Community Shared Ownership

LOCAL ENERGY SCOTLAND

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This session

- Christina Hinds, LES
  - What is community shared ownership (CSO)?
- Gillian Harkness-McKinlay, Anderson Strathern
  - Structure options for CSO
  - Timeline
- Morven Lyon, DTAS
  - Development Trusts and CSO
- Q & A

What is Shared Ownership?

“ .. we define Shared Ownership as *“any structure involving a community group as a financial partner”*, not individuals (within the geographical area of the project) who are in a position to invest”

from “Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Developments”

The ambition for shared ownership

“We continue to encourage the renewables industry to consider, explore and offer shared ownership opportunities **as standard** on all new renewable energy projects including repowering and extensions to existing projects.”

…. from Scottish Government’s, "Onshore wind: policy statement 2022“

Support from Local Energy Scotland

LOCAL ENERGY SCOTLAND

- Online information sessions
- Attend meetings with community groups interested in CSO - and the developer when requested
- CARES grants for legal/financial advice
- Support and guidance throughout

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Community renewables: shared ownership

CARES Conference 2023

19 September 2023

Gillian Harkness-McKinlay (Director – Public and Third Sector Team)

Shared ownership…a tempting offer or a step too far?

- There are no two ways about it, entering into a shared ownership project is daunting…and the complexity can be increased by virtue of different wind farm operators offering different deals.
- And there is no one size fits all approach for how the community ought to structure its involvement in a shared ownership scheme.
- What will dictate the structure involved?

- what the developer is offering, by way of community participation;
- what, if any, structures already existing within the local community e.g. is there an incorporated development trust or just a number of community councils (which do not have independent legal personality)?
- if there is an existing community body to take up the offer, does it have charitable status?
- how will the community finance its participation in the shared ownership scheme?

Anderson Strathern

What structures already exist within the community?

- It will be critically important to ensure that an “incorporated” entity takes the lead in a shared ownership project. As such, community councils cannot directly enter into shared ownership projects.

- Where an organisation is “incorporated” it has a separate legal personality from those individuals making up its membership:

  - it has the benefits of limited liability;
  - it can enter into contracts in its own name;
  - it can directly own assets.

- Whatever structure is chosen must be capable of being “accountable” to the community i.e. having representation from the relevant localities within its structure – this can be achieved by having membership open to local residents (and democratic elections to the board) or by including membership by representatives of the relevant community councils.

- And the relevant entity must have the confidence of the community, because it is this entity which will ultimately disburse funds (generated via shared ownership and/or community benefit funds) in furtherance of community projects.

What structures already exist within the community?

- If there is an existing development trust, it is likely to be structured as a charitable company limited by guarantee or as a SCIO (Scottish charitable incorporated organisation) - it could potentially be used as a part of the key structure involved in the shared ownership project [**but note my later comments on charitable status and renewables shared ownership projects**].

- There may be a need to amend the constitution of an existing charitable company/SCIO to reflect all relevant local areas/community council participation prior to embarking on the shared ownership project.

- If there is no existing entity (and just a range of unincorporated groups), then the appropriate "incorporated" structures would be a charitable company limited by guarantee or a SCIO (most likely a SCIO).

- **BUT** in either scenario (where there is an existing incorporated community entity or where a new entity needs to be established), if the community is proposing to raise finance via a **community share issue** then a **BenCom** would need to form part of the structure.

- A decision will need to be made on financing at as early a stage as possible in order to inform what structure will be optimum. The structure will ideally need to be in place prior to formally accepting an offer from the developer. **NOTE: it can take up to three months for OSCR to reach a decision on charitable status.**

Anderson Strathern

How will the community finance its participation?

- The developer might offer the community the opportunity to take a share in a joint venture entity, or (rather than the community becoming part of the formal legal structure operating the wind farm) it might offer a revenue sharing arrangement with/without the ability to contribute to capital costs in return for a bond.

- Regardless of what the offer is, the community will need to purchase its "stake" in the project and will need finance for this. It is possible that a local group will already have sufficient reserves which it could utilise for this purpose but if not, then the community will be looking to the following:

  - grant/loan funding; and/or
  - a community share issue.

- Where the community proposes to raise funds through a community share issue, then it will need to establish (if there is not one already) a "BenCom".

Anderson Strathern

What is a BenCom?

- A “BenCom” is a society for the benefit of the community – this is a different legal structure from a company or a SCIO. A company limited by guarantee or a SCIO does not include any element of “profit share” for its members.
- Each member of a BenCom has one vote irrespective of the size of their share.
- A BenCom can pay limited financial returns to its members as “interest on shares” (not a dividend).
- The Financial Conduct Authority is the relevant regulator for a BenCom (not Companies House or OSCR (unless the BenCom is also registered as a charity)).
- The key relevance of a BenCom is that it can raise finance through a community share issue without the need to follow the detailed financial services requirements that would apply to a company limited by shares making a share issue.
- The legislation relating to BenComs is complex, BenComs can be time consuming to establish and the FCA it not necessarily as user-friendly a regulator as other regulators.

Stand alone BenCom or BenCom linked to an existing incorporated charity?

- If:
  - there is no existing incorporated organisation, within the community, capable of taking forward the shared ownership project; and

  - the community wish to raise finance (to purchase their "stake" in the shared ownership project) through a community share issue,

  then, a BenCom could be established. Further, charitable status could be sought for the BenCom **[but note my later comments on charitable status and shared ownership projects].**

- If there is an existing incorporated community body (e.g. a development trust structured as a charitable company limited by guarantee or a SCIO), but the community wish to raise finance via a community share issue, then use could be made of what we call the **hybrid model**.

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BenCom: Hybrid Model

- **Hybrid model:**
  - a BenCom is established to raise the finance;
  - a BenCom cannot, technically-speaking, be a subsidiary of another entity (such as a development trust, however the DT is structured);
  - but under the hybrid model, special provisions can be included in respect of the development trust (as a member of the BenCom) e.g. rights in respect of board appointments, rights of veto in respect of a resolution to make fundamental changes to the rules of the Bencom;
  - reference to a **deed of covenant** between the BenCom and the development trust with obligations on the BenCom to pay (tax deductible) surpluses to the development trust.

BenCom: additional points to note

- A reliable source of income is needed if going down the BenCom route as the BenCom needs to be able to:

  - pay a financial return to its investors, each year;
  - repay commercial lenders (with interest);
  - pay surpluses to charitable development trust;
  - and to build up a reserve to repay investors on their terminating their involvement.

- Additional features of a BenCom: need to develop an offer document, publicise the proposed share issue and process applications.

Charitable status and shared ownership projects

- From a community perspective, you will want to ensure that there is a charity within the structure which is developed in respect of a shared ownership scheme – a charity (registered with HMRC Charities for charity tax relief) will not generally pay corporation tax in respect of its surpluses.

- But it is unlikely that a charity itself will be the actual entity which directly participates in a shared ownership scheme because:

  - shared ownership projects are linked to activities which would be deemed to be non-charitable and any income generated from such activities would not fall within the corporation tax exemption;

  - from a risk perspective (especially for an existing charity, such as a local development trust), it may be preferable to route the shared ownership project through a separate entity;

  - a lender may prefer to lend to an entity which is established for the sole purpose of participation in the renewable energy project.

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Case study

- Existing community development trust (structured as a SCIO/charitable company limited by guarantee…doesn't really matter which). The development trust has been operating for some time and initiates lots of good works within the community.
- The development trust is approached by a developer with an offer to purchase a stake in a windfarm.
- The development trust cannot source all finance from lenders/grant funders and, therefore, proposes to raise some of the funds via a community share issue – the current structure of the development trust precludes it from undertaking a community share issue.
- The development trust incorporates a BenCom following the principles of the **hybrid model [see earlier comments on this] –** this allows the development trust to be a sort of **anchor member** within the BenCom structure.

Charitable status and shared ownership projects

- For the reasons given in the previous slide, it is usual for a charity (regardless of how it is structured e.g. as a charitable company, a SCIO, a charitable BenCom) to establish a wholly owned non-charitable trading subsidiary. CIC (community interest company) status for a trading subsidiary?

- The trading subsidiary will be the legal entity which is party to arrangements with the wind farm developer. The subsidiary will be structured as a company limited by shares, and 100% of the shares will be owned by the charity.

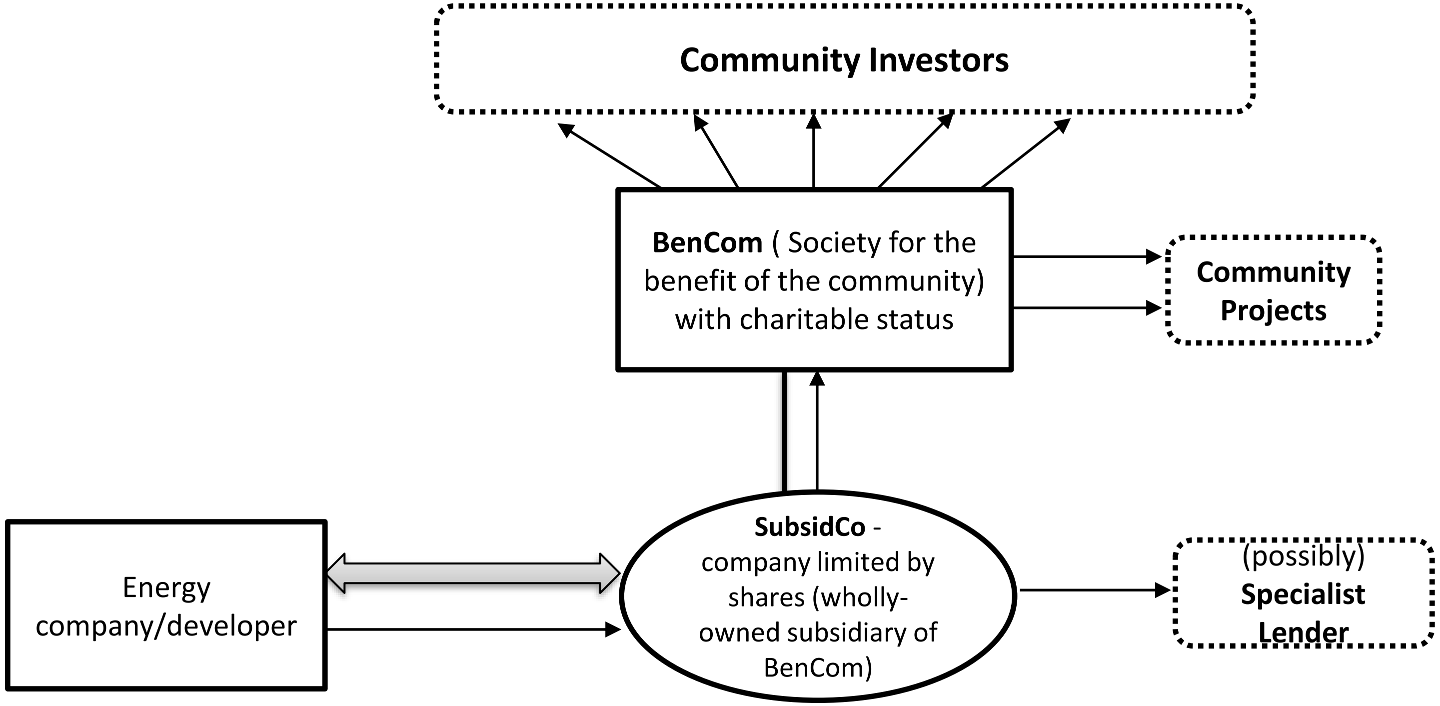
- As a non-charity, the subsidiary will be liable to pay corporation tax on its surpluses (i.e. those generated through its participation in the shared ownership project).

- But a wholly owned trading subsidiary of a charity can make gift aid payments to its parent charity (within 9 months of the end of its financial year) and can, thereby, reduce its corporation tax liability by the amount of any gift aid of surpluses to the parent.

- A lender may require a share pledge over the charity's shares in its subsidiary.

- Where no community share issue, the desired model is likely to be **charitable company limited by guarantee/SCIO plus trading subsidiary.**

Example structure



Key:

Den … aring Agreement

Denotes flow of funds (following set-up)

Case study

- The BenCom, in turn, establishes a wholly owned trading subsidiary (company limited by shares) and it is this entity which enters into the arrangements with the developer;

  - the BenCom lends the proceeds of the community share issue to the subsidiary, to enable it to purchase its stake in the shared ownership project;

  - the subsidiary gift aids surplus payments to the BenCom (it also repays the loan of the community share issue plus interest);

  - the BenCom, in turn, gifts a portion of its surpluses to the development trust.

- The development trust has also sought loan funding in respect of part of the costs involved in purchasing its stake in the shared ownership project – the lender, as security, takes a share pledge over the BenCom's shareholding in the subsidiary.

- **Note: subsidiaries often have to pay off loan finance and capital repayments are not tax deductible therefore a subsidiary cannot typically gift aid the full amount of its surpluses until loan repayments made in full.**

Legal structure of arrangements with the developer

- It is possible that the developer will offer the community the opportunity to form part of the legal structure operating the wind farm. A company limited by shares is a common joint venture vehicle, but an LLP (limited liability partnership) would be preferable from a community perspective as it is more tax efficient:

  - an LLP is tax transparent, which means that the members of an LLP are taxed (as opposed to the LLP itself) in accordance with their own tax status;

  - whereas, in the case of a company, the company itself (and not its individual members) is taxed on its profits;

  - a wholly owned non-charitable trading subsidiary, as a member of an LLP, would only pay tax on surpluses retained by the subsidiary after making gift aid payments to its parent charity.

- Some developers prefer not to enter into a formal joint venture entity and might, instead, offer the community the opportunity to enter into a revenue sharing agreement.

Get in touch

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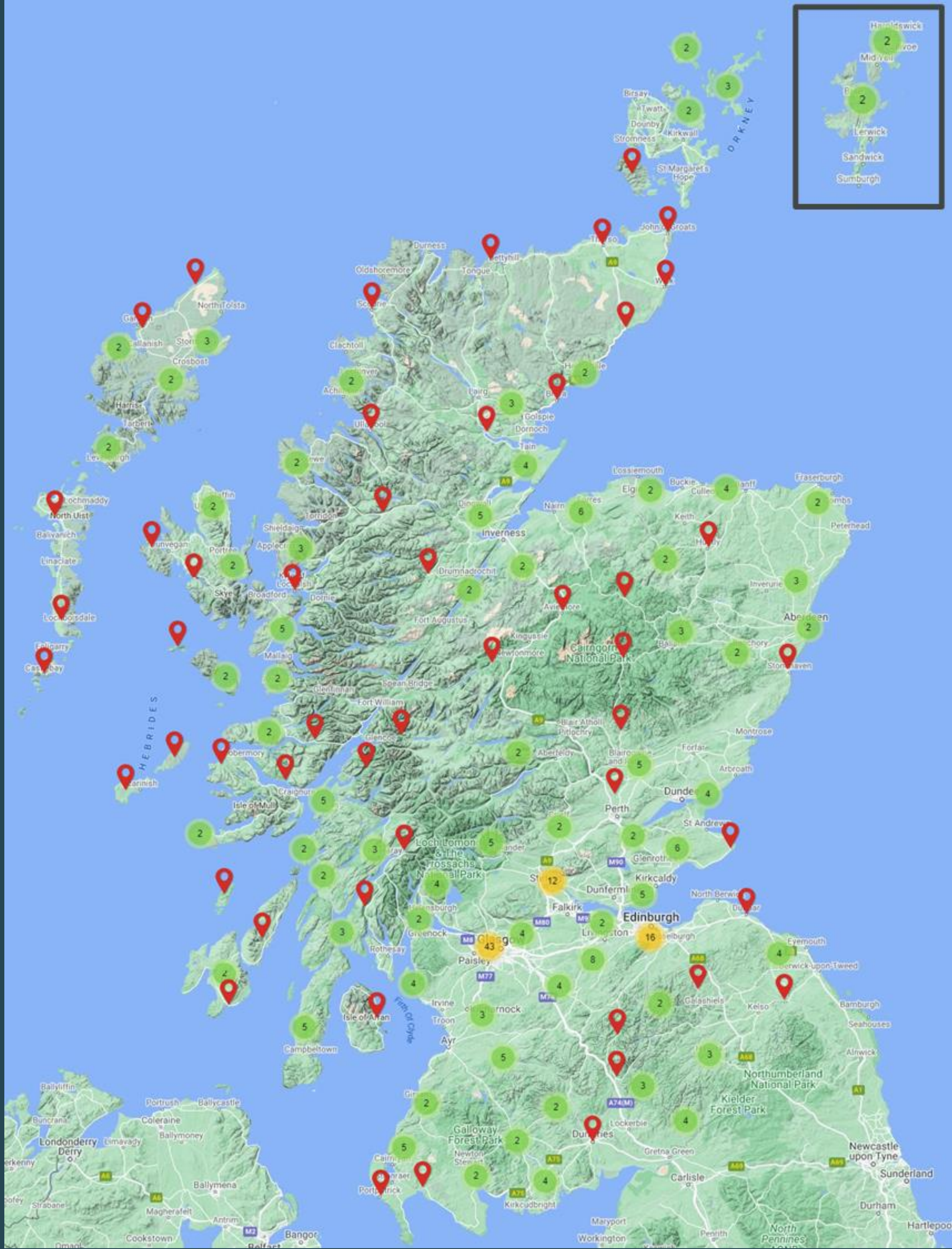
Anderson Strathern

Development Trusts Association Scotland

A Thriving Community-led Network

Introduction to development trusts:

- What is a development trust?
- Why and how to become a DT
- Legal structures for a DT
- About DTAS
- DTs and CSO – strengths and weaknesses



Islanders on Kerrera walking the new road together in November 2021. Kerrera DT's long term work got the project done, linking two parts of the community & ensuring vital services can be accessed by all.

Why set up a development trust?

- ✓ **To get things done** - unlocking the capacity of the community to act in an entrepreneurial way
- ✓ Most important - **a new form of local democracy**, at its best enriching the effectiveness of local government
- ✓ Access to **funding** and **sustainability**

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4 distinct characteristics

1. Independent and **community owned and led**;
2. Engaged in the economic, environmental and social **improvements of a defined area**;
3. Committed to **working in partnership** arrangements that are initiated by the community and;
4. (Perhaps most importantly) **Enterprising**

The opening of Cranhill Development Trust's Community Hub

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What do development trusts do?

Provide childcare, make benches, manage office space, teach ICT, support small businesses, cook healthy food, recycle paper, support other community organisations, **manage community centres**, run cinemas, build, sell and rent out houses, undertake youth work, repair and sell bicycles, provide home help schemes for older people, **run community transport schemes**, lobby Councils for improvements on behalf of local people, undertake consultancy work, run schools for excluded young people, manage parks and play areas, own restaurants and cafes and pizzerias, **have festivals & fun days** & Dickensian Christmas Fairs, run credit unions, support neighbourhood management and other local initiatives, prisoner of war camps and Scottish government nuclear bunker development, set up social enterprises, homework clubs, DJ Workshops, run community energy projects, five a side football, manage Healthy Living Centres, **district heating systems**, support local artists, swimming pools and gyms, provide wedding and conference facilities, create web-sites, **regenerate town centres**, teach basic skills English and Maths, **run bed and breakfasts**, lend money, employ local people, run play schemes, sports days, teach construction skills, manage sports facilities, provide a refuge for women, publish community newsletters, teach catering skills, support community radio, make soap and bath stuff, run community arts projects, build footpaths and cycleways, **manage renewable energy schemes**, build green and affordable homes, manage grant funding, manage local markets and market halls, run **community cohesion projects**, manage street ranger schemes, install CCTV, own and manage shops, leisure centres, benefit advice and debt counselling, promote tourism, manage heritage sites, skills training, undertake social audits, own and run pubs and bars, build and manage BMX tracks, run Archaeology survey companies, provide sets for film and television productions, **manage allotments**, make chocolate (and sell it to Selfridges!), make jam (and sell it to the Co-op) from orchards providing jobs for people with learning disabilities, own hostels, build boats, run Tourist Information Centres, sheltered and special need housing, own abattoirs, provide ferry services, own cinemas and theatres and museums, event management, own a security company, run a taxi service, **grow and sell food**, support people to find work, own and manage harbours and pontoons, deliver high speed broadband, smokehouses, airports, doula services, make widgets for central heating, own castles and former Bishop’s palaces, crofts and farms, run the Post Office, have a photography company which creates jobs for young people, employ people with complex needs, community bulk-buying schemes, make films, own camping and caravan sites, **run night clubs**…

Developing a development trust

Establish informal Steering Group	Consult with wider community	Organisation established/ refined
Draft Community Action Plan	Look for and deliver quick wins	Promote and grow membership
Raise funds through fundraising and grants	Deliver more ambitious projects	Trading to generate own income

The opening of the Rockfield Centre, Oban
Watch their member story at the DTAS Conference 2020 here

Development Trusts – legal structures

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Company Limited by Guarantee (CLG)

- No share capital or shareholders & members have no claim to company assets
- Owned by members on a collective rather than individual basis – democratically controlled by membership (1-member-1-vote)
- Personal liability of members is nominal amount & directors personally protected
- Can apply for charitable status on establishment or any later point
- Flexible and democratic form – easy to set up

Two-tier Scottish Charitable Incorporated Organisation (SCIO)

- Offer nearly all of the characteristics & flexibility of CLG with charitable status
- Charities from the outset & regulated solely by OSCR – streamlined reporting requirements
- Two-tier option is suited to development trusts (single-tier not suitable for DT model as not democratically accountable to members)
- **Well suited to development trusts that are sure they wish charitable status from the outset**

Community Benefit Society

- Similar to CLG in essence, **regulated by the FCA** – reporting requirements therefore slightly different
- Can get **charitable status**
- Allows you to do community share offer
- DTAS has developed CBS model rules and guidance notes, working with Burness Paull
- DTAS's partner service Community Shares Scotland can provide guidance & support

More information on legal forms can be found in the DTAS Legal Forms Factsheet and the DTAS Startup Toolkit

About Development Trusts Association Scotland

Established in 2003 – member-led, run by a volunteer board made up of member development trusts

350+ members

3 staff teams supporting communities:

- Development Trusts Support Team
- Community Ownership Support Team (COSS)
  dtascommunityownership.org.uk
- Community Shares Scotland Team (CSS)
  communitysharesscotland.org.uk

Our mission is to support the growth of effective and sustainable communities in Scotland

Development Trusts and Community Shared Ownership

Potential Strength

- Strong democratic community control and accountability – if done properly!
- DTAS national support network including Democratic Finance Programme
- National funders and Scot Gov big fans of DT model
- Grounding in Community Action Plans and Local Place Plans

Potential Weakness

- Area of benefit too tight –consortium approach with other DTs?
- Board and staff capacity – consider focused working group
- Does governing document allow for investment?
- Consideration of charitable status
- Financial risk and untrodden territory

Thank you!

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Development trusts …

- are **community-led** organisations, working across town, city rural and island locations throughout the UK, combining community-led action with **an enterprising approach**

- aim to bring about social, economic and environment renewal, **creating wealth in communities and keeping it there.**

Northmavine Community Development Company's community garden – grown in their polycrub (above), and community-run shop (below). Watch their member story here.

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Refreshments in the foyer 14.45 – 15.00

15.00 – 16.00 Workshop 2

- Preparing for shared ownership of windfarms – Ellisland suite
- Community benefits – from community action plans to net zero – Alloway suite
- Heat pumps – heating for net zero – Cambridge suite