

# Community Investment in solar developments on Council land

## Cabinet

Date: 10<sup>th</sup> February 2016

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Author:	Cabinet Member for Sustainability and Transport Interim Chief Executive, Head of Economy, Skills and Property Development
Wards:	All
Locality Affected:	All
Parishes Affected:	All

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### 1. Purpose and Reasons

- 1.1 The purpose of this report is to agree the method by which the Council will enable community investment in renewable energy projects on its land and how it is to be managed.
- 1.2 In addition, this report provides an update on solar schemes proposed on the Barnfield and Mannington sites, an innovative scheme to place solar panels on canopies in several Swindon Borough Council (SBC) owned car parks and the M4/A419 solar noise barriers.
- 1.3 With the launch of the new Vision for Swindon, the Council has committed to “improve infrastructure and housing to support a growing, low carbon economy”.

### 2. Recommendations

#### Cabinet is recommended to:

- 2.1 Authorise the Director of Law and Democratic Services, to undertake the necessary steps to secure ownership of the Community Interest Company (“the CIC”) currently owned by Public Power Solutions (PPS), so as to enable the Council to become the sole shareholder of the CIC.
- 2.2 Authorise the Director of Law and Democratic Services to present to the Special Committee of the Council a report approving the appointment of a minimum of three Council Officers as Directors of the CIC, and one Council Officer as its Company Secretary.
- 2.3 Authorise the Director of Law and Democratic Services, in consultation with the Cabinet Member for Communities and Strategic Planning, to agree an appropriate governance arrangement for purposes which include (but are not limited to) the involvement of elected members in the disbursement and distribution of funding from the proceeds of the CIC for the benefit of Swindon communities.
- 2.4 Authorise the Board Director, Resources, to facilitate on behalf of the Council as sole shareholder of the CIC, all necessary steps to enable Abundance to

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undertake and complete the community investment offer as detailed in this report.

- 2.5 Note that in the event that the community investment offer is unsuccessful, the Council in its capacity as sole shareholder of the CIC will need to make a decision as to how the required investment should be raised.
- 2.6 Authorise the Board Director, Resources, in consultation with the Cabinet Member for Finance, People and Performance, to invest £3m in the CIC (£2,987,500 by way of a loan to the CIC and £12,500 as minimum Equity to meet the requirement of a Public Limited Company).
- 2.7 Authorise the Director of Law and Democratic Services, in consultation with the Cabinet Member for Sustainability and Transport and the Head of Property Assets, to conclude all the necessary legal documentation in relation to the project at Common Farm and sites benefitting from the Local Development Order mentioned in Part 2 of this report, on such terms that are required to protect the interests of the Council.
- 2.8 Agree that the profits of the CIC will be apportioned as follows: 65% distributed for community benefit and 35% to the Council as the sole shareholder.
- 2.9 Agree this CIC model should be used as a model for future community investment in Swindon renewable energy schemes, ensuring that such schemes meet Council requirements for financial viability.

### **3. Detail**

#### Part 1: Common Farm Solar Scheme

- 3.1 Cabinet has previously agreed that Common Farm can be a site for a solar farm, and that the project be developed by Public Power Solutions (PPS) Ltd (Cabinet minute 114 (2), 2013/14 refers). In the Cabinet Report of 17<sup>th</sup> June, 2015, Cabinet agreed the principle of using a Community Interest Company (CIC) as an investment vehicle, with the CIC managed and governed by the Council (Cabinet Minute 9 (3), 2015/16 refers). The solar park is 4.7 MW in size and on completion will have a total capital value of around £4.8m. Lark Energy won the tender, carried out using Public Power Solutions' Dynamic Purchasing System, to finance and build the project.
- 3.2 Cabinet has also authorised that once built, the project could be refinanced with up to £3m investment by the Council and £1.8m from a community investment offer. Abundance Investment Limited ("Abundance"), a firm authorised and regulated by the Financial Conduct Authority (FCA), has been appointed to oversee the due diligence on the project and arrange the investment between the community investors and the CIC. The Director of Law and Democratic Services will work with external lawyers to prepare all necessary legal documentation. The CIC is currently owned by PPS and its ownership will need to be transferred to

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the Council, so that the Council will become the sole shareholder. The CIC will also become a Public Limited Company.

- 3.3 A CIC operates in the same way as a normal company, apart from one key difference. The company includes an “asset lock”, meaning that only 35% of its profits can be returned to shareholders in the company; the remaining 65% must be distributed for community benefit.
- 3.4 In the June 2015 Cabinet report (Cabinet minute 9 (5), 2015/16 refers), it was anticipated that the scheme would be financed by the Council and an investment partner on a 50:50 basis. Subsequent modelling has indicated that the optimum outcome for risk and return involves the split set out above at paragraph 3.2.
- 3.5 Over a period of 20 years, a sum in excess of £283k is expected to be generated for community use. Of this sum, around £7k per annum will be generated from the first year of operation, which, when indexation is taken into account, totals around £174k over 20 years. The balance of £109k is in the form of dividends generated by profits which are estimated to become payable from 2034. Both income streams will continue after the 20 year Feed In Tariff period ends whilst the farm continues to be in operation.
- 3.6 Retail bonds must be held in a public limited company (plc) structure, so the CIC must be converted to a plc. In order to do this, £12,500 of Equity is required which will be injected by the Council as part of the £3m investment, and is fully repayable at the end of the project.

#### Financial structure of the CIC

- 3.7 The assets will be transferred to the CIC upon commissioning, ie when the solar panels and associated equipment are correctly connected to the grid and generating electricity. Lark Energy, the developer, will pay for the construction at the Common Farm site and will invoice upon commissioning. The funds will be derived from 2 sources:
  - 3.7.1 A sum of £1.8m raised from community investment through Abundance Investment Ltd, giving Swindon residents the opportunity to invest in the project and receive a regular income stream. The community investment piece is an unsecured financial security, called a Debenture. It will pay a fixed amount back to investors every 6 months comprised of interest and capital repayment. The maturity period of each debenture is 20 years but can be sold on to other investors. The community investment Debenture will provide an effective rate of return over the life of the investment of 6%.
  - 3.7.2 The offer is a regulated investment and as such all marketing communications of the offer constitute a 'financial promotion'. Abundance Investment will be responsible for ensuring that a balanced and prominent risk warning is provided in all communications deemed to constitute a

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financial promotion. All communications about the public offer of investments will carry a risk warning.

3.7.3 A loan of £2,987,500 and a £12,500 Equity contribution will be provided by the Council. The loan will attract a fixed 3.5% annual interest rate. The cost of Local Authority funding is presently lower than this rate and therefore the Council will make a small surplus until borrowing rates increase towards 3.5%. The repayment of the loan is estimated at £150k per annum from years 4 to 19, with a lower level of repayment of £125k over the first 3 years and a final payment of £462,500 in year 20.

3.7.4 Should the community investment offer be unsuccessful in raising the required £1.8m, the CIC will take an action to ensure that sufficient investment is achieved so that scheme goes ahead.

3.7.5 In addition to the loan interest, the Council will receive an annual rental payment based on 4.5% of revenue streams, initially estimated at £25k per annum, and business rates estimated at £19k per annum. SBC will also be entitled to 35% of any future dividends, limited per the asset lock. This is currently estimated to be in the region of £59k over 20 years starting around 2034.

### Governance Structure of the CIC

3.8 The Community Interest Company (CIC) will be managed by council appointed directors.

3.9 Company Board: The directors of the Company will oversee the orderly running of the company and the maintenance of key contracts.

3.10 The Council will consider managing in house the accounting and revenue assurance functions

3.11 The specialist activities of the company will be outsourced:

3.11.1 Operation & maintenance of the solar park will be outsourced to Lark Energy, they will be contracted for 5 years and will be contracted to deliver a farm that operates 83% efficiency, 99% of the time. If this target is not hit, Lark Energy will face penalties

3.11.2 Investor relations and secondary market: Abundance will be contracted to manage the investor register, investor relations and provide secondary market services to the debenture holders in line with the Financial Services and Markets Act 2000.

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### Financial structure of the Community Investment Offer and returns

- 3.12 The Community Investment Offer will take the form of a public offer of Debentures, which are regulated financial instruments and therefore the investment will be arranged by Abundance
- 3.13 Abundance will take responsibility for ensuring the investment is "fair, clear and not misleading" and that the offer abides by Financial Services & Markets Act (FSMA) 2000. With the investment being regulated, investors and the Council benefit from certain protections. For example, any investor who feels they have been poorly served by Abundance, or that a product which has been approved and distributed by Abundance has been poorly put together, has the right to sue Abundance under FSMA section 138D for breaches of specified FCA rules. In addition, if clients complain to Abundance and are not satisfied by the resolution offered by Abundance, then they can take their complaint to the Financial Ombudsmen Service for consideration.
- 3.14 The investment instrument and structure have been chosen to ensure that the investment offer is regulated, accessible and low risk to maximise the opportunity for residents of Swindon to participate in the offer. The key terms of the investment offer will be as follows:
- Instrument: Transferable Debenture (debt security)
  - Debenture Term: 20 years
  - Investor Return: circa 6% average over the 20 year debenture period
  - Minimum Investment: £5.00
  - There is no maximum investment, however Abundance through previous schemes can show an average investment of £1,500 - £2,000 and a median first investment of £400.

### Communication of the Community Investment Offer:

- 3.15 Financial promotion - Abundance will create and approve all communications regarding the investment offer under the FSMA as set out at paragraph 4.12. Abundance therefore takes the liability for any regulatory failures or mis-selling of the investment.
- 3.16 Abundance will use digital, social and real world advertising and hold events for residents to communicate the investment offer. Also information will be included in the annual Council Tax communication. Abundance has devised a marketing strategy which ensures a broad reach across Swindon's residents, backed up by a national message. The Council will support the process by opening up relevant communication channels to Abundance to help ensure residents of the Borough are made aware of the offer.
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- 3.17 The offer will be open to people from outside the Borough as a balance needs to be struck between maximising local participation and filling the investment offer so the project can be fully funded.

#### Part 2: Barnfield Landfill site, Mannington Depot and SBC Car Parks

- 3.18 In the report to Cabinet on 23rd April 2014 (Cabinet Minute 114 (1), 2013/14 refers), a number of Council owned assets were identified as having solar development potential. Subsequently these sites received planning permission via the Council's Local Development Order (LDO) initiative. The LDO also granted planning permission for solar development on a number of other council assets and subsequent feasibility work has revealed further development potential for solar at Barnfield, Mannington and on a number of car parks currently owned by SBC.

#### Barnfield Landfill

- 3.19 The Council has now submitted a Closure Application to the Environment Agency and fully anticipates a positive determination in April 2016.
- 3.20 Initial investigations confirm that the land owned by the Council at the former Barnfield Landfill site could be transformed to accommodate a 3MW to 4.5MW ground mounted solar park. It is envisaged that once operational, the solar farm could be connected to the Waterside site by means of a private wire. This creates the potential for financial savings as electricity is directly provided to the site and CO2 reductions on the electricity consumption at this location.
- 3.21 Public consultation was held in February 2013 and the consensus received from local communities was that they were extremely supportive of a development of this scale and type.

#### Mannington Depot

- 3.22 Mannington Depot is a former composting site, which is very well screened from local residential and commercial properties. Whilst the site in its entirety is significantly larger, the Public Rights of Way that cross through it significantly reduce the size of the solar development. A development area of between 0.8ha and 1ha could be used for the solar development as it stands. However, a greater capacity could be yielded if the public rights of way were amended to the boundary of the site.
- 3.23 Initial investigations confirm that the land owned by the Council at Mannington Depot could accommodate a 250kW to 750kW ground mounted solar park.
- 3.24 There are a number of options surrounding grid connection, but It is envisaged that all power generated by the operation of a solar park could be purchased by SBC. This may be through a Power Purchasing arrangement to help reduce



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overall electricity expenditure, although the exact nature of the arrangement is yet to be decided

#### Solar Car Ports

- 3.25 Solar car ports are ideally suited to car parks where they not only generate electricity without compromising the primary use as a car park, but also provide additional protection from the weather for parked vehicles. The following car parks already benefit from planning permission, granted via the council's LDO. They include:
- 3.26 Brunel North Multi Storey Car Park (4,100m<sup>2</sup> & 400kW)
- 3.27 Brunel West Multi Storey Car Park (2500m<sup>2</sup> & 300kW)
- 3.28 Fleming Way Multi Storey Car Park (7,500m<sup>2</sup> & 500kW)
- 3.29 The Parade Multi Storey Car Park (1,400m<sup>2</sup> & 100kW)
- 3.30 Spring Gardens Multi Storey Car Park (2,500m<sup>2</sup> & 250kW)
- 3.31 Whilst no detailed structural surveys have been conducted on any of the above car parks to date, it is envisaged that solar canopies generating a total of 1.550MW could be installed across the five car parks.
- 3.32 It is proposed that all power generated by the operation solar parks could be purchased by SBC through a Power Purchasing arrangement to reduce overall electricity expenditure.
- 3.33 There is an opportunity presented to offer this provision to other landowners.
- 3.34 Potential on-site use of the electricity generated will be further investigated and could include plans for electric vehicle charging points.

#### **4. Alternative Options**

- 4.1 Should the Council decide not to invest in Common Farm, the scheme may go ahead if other investors can be identified; similar community benefits could be achieved but there would be no Council influence regarding the social objective of the schemes. To achieve the low carbon objective in the Vision for Swindon, SBC must maximise engagement in such schemes and drive the agenda.

#### **5. Implications, Diversity Impact Assessment and Risk Management**

##### Financial and Procurement Implications

- 5.1 These are detailed in the body of the report.

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### Legal and Human Rights Implications

- 5.2 Legal and Human rights considerations have been taken fully into account in compiling this report. It is considered that the proposals within this report are compatible with convention rights.

### All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 Sustainability is key to this report and such implications are set out in the body of the report and in its recommendations. No other specific implications have been identified at this time.

### Diversity Impact Assessment

- 5.4 A Diversity Impact Assessment has been prepared and is available from the author. This identified potential adverse impact on the basis of:

5.4.1 Socio economic status and

5.4.2 First language use.

- 5.5 These impacts have been mitigated by the marketing plan which has socio-economic inclusivity as a primary objective. This is reflected in the low minimum investment level of £5 and the broad outreach among Swindon residents and also national marketing. In addition, advice has been taken on a plain English approach to the marketing materials in order to be accessible to those whose first language is not English.

### Risk Management

- 5.6 Reputational – should the scheme fail the Council will be associated with a publicised scheme, which will no longer continue. In the event that the community offer is unsuccessful, it will be up to the Council as sole shareholder to determine an alternative means of raising the necessary investment funds.

### Mitigation

5.6.1 The Council is proposing to invest when Common Farming solar park is operational and has been tested. At such point, solar parks are relatively low risk investments.

5.6.2 The Council, in working with Lark Energy and Abundance, is working with established and experienced commercial partners with a track record of delivering similar projects in the commercial sector.

5.6.3 Abundance are a regulated investment firm with a specialism in renewable energy schemes



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- 5.7 Construction – risk of scheme failure due to construction related issues.

#### Mitigation

- 5.7.1 An experience engineering, procurement and construction (EPC) partner has been appointed with a track record of delivering similar schemes
- 5.7.2 Extensive due diligence has been undertaken by both funding and construction partners.
- 5.7.3 A client-side project manager will be employed to monitor the build and related health and safety issues, reporting back to PPS and SBC on a regular basis.
- 5.8 Financial – risk that the scheme does not generate the operational surpluses that are expected.

#### Mitigation

- 5.8.1 The scheme has been fully modelled by experts in the field and the Council is the shareholder and will own the CIC; therefore it has full visibility around financial performance

### **6. Consultees**

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports. Richard Freeman to be consulted, also ward councillors Barnfield, Mannington, Town Centre, Leader of the Council, Members for Sustainability and Transport; Communities and Planning; Finance, People and Performance.

### **7. Background Papers**

- 7.1 None

### **8. Appendices**

- 8.1 Appendix 1: Common Farm solar scheme project timelines

### **9. Key Decision/Decision in Cabinet Work Programme and Forward Plan**

- 9.1 This is a Key Decision and is included in the Cabinet Work Programme and Forward Plan for February 2016.