Opportunities for New Community Energy

A Scoping Report for the
Radical Renewable Art + Activism Fund (RRAAF)

Authors: Anthony Browne, Benny Talbot, Nick Chapman + Georgy Davis from Community Energy Scotland

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Resources Document to accompany the RRAAF Report

Community Energy Scotland
Empowering Communities

10.1 LEGAL STRUCTURES

10.11 Private Company Limited by Guarantee

- This is a flexible business model which is used by many charities, co-operatives and social enterprise, as well as a number of community energy projects in Scotland.
- Companies are run by directors on the behalf of its members, who would guarantee a nominal £1 in the event of the company being liquidised.
- Companies must be registered with Companies House and abide by a number of rules regarding record keeping and auditing.
- Whilst a company may incorporate social aims or asset locks into its original constitution, these may be rewritten so that the project can become less socially oriented if management changes hands in the future.
- A 'company limited by guarantee' is not able to issue shares to raise finance*. This means that if a community energy project wishing to hold a public share offer it would need to adopt a different legal structure.
- A company Limited by Guarantee can later be converted into a co-op or community benefit society, provided its articles and membership don't breach any co-operative rules. Speak to Co-operative Development Scotland or the Development Trusts Association Scotland for more information on this.

*A 'Private Company Limited by Shares' may issue shares to investors. However, due to high levels of regulation the costs of doing this are significant (up to £100,000) and therefore this is normally unsuitable for most community renewable energy projects. However, for large community energy projects, where several £1Ms must be raised, this model can provide additional insurance to investors and can attract significant investment.

10.12 Community Interest Company

- This is essentially the same as a Private Company Limited by Guarantee, but specifically tailored for social enterprises. The most material difference is the requirement for social benefit to be written into its constitution and an asset lock which prevents assets from being liquidised by its members.
- Whilst there are examples of CICs being used for community renewable energy in the UK, so far this structure is not very common.
- CIC's may not register as charities and therefore it may limit the funding that can be accessed as many funders ask for charitable status as a pre-requisite.

10.13 Industrial and Provident Society

- An Industrial and Provident Society (IPS) is a common model used by consumer co-operatives, workers co-operative, housing associations and credit unions, but are also increasingly being used by renewable energy projects that wish to raise finance through issuing shares to the community. Unlike Companies, shares may be issued by an IPSs with lower levels of regulation and therefore at significantly reduced cost.
- IPSs must register with the Financial Conduct Authority either as a 'bona-fide co-operative' (Co-op) or as a 'community benefit society' (Bencom). The former is constituted for the benefit of its members and tends to pay a larger dividend to investors in renewable energy project. The latter is constituted for the benefit of the wider community and tends to pay a smaller dividend to investors and a greater contribution to a community benefit fund.
- All IPSs work on a one-member-one-vote principle.
- They will often be constituted to transfer profit directly into another organisation (Company, Trust, Parent Organisation etc) for the delivery of community benefit funds.
- Whilst Community Benefit Societies are able to gain charitable status Bona-fide Co-operatives cannot.

10.14 Trust

- Unlike Companies and Industrial and Provident Societies, Trusts are 'un-incorporated' organisations. This means that there is no legal distinction between the organisation and its members (trustees), so members are liable for any financial risk taken on by a Trust. This makes Trusts unsuitable for developing renewable energy projects, which invariably require significant levels of financial risk.
- However, once a renewable energy project is finished and generating income, a Trust may be a suitable model to administer funds provided by a renewable energy project.
- Trusts may register as charities.

If more than one legal entity is required to deliver a community energy project, it is common for new entities to become wholly owned subsidiaries of existing entities. For example, 'Community Energy Scotland Trading' is a wholly owned trading subsidiary of Community Energy Scotland, tasked with developing revenue generating renewable energy projects to support the charity and its charitable aims. A similar approach could be taken with the RRAAF project if appropriate.

The use of different legal structures to carry out a renewable energy project is given in the below case study of the Applecross Hydro Scheme.

10.15 Applecross Hydro Case Study

Applecross Community Company was set up as a Company Limited by Guarantee in 2008 to take forward a range of projects to benefit the Applecross community, including a community petrol station and broadband scheme. In 2009 the Community Company began developing a 90kW hydro scheme using CARES loans to support feasibility work. By 2014 the scheme was ready for installation and a large sum of money (approximately £700,000) would be required.

However, there was limited opportunity to access affordable bank loans to support this relatively small scale development. Instead, it was decided that a community share issue would be the best way to raise this capital. Since the Community Company did not have the right legal structure to affordably raise money in this way, a new IPS BenCom was formed – called Apple Juice Ltd. This new entity would be used to raise capital through holding a share issue and become the owner and operator of the hydro scheme.

To ensure that the scheme would deliver community benefit to Applecross, the Apple Juice constitution stated that Applecross Community Company would be represented on its board and that all profits from the scheme, once share holder dividends were paid, would be transferred to the Community Company. The share issue closed in November 2015 having successfully raised its total in just 3 weeks!

10.2 CARES START-UP FUNDING

Andrew Morton (andrew@se.localenergyscotland.org) CARES South of Scotland Manager will be able to advise RRAAF and provide feedback whilst drafting an application. Although it is expected that the CARES scheme will continue after March 2016, at present there is no guarantee of this being the case and therefore it is recommended that RRAAF apply for start up funds early in 2016.

CARES Start-up Grants are delivered on behalf of the Scottish Government by Local Energy Scotland. A maximum grant of £10,000 is available with up to 100% intervention rates. CARES Grants are targeted at early stage activities (particularly those activities without which the installation of renewable energy generating technology would not be able to go ahead), including:

- Costs towards forming a constituted group to take forward a renewable generator.
- Feasibility studies.
- Community consultation.
- Community capacity building.
- The development of community investment plans.
- Support for investigating joint venture projects with commercial developers.

Communities who wish to look into buying in to a commercial renewable energy development, such as an opportunity on the National Forest Estate, may be eligible for an increased CARES Start-up Grant of up to £20,000 to procure legal and financial advice. CARES Grants are considered *de minimis* funding and is subject to state aid regulation, these regulations state that the maximum public assistance any single recipient can receive is €200,000 over a three year fiscal period. RRAAF should consider whether a CARES loan could lead to a breach of these funding regulations or impact future funding opportunities.

After a recent discussion with CARES our impression is that the funding is designed towards communities of place rather than interest, and therefore to qualify RRAAF should expect to release at least 10% of their profits to a local community organisation near the site of their installation.

CARES also provide pre-planning loans. These can be invaluable funding for a dedicated project worker, and the cost of expensive feasibility and impact studies which may be required as RRAAF enters stage 4 ('develop the project' – see section 3) provide access to larger sums of cash to communities developing a project, with a maximum loan per legal entity is £150,000. Crucially, CARES pre-planning loans can be written off, where a project does not progress due to failure to gain planning consent or other major obstacles.

Applications for pre-planning loans are competitive and are taken until funds are fully allocated. 95% of pre-planning costs such as Environmental Impact Assessments and technical feasibility studies can be funded through the loans. Applicants must provide some match funding, contributing a minimum of 5%, and must fund any recoverable VAT. Credit checks are undertaken, but security is not required. Interest is charged at 10% per annum from the date of each drawdown.

10.3 CAPITAL FUNDING OPTIONS

10.31 Bank Loans

Traditional bank loans are a common method of funding renewable energy installations. The majority of the large banks offer some form of loan finance for renewable, however not all provide loan financing at the level required for community based projects. Banks receptive to financing community projects include Triodos, Santander, Close Bros, Temporis Capital and Charity Bank. Other organisations which may give loans for community renewable include Pure Leapfrog, SIS, and REIF (particularly for short term 'bridging loans').

It is worth noting that whoever funds your project they are unlikely to provide greater that 95% of capital funding for the scheme and therefore equity will need to be found to contribute towards the project.

10.32 Community Share Offers

An alternative method of long term debt funding is by a community share offer. Community shares are a funding mechanism which can be used only by Co-operatives or Community Benefit Societies. Both organisations operate on the system of one member one vote and all members are able to vote on major issues affecting the organisation. The key difference between the two is that a community benefit society sets out for the benefit of a wider community, however the main purpose of a co-operative is to benefit its own members. In the instance of RRAAF therefore, where the purpose is to provide funding beyond the investors in the scheme a community benefit society is recommended as the best option of the two.

Community shares have no set repayment date - repayment to shareholders is linked to the performance of the enterprise and interest is at discretion of directors. Community share offers can also be a tool for raising the profile of a project, and retaining contact and meaningful involvement with the community of shareholders. Money raised through such an offer could fund the whole costs of a project or allow RRAAF to match fund through a commercial loan.

Generally the investment made by the shareholder should be seen as primarily for social return. Interest on investment is not a guarantee and if offered is fair and modest. Community shares cannot increase in value or be sold on to anyone else. However they can be withdrawn within the set rules of the society. Community shares are exempt from regulation under FSMA 2000 but carry a responsibility for stringent self-regulation.

In order to raise community investment, there are four key elements which all community enterprises should consider before launching a community share offer:

- As with other forms of financing, a successful community enterprise requires a strong business case which is shown to be viable, profitable and sustainable.

- Raising share capital from the community will only work if you have their support. Enterprises should understand the scale and scope of their community then attract support and finally build membership as part of the share offer itself.

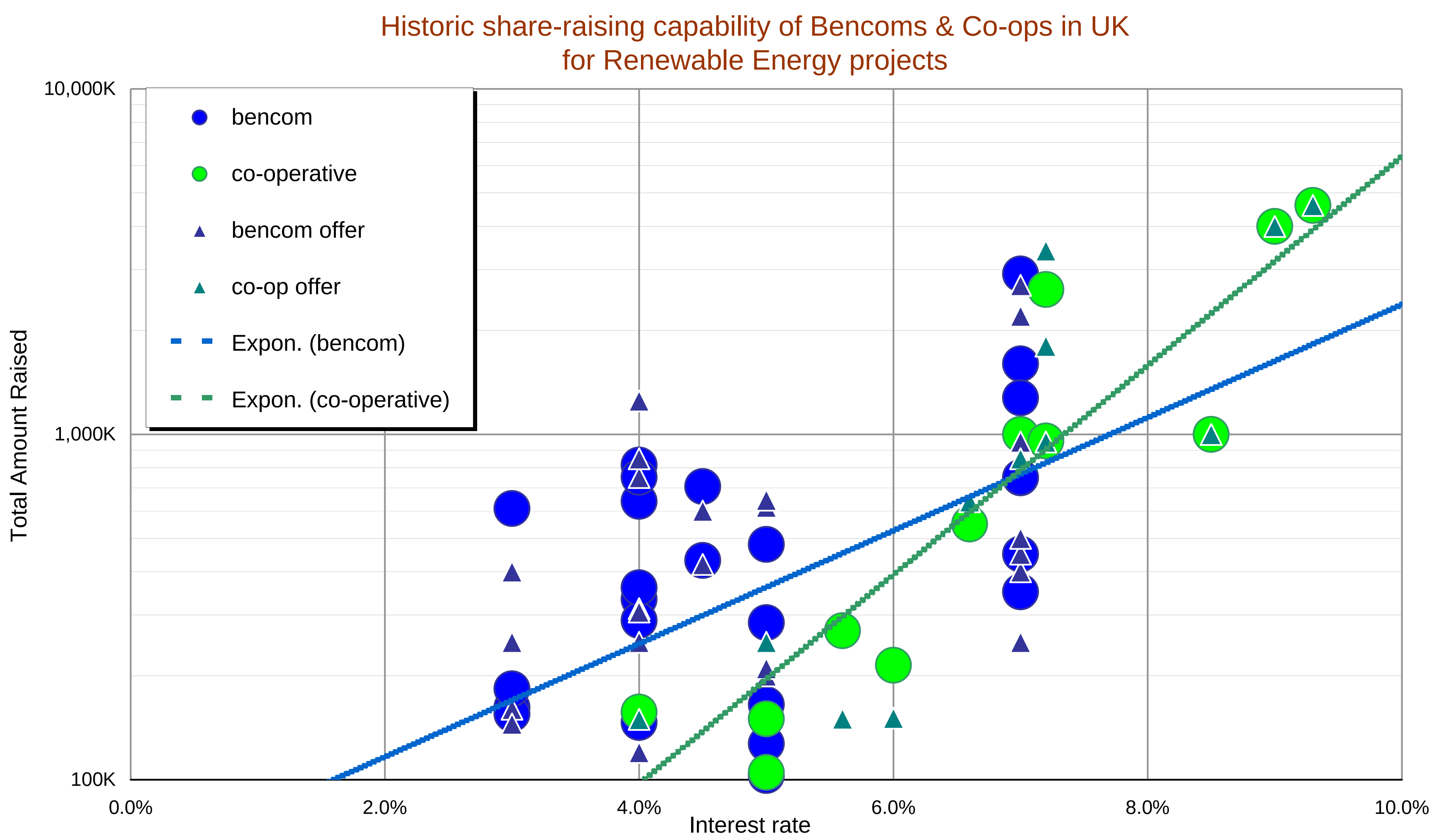
- An enterprise wishing to issue a share offer must have an appropriate legal form and governance structure. Any organisation seeking to become a co-operative or a community benefit society must register and structure its rules accordingly.

- RRAAF should allow sufficient time and resource to draft a strong share offer document which should offer a powerful narrative as to why the community should invest. The prospectus also needs to be highly accurate and informative, so as not to mislead investors.

The graph on the following page puts community share offers in context, by summarising the interest promised and the total amount raised by co-operatives and community benefit societies in the last few years. The triangles indicate target offerings, and the circles show the amounts actually raised by each offering.

The UK government's recent decision in November 2015 month to remove SITR tax subsidies for investors in community energy share offers may have an impact on the viability of community share offers: reducing the total amount of money that can be raised, or increasing the interest rate that needs to be offered by a community share offer to make it attractive to potential investors.

However these changes have only just come into effect. RRAAF should keep track of the progress on community share offers post SITR (such as Bristol Energy Co-op's current offer) to see what impact these changes have had.


Historic share-raising capability of Bencoms & Co-ops in UK
for Renewable Energy projects
Total Amount Raised
10,000K
1,000K
100K
0.0%
2.0%
4.0%
6.0%
8.0%
10.0%
Interest rate
bencom
co-operative
bencom offer
co-op offer
Expon. (bencom)
Expon. (co-operative)

10.33 Community Bond Offers

One alternative to a community share offer is to issue a community bond offer. Bonds are shorter term debt tools – lasting for a fixed number of years, and guaranteeing a fixed interest rate. A community bond could typically range from 3-6% interest over 3-6 years.

Bonds may be more appealing to community investors because they offer more certainty, and do not tie the money into the scheme for so long. The disadvantage is that bonds wouldn't provide their holders with a stake or a decision making role in an organisation, and need to be repaid at a set date. Repaying the bonds would likely require RRAAF to take out a second tranche of bonds or a loan.

Community bonds, also known as 'loanstock', are commonly used by housing co-ops to fund property purchases, and may be an option for community energy groups following the removal of SITR. Bristol Energy Co-op has opted to launch a community bond offer in parallel with its post-SITR share offer, which should provide some indication of the successfulness of each approach.

10.34 Grant Funding

It is important to distinguish between grant funding from Government and private sources. At present renewable energy projects that receive government grant funding for their schemes cannot also claim the governments Feed-in Tariff as this essentially is viewed as a double subsidy. Private funds do not carry the same restrictions however, and so projects that can obtain funds through private sources are also able to claim the governments Feed-in Tariff**.** Furthermore, since the introduction of Feed-in Tariffs most private funders have been unwilling to provide grant funding, as they can see that projects can succeed without their support.

Prior to the introduction of the Feed-in Tariff by the UK Government several community renewable generators were able to access (Lottery) grant funding to support the capital costs of installation. Given the reduction in value of the Feed-in Tariff, it is now plausible that grant funders will be more willing to give to support renewable energy projects based on their social and environmental outcomes.

Scottish Legal Structures for Social Enterprise at a Glance

This is a rough guide to the legal structures most commonly associated with social enterprise. For more information on them, see the websites listed below. For more general information about business structures, including other options such as partnerships and limited liability partnerships, see http://www.businesslink.gov.uk. However, there are a variety of legal requirements associated with setting up the structures described below and you should consider seeking professional advice before your organisation adopts any one of them.

Legal structure	Summary: most typical features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it be a charity and get charitable status tax benefits?
Unincorporated association	Informal; no general regulation of this structure; need to make own rules.	Nobody owns - governed according to own rules.	*No, which can create problems for contracts, holding property and liability of members.*	Depends on own rules.	Would need bespoke drafting to achieve this.	Yes, if it meets the criteria for being a charity.
Trust	A way of holding assets so as to separate legal ownership from economic interest.	Assets owned by trustees and managed in interests of beneficiaries on the terms of the trust.	*No, which means the trustees are personally liable.*	Not usually. Trustees/directors can only benefit if trust, court or Charity Commission give permission.	Yes, if trust established for community benefit.	Yes, if it meets the criteria for being a charity.
Limited company (other than Community Interest Company) www.companieshouse.gov.uk	Most frequently adopted corporate legal structure; can be adapted to suit most purposes.	Directors manage business on behalf of members. Considerable flexibility over internal rules.	Yes, members' liability limited to amount unpaid on shares or by guarantee	*Yes, but no dividends etc to members if it is a company limited by guarantee.*	Would need bespoke drafting in articles, which could be amended by members.	Yes, if it meets the criteria for being a charity.
Community interest company (CIC) www.cicregulator.gov.uk	An effective limited company structure for social enterprise with secure 'asset lock' and focus on community benefit.	As for other limited companies, but subject to additional regulation to ensure community benefits.	Yes, members' liability limited to amount unpaid on shares or by guarantee.	*Yes, but must benefit the wider community. Can pay limited dividends to private investors and directors can be paid.*	Yes, through standard provisions which all CICs must include in their constitutions.	*No, but can become a charity if it ceases to be a CIC.*
Industrial & Provident Society (IPS) (Co-operative) http://www.fsa.gov.uk/pages/doing/small_firms/msr/societies/index.shtml	For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services.	Committee / officers manage on behalf of members. One member, one vote (regardless of size of respective shareholdings).	Yes, members liability limited to amount unpaid on shares.	*Yes, but should do so mostly by members trading with society, using its facilities etc, not as a result of shareholdings.*	Would need bespoke drafting in articles, which could be amended by members.	*No, would have to be constituted as community benefit type of IPS.*
Industrial & Provident Society (IPS) (Community Benefit Society (BenComm))	Benefit community other than just own members and have special reason not to be companies.	Like Co-op type, but new legislation provides option of more secure form of 'asset lock'.	Yes, members liability limited to amount unpaid on shares.	Must primarily benefit non-members - 'asset lock' applies.	Yes, asset lock only survives dissolution if new statutory form of asset lock adopted.	Yes, if it meets the criteria for being a charity.
Scottish Charitable Incorporated Organisation http://www.oscr.org.uk/about-scottish-charities/scio	Ready-made corporate structure specifically designed for charities.	Similar to company but with different terminology, eg 'charity trustee' instead of 'director'.	Yes, members either have no liability or limited liability.	Members are not permitted to benefit and charity trustees are only able to benefit if constitution, court or Charity Commission give permission.	Yes.	Cannot be anything but a charity, and must meet the criteria for being a charity.

10.4 PROJECT FINANCIAL CASE STUDIES

10.41 Alternative Technologies to Wind and Solar

Should finances not stack up for wind or solar projects due to the recent cuts to government 'Feed-in Tariff' subsidies, RRAAF could consider turning to some other technologies which currently retain a higher level of support.

- The Feed-in Tariff for hydro is still much higher than for wind and solar.
- The renewable heat incentive also provides more generous subsidies for generation of renewable ***heat*** (eg. using biomass boilers, anaerobic digestion, or water source heat pumps)

Of course, risks remain with this approach: the government might choose to reduce support for other technologies over the 1-3 years it will likely take for RRAAF to develop its project.

10.42 Self-Use of Energy

The UK energy system has one of the lowest 'wholesale' bulk electricity prices in Europe, but this has not particularly benefited UK citizens due to a far higher final 'retail' price of energy. The difference comes from the costs and profit margin of energy supply companies. Self-use of electricity is a way to bypass the electricity supply system, and directly realise much more of the value of electricity.

Self use occurs when an electric load can be connected 'behind the meter' at your site of generation. Instead of all the energy generated flowing out onto the national grid, and having to be sold at the wholesale price of ~5p/kWh, electricity used directly by local loads would be worth the retail price of electricity (6-10p/kWh for industrial, or 7-18p/kWh for domestic users).

As the local load needs to be directly connected to the generator, local use is only possible when they are physically extremely close – for example, directly supplying a building via solar panels on the roof. Self use also requires the generation to occur at the same time as the electrical demand.

10.43 Local Energy Economies

Over the last three years Community Energy Scotland have invested considerable resource in trialling non-conventional business models through our 'Local Energy Economies' programme. We believe that, in the long term, the best way to sustain community energy in the face of growing grid constraint and shrinking subsidies will be to find ways to retain far more of the economic and electrical power flows (along with decision making power) in local communities.

In practical terms, this has meant taking forwards a number of trial projects aiming to use new technology and new contractual arrangements to increase the potential for local energy supply and grid management. Ideas under investigation include using smart 'demand side management' devices to change the time storage heaters and electric vehicles charge so that these better match renewable generation times, and aggregation of domestic meters to allow direct self-supply to community power co-operatives.

This is a rapidly evolving area, and these projects are still under development, so it is not yet possible to draw clear conclusions; however we would be happy to explore potential for applying such methods, where applicable, to sites under investigation by RRAAF.

10.44 Data Used in the Example Business Case

Capacity Factors: These are close to average UK capacity factors, however we have slightly raised the performance of the wind turbine and lowered the performance of the solar PV to reflect Glasgow's relative position within the UK.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/450298/DUKES_2015_Chapter_6.pdf

FIT rates: vary depending on installed capacity and technology. They are also liable to be reduced with time, a process known as digression. The Government's latest review of FIT rates can be found here. The 'reduced rate' is based on an assumption that these have further decreased by 40% by the time RRAAF is ready to pre-accredit for support.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/469476/Consultation_on_a_Review_of_feed-in_tariff_scheme.pdf

On-site Energy Value: was based on 2014 average electricity prices for Southern Scotland: For Solar PV, we used the average domestic price of electricity, however for Wind we used the average electricity price for a small business, to reflect the fact that megawatt scale wind is less likely to be found very close to domestic properties. Both rates have been reduced by 3p/kWh to account for passing some benefit on to the local user and/or not being able to access the full value of the power by reducing standing charges.
You should also bear in mind that, unless the electricity demand is onsite additional capital costs will be required to build a private cable linking the turbine to the site of electrical demand. These costs would be roughly £100,000 per kilometre for a rural area: far higher if the cable needs to cross a built up area.

Cost per kW: This is based on UK averages from the following report. It is worth being aware that community energy groups often incur above average development costs.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/456187/DECC_Small-Scale_Generation_Costs_Update_FINAL.PDF

Total Borrowing Costs: Calculated using an online loan repayment calculator, assuming a 4% rate of interest on a 20 year loan. This reflects the rough cost of a community share offer – a commercial bank loan may entail a higher rate of interest; possibly up to 7%. Loans may also be taken out for a shorter period of time; however we chose the whole project life of 20 years to simplify the calculations.
www.thisismoney.co.uk/money/cardsloans/article-1633405/Loan-repayment-calculator.html

10.45 Pre-Subsidy Case Studies

Community Group	Isle of Gigha Heritage Trust (Parent Charitable Trust) and Gigha Renewable Energy Limited (trading arm, wholly owned by the charitable trust)
Technology	Wind
Size	3 x second hand Vestas V27's, each with an installed capacity of 225kWs
Date of commissioning	2005
Capital Cost	£440k
Funding	Grants = £132k Loan finance = £148k, repaid over a 5 year period Equity = £120k
Gross Annual Income	£150k (Power purchase agreement + renewable energy certificates)
Net Annual Income	£75k per year in first 8 years

10.46 Community Share Case Study

Community Group	Balerno Village Trust (Co. Ltd by Guarantee and Harlaw Hydro (a community benefit society)
Technology	Hydro
Size	65kW
Date of commissioning	2015
Capital Cost (estimate)	£313k
Development Costs	£10k
Funding (targets)	£150k Community Share Offer with 4 % return, £50k Donations, £50k Interest free loans, £63k bank loan (8%). ACTUAL: 100% of funds required were raised through a community share issue.
Gross Annual Income	£58k
Net Annual Income	£5k in year 1 rising to £55k per year after year 10

10.5 USEFUL ORGANISATIONS

Community Energy Scotland:
A membership based organisation which supports and represents community energy groups through individual partnerships, as well as at a policy level. Community Energy Scotland's 'innovation' arm develops new business models and finds routes to overcome technical and economic challenges facing its member groups. Membership of Community Energy Scotland is free to eligible organisations.
www.communityenergyscotland.org.uk

Local Energy Scotland:
Local Energy Scotland receives funding from the Scottish Government to support community owned renewable energy, including administering CARES start-up grants and loans. Their website provides a wide range of free resources for prospective community generation groups, including case studies and templates for business planning. It's well worth taking some time to read through their resources & advice page in detail:
www.localenergyscotland.org/funding-resources/resources-advice

Please contact Andrew Morton in relation to your start-up grant application:
andrew@se.localenergyscotland.org 07881 109 003

Community Shares Scotland:
Community Shares Scotland provides free support and advice to groups considering launching a community share offer. www.communitysharesscotland.org.uk

Development Trusts Association Scotland:
A membership based organisation which supports and represents community organisations aiming to strengthen their local area through community ownership of land and resources.
www.dtascot.org.uk

Co-operative Development Scotland:
Co-operative Development Scotland is an arm of Scottish Enterprise and provides free support and advice to groups considering becoming co-operatives. www.cdscotland.co.uk

Energy 4 All:
A co-operative which supports affiliated community energy co-operatives across the UK, providing project management and a peer network (for a fee).

Centre for Sustainable Energy:
The Centre for Sustainable Energy provides a range or resources to support communities with the development of renewable energy projects. Videos and written resources are bought together on the 'PlanLoCaL' project website:
www.planlocal.org.uk/pages/renewable-energy/renewable-energy-technologies-1 and signposting to resources from other organisation can be found on 'The Source' project website: www.cse.org.uk/thesource/browse/generating-your-own-energy-17

Co-operatives UK:
Co-operative UK have produces a helpful document called 'Simply Legal' which outlines the different legal structures available and their characteristics. Although it is not specifically focused on renewable energy projects much of the information can be applied:
www.uk.coop/sites/default/files/uploads/attachments/simplylegal_0.pdf

Glasgow City Council:
The Council's Energy Team has undertaken a comprehensive mapping exercise to look at potential sites for renewable energy developments within the city. The findings of this exercise can be viewed on an online map: http://map.glasgow.gov.uk/?map=energy-map

The Energy Team are aware and supportive of the RRAAF project and are keen to discuss this further with representatives from the group. Please contact Rose Cawood:
rose.cawood@glasgow.gov.uk

Scottish Enterprise Renewable Energy Investment Fund:
Another possible funding source could be Renewable Energy Investment Fund by Scottish Enterprise. It would be worth approaching them directly to present the RRAAF project:
www.scottish-enterprise.com/services/attract-investment/renewable-energy-investment-fund/overview