

# Decision Pathway – Report



**PURPOSE:** Key decision

**MEETING:** Cabinet

**DATE:** 02 November 2021

<b>TITLE</b>	<b>Ambition Community Energy Wind turbine</b>		
<b>Ward(s)</b>	Avonmouth and Lawrence Weston		
<b>Author: Peter Webb</b>	<b>Job title: Property manager</b>		
<b>Cabinet lead: Cllr Craig Cheney</b>	<b>Executive Director lead: Mike Jackson</b>		
<b>Proposal origin:</b> City Partner			
<b>Decision maker:</b> Cabinet Member <b>Decision forum:</b> Cabinet			
<b>Purpose of Report:</b> This report advises Cabinet of the proposed letting of Bristol City Council owned land in Avonmouth to Ambition Community Energy to facilitate the development of a single wind turbine. Cabinet is asked to recognise and approve that the letting will be at less than market rent and therefore at an undervalue as set out in the valuation report.			
<b>Evidence Base:</b>  <b>Background:</b>  1.1 BCC Officers have been working with Ambition Lawrence Weston since 2016, supporting them in finding a suitable BCC owned site for a community wind turbine. A preferred site known as 'Land Southwest of Seabank' on Severn Road in Avonmouth was found in 2017.  1.2 BCC has provided funding and support for the project with development costs being partially funded by grants from the Port Communities Resilience Fund in 2018 and 2019. PCRf sought to deliver community resilience and this project was selected through a competitive process including a residents panel and a public vote. The impact of the PCRf contribution into the project will be maximised by increasing the potential to return the highest possible revenue back into Ambition Community Energy (ACE) CiC to fund the delivery of the Lawrence Weston Community Plan.  <b>2.0 Exclusivity agreement</b>  2.1 To enable ACE to progress a scheme and secure grant funding, BCC entered into an exclusivity agreement with ACE in November 2019 under which:  2.1.1 BCC would not hold discussions with any third parties regarding the future of the site;  2.1.2 ACE were permitted access to undertake surveys and investigations to enable a planning application to be prepared and submitted for a community wind turbine;  2.1.3 ACE would indemnify BCC against any material loss caused from the disruption to free flow of air to its own wind turbines;  2.1.4 BCC would grant a legal interest to ACE under terms that are commonplace in the market at the time.			

2.2 This agreement included provision that lease terms would be negotiated following the grant of planning permission.

### **3.0 Funding**

3.1 The total capital cost of the project is £4,031,000 and ACE have secured funding for the project through a mix of grants and loans which total £1.103 million:

3.1.2 £19,623 Urban Community Energy Fund Grant (DECC/BEIS managed by CSE) (application submitted 26/03/2016 grant awarded ~01/06/2016 - Ambition Lawrence Weston (setup ACE & initial business plan and exclusivity agreement for BCC to consider at Seabank);

3.1.3 £78,168 Bristol Community Energy Fund Loan (funded by DECC/BEIS via BCC, managed by CSE) 03/08/2018 - Ambition Community Energy C.I.C This is a contingent loan, meaning that ACE have signed an agreement to repay the loan with interest once the project reaches completion. The repaid loan will be used to support other community owned projects;

3.1.4 £49,920 Power to Change (plus recoverable VAT - managed by Power to Change) Grant Funding 13/12/2018 - Ambition Community Energy C.I.C;

3.1.5 £109,049.65 Port Community Resilience Grant Funding (via BCC, managed by BCC) (02/07/2018 £9,049.65, 07/8/2019 100,000) - Ambition Community Energy C.I.C;

3.1.6 £150,000 City Funds Loan (managed by Bristol & Bath Regional Capital) 26/05/2020;

3.1.7 £300,000 City Funds Loan (150k) & Power to Change Loan (150k) 16/07/2021;

3.1.8 £500,000 capital grant from West of England Combined Authority awarded in July 2020 - Local Energy Scheme grant, funded by the European Regional Development Fund 23/07/2021.

3.2 The remaining funding of £3,608,000 is being secured from Triodos Bank.

### **4.0 Planning**

4.1 A planning application for the scheme was submitted in March 2020 and granted on 17<sup>th</sup> August 2020 for a single wind turbine of 150 m and associated infrastructure.

4.2 It was initially recommended for refusal on a technical point (due to a Written Ministerial Statement 2015) although committee granted the application.

### **5.0 Lease**

5.1 The exclusivity agreement referenced in paragraph 2 above provided that, 'as soon as Planning Consent was granted to ACE, BCC would grant an interest in line with the current market for wind turbines.'

5.2 ACE's solicitors and BCC Legal services have substantially agreed the draft lease.

5.3 To determine the level of rental to be paid, BCC and ACE jointly appointed property consultants Fisher German (FG) as an independent expert. They advised that the open market rental for a scheme of this size would be based on a payment of 9.5 -10.5 % of the gross revenue. Income projections provided by ACE suggest this would produce annual rental payment of between £50,000 to £60,000 per annum. Their report is attached at exempt appendix I

5.4 Concerns about the level of income that could be generated for the local community from this project were expressed in July by ACE who put forward a counter - offer for rental of 5% of the net profit (forecast to be in the region of £2,000 per annum on average for the first 10 years) to be capped at £25,000 per annum.

5.5 The difference in the potential rental income being recommend by FG and being offered by ACE over the duration of the lease is significant. Therefore, a decision is sought to determine whether a grant of this lease at an undervalue is approved by Cabinet.

5.6 It should be noted that an additional base rental of £25,000 per annum is to be paid by ACE in addition to the rental being offered. This is a compensation payment for reducing the amount of air flow to BCC's own two wind turbines (located 400 metres to the south of the site on Severn Road) and therefore it is not appropriate for it to be considered as part of the valuation as it has no net financial benefit to BCC.

## **6.0 Disposal at Undervalue**

6.1 As a local authority BCC is obliged to dispose of land for best consideration obtained in line with section 123 of the Local Government Act 1972. Although under the General Disposal Consent (England) 2003 it is lawful to dispose of land at an undervalue where the disposal will secure the promotion or improvement of the economic, social, or environmental wellbeing of an area.

6.3 The ACE have confirmed that all surplus profits from the project, estimated at £4.27 million, will be used to implement the Lawrence Weston development plan. Securing improvements to the social and wellbeing of the local area.

6.4 The sustainable generation of energy from the project will save 49,125 tonnes of carbon over 25 years. This has an estimated social value of £3.3 million (based on the TOMs version 12 social value calculator).

6.5 An assessment has been undertaken of the undervalue should a lease be granted at the rental offered by ACE (5% of net profit per annum) instead of the market rental (9.5 % -10.5% of gross income recommended by Fisher German).

6.6 Additional value will be created for BCC by ACE building a new access road which BCC will have access rights over. The initial cost of £250,000 is being paid for by the project and its creation will add a value of £125,000 to BCC's surround land interests.

6.7 The total under value of the scheme considering the new access road is exempt information as it relates to the business affairs of the Council and ACE. An internal valuation report providing a more detailed explanation of this value is attached in exempt appendix I. It is the valuers view that the benefit identified and set out in their report justifies BCC proceeding with the granting of the lease on the proposed term at the undervalue set out in the exempt report.

## **7.0 Power Purchase Agreement**

7.1 ACE wishes to sell the electricity produced by the wind turbine on a long-term contract to a reputable off-taker. Council officers have been developing contractual mechanisms so that ACE and any other renewable generator are able to competitively tender for renewable electricity supplies to council buildings and schools. This could support the 2025 carbon neutrality goal for the council's own operations.

### **Cabinet Member:**

1. That Cabinet approves the grant of a 30-year lease to Ambition Community Energy (25 years operational lease, 5 years for implementation/decommissioning) to enable the development of a Wind Turbine on land at Severn Road in Avonmouth and recognises that terms of this lease will be at an undervalue as set out in the valuation report.

### **Corporate Strategy alignment:**

1. The grant of this lease prioritises community development and supports the local community, granting the lease at the undervalue will release additional funding to enable the implementation of Lawrence Weston's community development plan in line with Bristol City Council's commitment to be Empowering and Caring
2. The implementation of the community development plan will help to develop balanced communities which are inclusive and supporting a commitment to support fair and balance communities.
3. The lease will improve the Wellbeing of Bristol and keep it on course to be run entirely on clean energy by 2050 whilst improving our environment.

**City Benefits:**

Keep Bristol on course to be run entirely on clean energy by 2030 whilst improving our environment to ensure people enjoy cleaner air.

**Consultation Details:** N/A

**Background Documents:**

<b>Revenue Cost</b>	£	<b>Source of Revenue Funding</b>	Insert specific service budget name
<b>Capital Cost</b>	£	<b>Source of Capital Funding</b>	e.g. grant/ prudential borrowing etc.
<b>One off cost</b> <input type="checkbox"/>	<b>Ongoing cost</b> <input type="checkbox"/>	<b>Saving Proposal</b> <input type="checkbox"/>	<b>Income generation proposal</b> <input checked="" type="checkbox"/>

**Required information to be completed by Financial/Legal/ICT/ HR partners:**

**1. Finance Advice:** To date over £900k of public funds have been committed to this project from a combination of sources including BCC's Port community resilience fund, City fund as well as WECA's Local energy scheme. Including the undervalue, the total amount of public funds equals c£1.5m.

The details of the rental agreement will need to be finalised; however, it is understood that a minimum rent of £25k is guaranteed (which in effect only replaces the lost income from the Council own Wind turbines, so not considered as new money).

In addition to the minimum rent, the ACE are proposing to share 5% of net profits generated, after they have deducted the next £47k of profit (representative of return on investments made by grant funders e.g. WECA 500k grant). Thereafter any subsequent profit over the 47k, 5% of this would be additional rent to BCC - capped to 20k.

The Council will need to ensure the details of the deal are adequately captured in the legal agreement, and that such agreement includes an open book policy and a requirement for independently audited accounts to be submitted annually as part of determining the financial performance and the profit share due.

ACE currently estimate the proposal to generate c£4.3m surplus over 25 years. While this is expected to contribute to their community plan, the latest plan seen was dated 2018 and requires refreshing to ensure these plans align with the Councils strategic plans for Bristol and the local community in which they operate, to ensure any social value benefits planned are delivered. ACE is a charitable organisation.

**Finance Business Partner:** Kayode Olagundoye, Interim Finance Business Partner, 25th October 2021

**2. Legal Advice:** Please request legal support through [Legal Services](#). Section to be completed by a Legal Services Team Leader **ONLY**. If there are none, this must be stated by the legal officer. Additional/exempt advice can be added in **Appendix H** or **Appendix J**.

The Council is under a duty by virtue of S123 of the Local Government Act 1972 to achieve best value for its assets and any disposal should be at the best price reasonably obtainable. The duty to seek best consideration is subject to certain exceptions, most notably section 3 of the Local Government Act 2000 providing the Council with well-being powers to accept a disposal at undervalue within the £2 million threshold, where the authority considers the disposal

will help it to secure the promotion or improvement of the economic, social or environmental well-being of its citizens. It follows that if the Council considers this transaction secures the promotion or improvement of the economic, social or environmental well-being of its citizens, the transaction falls within the £2million undervalue threshold and the Council will have authority to grant the lease without the need to obtain Secretary of State consent to the transaction.

Whilst there is a lack of certainty around subsidy control since the UK having left the EU, this would not appear to be a subsidy for the purposes of the definition in the government guidance given that it ‘must cause a distortion in or harm to competition, trade or investment’ in order to fall within scope. The undervalue disposal will have no impact upon the price at which the energy will be sold and the increased profits that the ACE CIC will derive as a result are to be spent solely on delivery of the Lawrence Weston development plan and therefore there should be no impact upon competition in the energy market.

**Legal Team Leader:** Andrew Jones – Property Planning and Transport Team, 25 October 2021

**3. Implications on IT:** No anticipated impact on IT/Digital Services

**IT Team Leader:** Simon Oliver, Director – Digital Transformation 25th October 2021

**4. HR Advice:** No anticipated impact on Human Resources.

**HR Partner:** Mark Williams, Head of Human Resources, 25th October 2021

<b>EDM Sign-off</b>	Stephen Peacock	25/10/21
<b>Cabinet Member sign-off</b>	Cllr Craig Cheney	25/10/21
<b>For Key Decisions - Mayor’s Office sign-off</b>		25/10/21

<b>Appendix A – Further essential background</b>	<b>YES</b>
<ul style="list-style-type: none"> <li>Site Plan</li> </ul>	
<b>Appendix B – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix C – Summary of any engagement with scrutiny</b>	<b>NO</b>
<b>Appendix D – Risk assessment</b> (template available by following the link on the Decision Pathway page on The Source)	<b>NO</b>
<b>Appendix E – Equalities screening / impact assessment of proposal</b> To Follow	Choose an item.
Appendix F – <a href="#">Eco-impact screening/ impact assessment of proposal</a>	<b>NO</b>
<b>Appendix G – Financial Advice</b>	<b>NO</b>
<b>Appendix H – Legal Advice</b>	<b>NO</b>
<b>Appendix I – Exempt Information</b>	<b>Yes</b>
<ul style="list-style-type: none"> <li>Undervalue valuation of Lease</li> <li>F &amp; G Report and valuation</li> <li>ACE financial model</li> </ul>	
<b>Appendix J – HR advice</b>	<b>NO</b>
<b>Appendix K – ICT</b> Include here additional information from ICT	<b>NO</b>
<b>Appendix L – Procurement</b> Include here additional information from Procurement	<b>NO</b>

