Co and 7/18 to Struan Community Trust.
 - where such amount is a negative number, no adjustment shall be made to the Annual Payment(s) payable on the Payment Date next following the relevant Indexation Adjustment Date; and
- **No payments due after the Final Payment Date.**
- Repeat old cl 2.4 (if increase in installed MW).
- **Clauses 3.2 and 3.3** – changes to Memo and Arts / Trust Deed. Suggest these are dealt with separately in accordance with 3.2 and 3.3 separately. If desired, we could have a clause in the Minute of Variation that notes these docs have been changed and appends the revised docs (although not strictly necessary to do so).

Annex 4

ECC Budget '24 - PAPER 3 Budget vs Actuals July '24

	Budget	Spend
Development Grants Community Support		
Development grants from ECC annual income	£43,000.00	£7,500.00
Village Maintenance	£10,000.00	£2,520.00
Sub Total	£53,000.00	£10,020.00
ECC Running costs		
Development Worker	£20,000.00	£2,322.95
Administrator	£8,000.00	£645.00
Accountant	£2,200.00	£62.00
Insurance	£1,000.00	£550.18
Hospitality	£3,000.00	
Meeting Exps	£350.00	£314.80
Photocopier /scanner/ Office Exps	£500.00	£427.60
Publicity	£300.00	
Website	£300.00	
Subscriptions		£65.00
Finance costs		£10.50
Sub Total	£35,650.00	£4,398.03
Development Project Costs		
Karens Track bridge completion	£5,000.00	£15,450.00
Shop Development costs		
Planning Process	£4,500.00	
Land Acquisition	£16,500.00	
Legal costs related to land acquisition + other matters	£3,500.00	£4,319.04
Demolition + consent	£15,000.00	
Landscape Design	£2,000.00	
VAT Advice, Registration + establishment of Trading arm	£5,000.00	
Links paths consultations	£1,000.00	
Village Centre Scheme	£25,000.00	
Housing - Legal contingency linked with buyout frtom THC	£2,000.00	
Sub Total	£79,500.00	£19,769.04
SUMMARY		
Dev grants / Community support	£53,000.00	£10,020.00
Admin / Running cost	£35,650.00	£4,398.03
Development Project costs	£79,500.00	£19,769.04
TOTAL	£168,150.00	£34,187.07