Governance structures and roles

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When considering the type of legal entity for your Community Engagement Project (CEP), it is essential to assess various factors and consult with professionals who understand the legal, tax, and accounting implications. While many communities lean towards non-profit structures, it's important to consider all options and evaluate what aligns best with your project and community. Even if your community already has an existing entity, it may be worth considering a separate entity for the CEP. The Community Toolkit website (communitytoolkit.org.nz) provides helpful information to start exploring these options.

Here are some factors to consider when determining the type of entity for your CEP:

Liability: Evaluate the level of liability the members are willing to assume. Different legal entities offer varying degrees of personal liability protection for their members.

Benefit allocation: Determine how the benefits and profits generated by the project will be allocated among the members or participants. This consideration is important for transparency and ensuring fairness.

Funding: Assess whether you will be applying for grants, seeking funding from members or investors, or utilising a combination of funding sources. The chosen legal entity should support your funding strategies.

Decision-making: Define how decisions will be made within the entity. Consider the balance between centralised control and consensus-based decision-making, as this will impact the governance structure and decision-making processes.

Ownership and control: Identify who should own the project or have a controlling interest. This aspect relates to the governance structure and the distribution of decision-making power among stakeholders.

By addressing these questions early in the process, you can establish agreement and clarity regarding the project's structure, ownership, and delivery. This helps avoid potential disagreements or conflicts as the project progresses.

It is important to remember that this summary provides a starting point for discussion, and professional guidance tailored to your specific context is crucial in making informed decisions about the legal entity for your CEP[1].

Limited Liability Company (LLC)

Limited Liability Company (LLC) provides directors with limited liability rather than complete immunity from liability. One advantage of an LLC is that it allows for a small number of people to have control over the company's decision-making processes. This can streamline the decision-making and make it more efficient, which can be beneficial for the CEP. In terms of benefit allocation, an LLC offers flexibility. Benefits can be distributed separately from management by allocating shares or membership interests to reflect the intentions of the project. This means that many people can benefit economically through shareholding, while a smaller number of individuals can manage the project. The allocation of voting power can also be tied to the ownership shares, granting individuals with more shares greater voting power. An LLC can provide a balance between limited liability for directors and the ability to structure the ownership and management of the CEP in a way that aligns with the project's goals and intentions.

Co-operative company

A co-operative company is a specific type of Limited Liability Company that emphasises broad ownership and democratic decision-making. In a cooperative, the ownership is distributed among members who actively trade or do business with the company. In the context of a community energy project, this could mean that members of the cooperative are purchasing electricity from the project. One important characteristic of a cooperative is its democratic structure. Each member typically has one vote in major decisions, regardless of the number of shares they hold. This ensures that decision-making power is distributed equally among members, promoting a sense of fairness and inclusivity. It's worth noting that cooperative structures may limit the ability to bring in outside investment since the primary focus is on member participation and benefit rather than attracting external investors. However, cooperatives can still raise capital through member contributions, loans, or grants targeted at cooperative enterprises.

1 Note that this does not constitute legal, tax or accounting advice.

Incorporated Societies

Incorporated societies are commonly used to promote community activities such as sports, arts, social services, or philanthropy. They provide a legal structure for organising and managing these activities. Here are some key features of incorporated societies:

Membership: Incorporated societies allow for flexibility in changing members while ensuring the continuity of the society. Members typically have rights and obligations outlined in the society's rules.

Limited liability: Members are generally not personally liable for the liabilities of the incorporated society unless they have breached a rule. This helps protect individual members from assuming the financial risks and obligations of the society.

Non-profit focus: Incorporated societies must exist for a purpose other than making a profit. Their primary objective is typically to serve the community or advance a specific cause. As a result, incorporated societies are generally not permitted to operate for financial gain or distribute surpluses to their members.

Charity registration: Many incorporated societies also choose to register as charities to access certain benefits and tax exemptions. However, registering as a charity requires meeting additional requirements and complying with specific regulations.

Minimum membership requirement: To establish an incorporated society, a minimum of 15 members is typically required. This ensures a level of community involvement and participation in the society's activities.

While incorporated societies offer inclusivity and can be suitable for community-oriented projects, they may have limitations when it comes to managing a project and accessing certain types of financing. For example, the restriction on operating for financial gain may hinder the ability to attract investment. Additionally, the management and decision-making processes of an incorporated society may be more complex compared to other entity structures.

Charitable Trust

A charitable trust is another legal entity option for a community energy project (CEP). Here are some key points to consider regarding charitable trusts:

Purpose: A charitable trust must have its primary purpose as benefiting the community. The activities and operations of the trust should align with its charitable objectives, which can include advancing education, relieving poverty, promoting health, protecting the environment, or any other charitable purpose.

Trust deed: The trust is governed by a trust deed, which outlines the rules and guidelines for its operation. The trust board, consisting of trustees, manages the affairs of the trust and ensures compliance with the trust deed.

Profit and distribution: While a charitable trust is permitted to generate profits, those profits must be used for charitable purposes. They cannot be distributed to the trust's members or beneficiaries. This requirement ensures that any surplus funds are reinvested back into the community for the intended charitable objectives.

Trust board: The trust board, composed of trustees, is responsible for making decisions and overseeing the activities of the trust. The board operates within the framework defined by the trust deed and must act in the best interests of the trust and its charitable objectives.

Governance and community participation: When establishing a charitable trust for a CEP, careful consideration should be given to the governance structure and mechanisms for community participation. This can involve defining how community members can become involved, contribute, and have a voice in the decision-making processes of the trust

Setting up and managing a charitable trust requires a clear understanding of trust law and compliance. It is advisable to seek assistance from a trust lawyer or legal professional who specialises in trusts to ensure the trust's establishment and ongoing operations are in line with legal requirements.

Entities that may be unique to Māori

There are unique structures and considerations for Māori organisations and land in New Zealand. Here are some additional points to consider:

Māori authorities: Māori Authorities are entities recognised under New Zealand tax law that are specifically designed for Māori organisations. These entities can include Māori trusts, incorporations, and post-settlement governance entities. Being recognised as a Māori Authority provides certain tax benefits, such as exemptions or concessions, but it requires a separate application and approval process.

Māori land trusts: Māori land, which is collectively owned by Māori tribes or whānau, is often managed through Māori Land Trusts. These trusts are established under the Māori Land Court and operate according to the rules and regulations specific to Māori land. While the management of Māori land through trusts can have some complexities, it allows for collective decision-making and preservation of ancestral connections to the land.

Communal decision making: Māori culture places emphasis on collective decision-making and consensus-building processes. This approach extends to Māori organisations and land management, where decisions are often made in a communal manner, involving various stakeholders and considering the collective interests of the community. While this can lead to greater community participation and alignment, it may also present challenges in terms of achieving consensus and timely decision-making.

Governance of the entity and management of the project

Governance of the entity

Governance plays a critical role in establishing robust structures, processes, and behaviours that promote ethical conduct, responsible decision-making, and the long-term sustainability of the project. It provides a framework for accountability, transparency, and alignment with community values, fostering trust and confidence among stakeholders. The following are important elements of governance:

Meeting legal requirements: Governance involves ensuring compliance with the legal framework applicable to the chosen entity type. This includes understanding and adhering to relevant laws, regulations, and reporting obligations. By meeting these requirements, organisations demonstrate their commitment to operating within the legal boundaries and fulfilling their responsibilities to stakeholders and the broader community.

Fairness, transparency, and accountability: Governance aims to promote fairness, transparency, and accountability within an organisation. Fairness means treating all stakeholders with equity and impartiality, considering their rights and interests. Transparency involves open and accessible communication, providing stakeholders with clear and accurate information about the organisation's activities, performance, and decision-making processes. Accountability holds those in positions of authority responsible for their actions and requires mechanisms for oversight and review.

Alignment with community values: Effective governance ensures that the project is directed and controlled in a manner that aligns with the values and aspirations of the community it serves. This involves understanding and reflecting the needs, expectations, and priorities of the community, and incorporating these into the organisation's vision, mission, and decision-making processes. Governance should facilitate community participation, engagement, and influence in shaping the organisation's direction and outcomes.

Te Puni Kōkiri (Ministry of Māori development), highlights the integration of tikanga principles within governance practices[2]:

*"**Tikanga** principles are often included in governance. Tikanga can easily fit alongside governance best practice. Many Māori organisations are explicitly driven by tikanga, kawa and values (for example in employment, tangihanga and cultural leave policies) that consider the aspirations of whānau, hapu and iwi. Māori organisations may also have a Māori dimension in procedure such as the use of Te Reo, mihi, karakia, koha, hospitality for manuhiri, manaakitanga, whanaungatanga, consensus decision-making and regular consultation hui. These elements should support the general principles of good governance."*

Management of the project

In contrast to governance, management focuses on the day-to-day operations and tasks necessary to implement the project's strategies and plans. Here are some key points about project management within a CEP:

Execution of strategies and plans: Management ensures that the strategies and plans developed by the governance team are implemented effectively. They translate the high-level goals and into actionable tasks and set timelines for their completion.

Timely and budget-conscious execution: The management team ensures that project activities are completed on time and within the allocated budget. They monitor progress, identify potential delays or cost overruns, and take corrective actions as needed to keep the project on track.

Coordination of individual contributors: Management is responsible for coordinating the work of individual contributors within the project team. They assign tasks, set priorities, and ensure that everyone understands their responsibilities.

2 What is governance

Role shifting: In a CEP, it is common for individuals to contribute in multiple roles throughout the project. Depending on the situation and the project's needs, team members may switch between governance, management, and individual contributor roles. It's important for individuals to recognise which role they are filling at any given moment and perform their duties accordingly. Prioritising tasks, managing deadlines, and maintaining a clear focus are critical to ensure productivity and success across different aspects of the project.

By maintaining a clear understanding of their roles and responsibilities, and effectively managing the daily operations, the management team plays a crucial role in driving the progress and success of a community energy project.

Assembling the team

Assembling a skilled and diverse team is crucial for the success of a CEP. While CEPs share similarities with commercial energy projects, they also have unique aspects that require specialised expertise. The following are some roles worth considering having as part of your CEP:

Champion: The champion is the driving force behind the project. They promote the vision, communicate with stakeholders, raise funds, and lead negotiations. They are responsible for community outreach, education, and ensuring the project stays on track.

Legal and governance advisor: This role involves providing professional advice on legal obligations and various governance arrangements. They help the community energy project group understand the advantages and limitations of different entity types and ensure compliance with legal requirements.

Community engagement manager: This role focuses on facilitating community participation, input, and decision-making. They ensure that the community is involved in project design, delivery, and relevant discussions. Building relationships and fostering community support is a key responsibility.

Project manager: A project manager ensures that tasks are executed efficiently and effectively. They organise, manage, and motivate the team, ensuring that project milestones are met within budget and on time. Project managers also play a crucial role in securing funding and managing financial aspects of the project.

Financier and accountant: This role involves managing the financial aspects of the project. They create and maintain financial models, analyse revenue streams and costs, and provide economic insights to stakeholders. While they don't need to be accountants, they should possess financial modelling skills and be able to communicate financial information effectively.

Technical expert: A technical expert understands energy systems, the electrical grid, and the market dynamics. They ensure that the project's technical aspects align with the community's needs and the grid requirements. Technical modelling experience is valuable in illustrating the project's generation profile and negotiating with relevant parties.

Storyteller: This role focuses on effectively communicating the project's value and opportunities to various audiences. They manage the project's narrative through media engagement, website updates, and other communication channels. Their storytelling skills help engage stakeholders and create a positive perception of the project.

Community leader: This role represents the community's interests and ensures their voice is heard throughout the project. Having someone with strong standing in the community helps build trust and maintain community involvement.

Negotiator: A negotiator handles contract negotiations, deals with counter parties, and maximises revenue opportunities for the project. They ensure that the project doesn't leave potential financial gains on the table. Strong negotiation skills and the ability to build relationships are essential.

It's important to note that individuals may serve in multiple roles, and the team composition may evolve over the life of the project. By assembling a diverse team with the necessary skills and expertise, a community energy project can increase its chances of success and effectively manage its operations.

Paid staff and volunteers

As a CEP progresses, it is common for a small number of individuals to shoulder the majority of the workload. At some point, these individuals may need to be compensated for their contributions or reduce their involvement due to personal circumstances. It is important to have a plan in place to address this and ensure the project's sustainability. Here are some considerations:

Compensation options: Explore various compensation options for key individuals, such as deferred income, profit-sharing, equity ownership, or non-monetary benefits like free electricity. The chosen method should align with the project's financial situation and be agreed upon by all relevant parties.

Value allocation: As the CEP generates cash or other tangible benefits, there will be value that can be allocated to compensate contributors. Determine how this value will be distributed and fairly allocated among team members based on their contributions and commitments.

Transparent decision-making: Ensure that decisions related to compensation and resource allocation are made transparently and with the involvement of relevant stakeholders. This promotes trust, accountability, and fairness within the project.

Partnering for skills and influence

Partnering with organisations and businesses can bring valuable skills, resources, and support to a CEP. Here are some points to consider when seeking partnerships for skills and influence:

Assess skills and resources: Evaluate the skills, expertise, and resources that potential partners can contribute to the CEP. This could include technical knowledge, project management capabilities, financial support, access to networks or distribution channels, policy advocacy, or community engagement expertise.

Mutual benefit: Consider how partnering with these organisations aligns with their own objectives and how they can benefit from supporting the CEP. Highlight the potential synergies and value they can derive from the collaboration.

Collaboration models: Determine the level of involvement and collaboration that is appropriate for each potential partner. This can range from advisory roles and sharing best practices to more active engagement in project management or financial partnerships.

Clear roles and responsibilities: Clearly define the roles and responsibilities of each partner within the collaboration. This helps establish accountability and ensures that each party understands their contributions and expectations.

Outreach and engagement: Include potential partners in the broader outreach program of the CEP to attract their support and involvement. This can include collaborative events, workshops, joint campaigns, or educational initiatives that promote the project and its objectives.

Legal and financial considerations: Consider any legal or financial implications of partnering, especially if there are agreements or contracts involved. Seek professional advice to ensure the partnership is structured appropriately and addresses any potential risks or liabilities.

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