



Community Energy Program

Request for Legal Advice

17 December 2018

Advice is sought from a firm with experience in local government, energy and competition law. The purpose of the advice is to resolve how a regional Local Government Association (LGA) or Council(s) could establish a Community Energy Foundation – which would procure energy services that cut carbon emissions as well as living costs for consumers – while minimising exposure to any legal, financial and governance risks.

Desired Outcomes

The ideal outcome of the requested legal advice is that the Working Party and participating councils are sufficiently reassured that any legal risks of the proposed model have been identified and addressed, in order to consider establishing and investing in said model.

From this legal advice, we are specifically seeking:

- Review of the proposed model as outlined in the attached CEP Report, particularly the proposed role of councils in establishing and funding a Community Energy Foundation in the immediate to medium-term;
- Identification of any legal risks to councils, and associated financial and governance risks, arising from the proposed program design (including their likelihood and severity);
- Advice on how such risks can be minimised to as low as reasonably practicable (and the residual risk level); and
- Advice on any issues to consider in preparing governance documents (see below).

The legal advice will play a significant due diligence role, with partner councils set to consider in 2019 whether to progress with and invest in the proposed model. The advice should also lay the groundwork for other councils and regional LGAs considering whether to replicate the model.

Note that a project hold point will arise upon receipt of this advice. If the project Working Party forms the view that the legal review has revealed an unacceptable level of legal risk, we would not proceed to council consideration.

Specific Issues to Consider

Legal review of the recommended delivery model is an essential risk management requirement – the energy sector is highly regulated and changing rapidly.

Among other matters, the advice should explicitly consider:

- Relevant recommendations contained in the recent ACCC report on restoring electricity affordability (attached);
- Recent compliance action taken by the ACCC against One Big Switch; and
- Avoidance of competitive advantage to the Local Government Finance Authority (noting that if competitive advantage cannot be avoided/mitigated, the project will not proceed).

Next Step: Governance Documents

In the context of this request for advice, it is useful for us to provide some details on the next task in this project – development of five key governance documents that will give life to the recommended delivery model.

Note that we are also seeking a separate quote to deliver draft documents 2-5.

The five documents are:

1. Interim Committee Terms of Reference

Recruitment of a volunteer interim committee will be the first step in transitioning the project to becoming a community-led, council-supported initiative. The committee will work with participating councils to establish the Foundation.

2. Constitution of the Foundation

The Report recommends that the Foundation be established as a non-profit and considers the benefit of charity status.

3. Inter-Council Funding Agreement

This agreement will record the ways in which participating councils and the Foundation agree to work together to deliver the program. It will also detail council seed-funding contributions.

4. Retailer RFQ

Following the aggregation of potential customer information, the Foundation will issue a Request for Quote seeking to form a partnership with a community-oriented energy retailer.

5. Agreement with Retailer

This agreement will record the ways in which the Foundation and Retailer agree to work together to deliver the Retail Offer, including the basis on which payments from the Retailer to the Foundation will be calculated and paid.

Background

Councils have a stake in the economic outcomes of energy transition. Our research indicates that, by establishing Community Energy Foundations, local governments can work with their communities to deliver energy that is affordable, reliable, good for the local economy and good for our environment.

Since mid-2017, the Resilient Hills & Coasts (RH&C) climate change adaptation partnership (including six councils) has been exploring how to work with our community to achieve this.

The priorities driving the program design are:

- Reducing cost of living for as many people within our community as possible – not just those who own their own home and can afford rooftop solar;
- Working towards a self-funded model that localises economic benefits of energy supply; and
- Empowering our whole community to participate in the transition to a clean energy future.

In May 2018, the partners commissioned a detailed program design report (attached), prepared by Moreland Energy Foundation and Tandem Energy. The report recommended the establishment of a not-for-profit, community-led Community Energy Foundation.

The proposed Foundation would:

- Stage 1 – Aggregate demand to broker a competitive electricity deal for local consumers through a community-orientated energy retailer;
- Stage 2 – Establish an arrangement with the retailer whereby a community dividend is paid to the Foundation; and
- Stage 3 – Apply revenue received from the retailer and attract additional funding to deliver sustainable energy projects and programs within the region.

The Foundation is expected to transition to financial self-sufficiency through agreed revenue from the partner retailer and by attracting additional funding to deliver services that assist communities to reduce, generate, share and store energy.

Our research to-date indicates that successfully establishing a Community Energy Foundation requires partner council support in the near to medium term. Such support would likely consist of:

- A commitment to work together for a three to five years via an inter-council MOU;
- Provision of seed funding and in-kind support for the establishment and operation of the Foundation; and
- Ongoing promotion of the Retail Offer (Stage 1) and associated programs (Stage 3) through all available council communication channels.

Attachments

1. Community Energy Program (CEP) Report
2. CEP Summary
3. [ACCC Report: Restoring electricity affordability & Australia's competitive advantage](#)