

Community renewables - Legal structures for JV projects

20 May 2010

Stephen Phillips, Head of Third Sector team
Burness LLP

stephen.phillips@burness.co.uk

COMMUNITY RENEWABLES - LEGAL STRUCTURES

FOR JV PROJECTS

- Some fundamentals
- Current joint venture models:
 - Virtual-turbine projects
 - Projects involving a JV entity

Community renewables – the Holy Grail of community development?

- Key characteristics – long-term and reliable income stream; delivering an excellent return on capital expended
- From the community perspective, that income stream can solve the perennial issues around accessing year-by-year revenue support for essential community services etc
- *but also:*
 - can be used as the basis for obtaining loan funding for capital investment
 - can be invested to support new enterprises that will themselves create additional income streams

- Normal risk profile on renewables projects – high risk, and stakes continually rising, through planning, technical analysis, ecological studies etc... and *then* (assuming proven technology) a low-risk money tree
- Key requirements to get to that money tree:
 - planning consent (with community support being a key factor)
 - expertise
 - money
- The various legal structures for community renewables projects are basically just different ways of creating that mix

- 100% community-owned projects place a heavy burden on the local community – steep learning curve, dependence on funding agencies to support initial costs etc etc
- Classic community-benefit package provides limited financial rewards to the local community; and little or no sense of ownership
- A joint venture approach can usefully blend private sector expertise and money, with the community contribution and buy-in
- The JV structure needs to strike an appropriate balance on risks/rewards and control; also, transparency is a key issue

COMMUNITY VIRTUAL-TURBINE PROJECTS

Burness 

- Basic principle: the community “buys” one of the turbines within a larger commercial scheme
- Price for the turbine includes a share of overall costs of developing the windfarm
- Funding for the purchase may be structured as a share of the overall financing deal
- Turbine will not be a specific physical turbine, but a virtual turbine

COMMUNITY VIRTUAL-TURBINE PROJECTS (cont)

Burness 

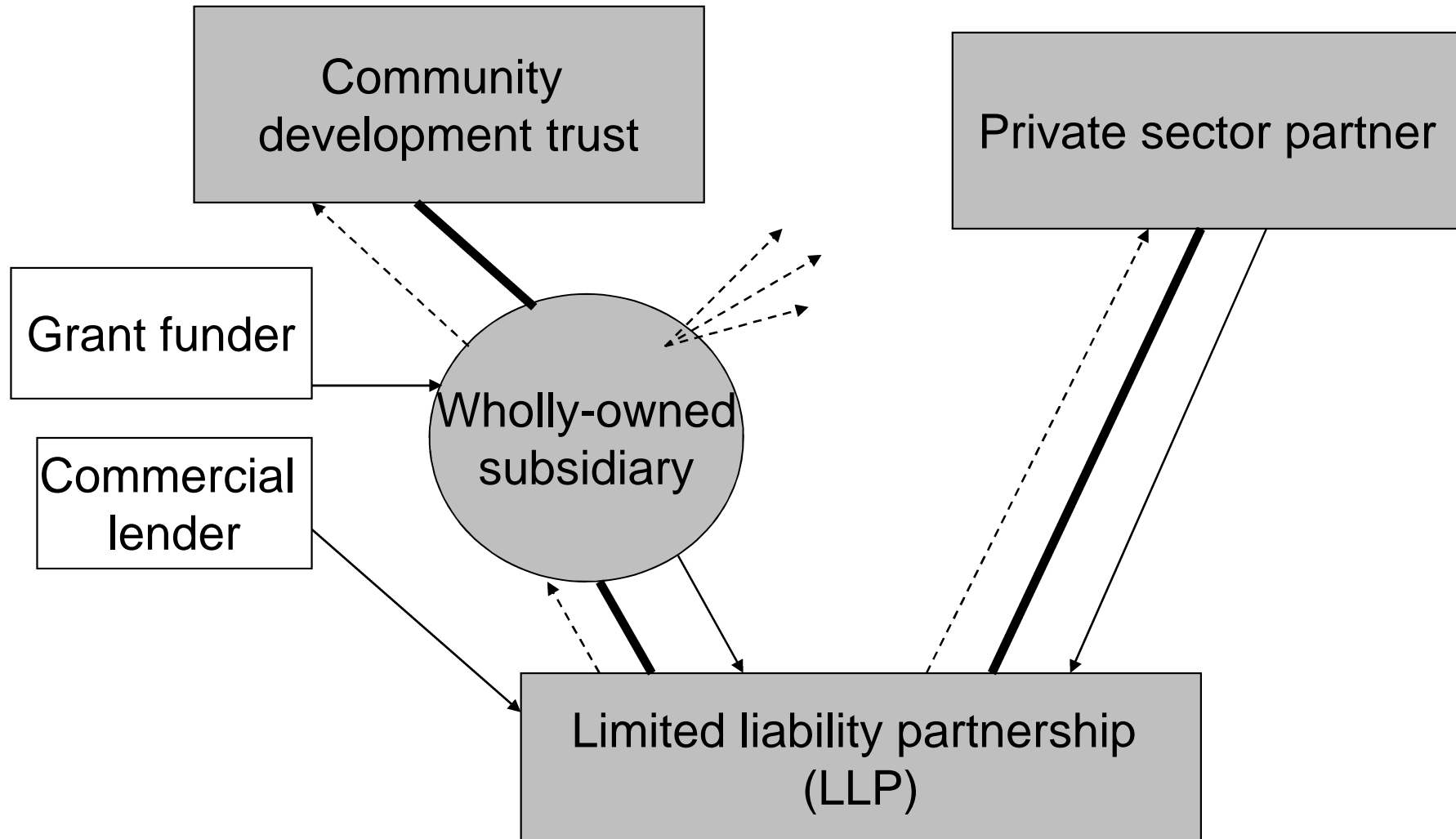
- Income to the community will reflect the pattern of net returns to the private sector windfarm company:
 - lower returns during initial years, as funds are used to service the loan funding; much higher returns in later years
 - returns varying with output/prices for electricity sold to the grid
- Transparency on financials is key
- A charitable organisation (e.g. a development trust) can be used to siphon off income in a tax-efficient way
- Community participation rests on the contract; control of the overall project lies with the private sector windfarm company

- Basic structure involves a jointly-controlled legal entity, with ownership (and financial returns) shared between the community and the private sector windfarm developer
- The JV entity holds the lease, enters into the contracts for supply & installation of the generating equipment, takes the role of borrower in relation to commercial loan funding, enters into the PPA
- The private sector partner in the JV normally funds the initial work, so will require control of the JV entity until the full package is assembled

JOINT VENTURE PROJECTS (cont) Burness

- Arrangements can be structured so the community can choose what proportion (normally up to 49.9%) of equity it wants to purchase
- After the community has made its equity contribution, its input into decision-making will increase accordingly
- JV documentation will include the usual menu of issues, including representation on the board, matters requiring approval of JV partners, conflict of interest at board level, deadlock/default, exit routes etc
- Type of JV entity: an LLP structure provides significant tax benefits for the community

JOINT VENTURE PROJECTS (cont) Burness [ⓑ]



COMMUNITY RENEWABLES JV PROJECTS – LEGAL STRUCTURES

Burness 

In summary:

- Important to consider the fundamentals in determining what type of legal structure would suit
- Two main types of JV models: virtual turbine projects and JV corporate entities
- Each community will have its own objectives and priorities; and a solution needs to be developed which represents the best fit with that particular community