

# Co-operatives National Law (NSW)

## CO-OPERATIVE FORMATION

# DISCLOSURE STATEMENT

FOR THE FORMATION OF A DISTRIBUTING CO-OPERATIVE

NAME OF PROPOSED CO-OPERATIVE:

**GOULBURN COMMUNITY ENERGY CO-OPERATIVE LTD**

DATE OF APPROVAL:

	/		/	
DD		MM		YY

**THIS DISCLOSURE STATEMENT IS VALID FOR A PERIOD  
OF 6 MONTHS FROM DATE OF APPROVAL  
FOR ISSUE WITHIN THE STATE OF NEW SOUTH WALES**

# **DISCLOSURE STATEMENT**

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## DISCLOSURE STATEMENT

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### 1. INTRODUCTION

#### **Explanation of this statement**

The Co-operatives National Law (NSW) (the CNL) requires that a draft disclosure statement for a proposed distributing co-operative is to be presented to the formation meeting. This disclosure statement sets out information necessary to ensure eligible members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the proposed co-operative.

#### 1.1 Name

Goulburn Community Energy Co-operative Ltd

#### 1.2 Registered office

C/- Laterals GLP, 35 Montague Street, Goulburn NSW 2580

### 2 BACKGROUND AND DEMAND FOR SERVICES

#### 2.1 Background to forming the co-operative

In 2015, The Goulburn Group provided the auspice for a feasibility study into the Goulburn Community Solar Farm. Community Energy 4 Goulburn was set up as a subcommittee to coordinate the study and engage community support for a 1 megawatt (MW) community owned solar farm, and was subsequently incorporated as a separate association Community Energy for Goulburn Inc (CE4G). The study was funded through the NSW Government's Community Energy Grants Fund and supported through community-business-government collaboration.

The capacity of the proposed solar farm was increased early on from 1 MW capacity to 1.2 MW AC output during the study because of advances in solar PV technology and adjustments to the site. The study supported the proposition that a community owned solar farm in Goulburn was feasible, based on the assumptions and projections available during the study. Public meetings have shown considerable support from the local community for the solar farm and many in the community have expressed interest in becoming investors.

Initially, the model was to set up an unlisted public company to attract investment and own the farm. However, CE4G became concerned about the voting structure of a company and the potential for one or more shareholders to form a bloc and dominate the project. After much research, the committee decided that the more democratic model of a

co-operative was more suitable for the governance structure.

## 2.2 Objects

The objects of the co-operative are to:

- develop, own, operate and manage renewable energy projects (both “in front of the meter” and “behind the meter”) within the Goulburn region
- generate and supply energy from those renewable projects
- provide advice to members on how to reduce energy usage and increase energy efficiency
- raise community awareness of the benefits of sustainable and renewable energy
- provide support to disadvantaged people in the community.

## 2.3 Preconditions

There must be at least 5 members to form the co-operative. There are no other preconditions that must exist for the co-operative to be formed.

The co-operative will commence activities immediately after formation.

## 2.4 Demand for services

Globally, part of the response to climate change has been to increase investment in renewable and sustainable energy generation.

In 2016, CE4G commissioned a feasibility study which indicated that a community-owned solar farm would be able to provide an appropriate, risk-weighted return to investors. Since then, improvements to solar technology have only improved the prospects.

## 3. MEMBERSHIP

### 3.1 Who can be a member

A member can be either a natural person or any corporate entity.

They qualify to be admitted to membership of the co-operative if there are reasonable grounds for believing they will be an active member of the co-operative.

Joint membership is permitted.

### 3.2 Application for membership and shares

Applications for membership must be lodged at the registered office using the application form approved by the board and should be accompanied by payment for:

- the entry fee for an application for membership
- any annual (financial year) subscription
- allotment of at least the minimum number of shares in the co-operative.

The entry fee for an application for membership is \$10. Any annual (financial year) subscription is determined from time to time by the board and published at the registered office or on the website of the co-operative. It is proposed that the annual subscription initially be also \$10.

The nominal value of shares in the co-operative is \$1 each. The required minimum number of shares for members is 400.

Every application must be considered by the board.

If the board approves of the application, the applicant's name and any other information required under the CNL must be entered in the register of members within 28 days of the board's approval.

The applicant must be notified in writing of the entry in the register and the applicant is then entitled to the privileges attaching to membership.

The board may, at its discretion, refuse an application for membership.

The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded within 28 days without interest.

### **3.3 Rights and liabilities attaching to membership and shareholding**

Active members have the right to nominate another person to be a director of the co-operative and, if they are at least 18 years of age, be nominated.

Members are entitled to be given notice of and to attend all general meetings.

The minimum number of shares a member must hold is 400.

No share is to be allotted unless 100% of the nominal value of the share has been paid.

Members may hold more than the required minimum number of shares, but no one member can hold more than 20% of the total issued share capital of the co-operative.

There is a fee of up to \$200 (or a lesser amount decided by the board from time to time) for the transfer of shares or debentures.

On winding up of the co-operative a member of the co-operative is liable

to the co-operative for any charges payable by the member to the co-operative as required by the rules of the co-operative.

#### Resignation

A member may resign from membership of the co-operative by giving 30 days' notice in writing. Once resignation is effective, the member's shares must be cancelled and forfeited. Subject to the terms of issue of those shares, the share capital is repayable by the co-operative to the member, less any amounts owed by the member to the co-operative (see rule 11).

#### Expulsion

A member may be expelled from the co-operative if the member:

- fails to discharge their obligations under the rules or any agreement or contract entered into with the co-operative
- prevents or hinders the co-operative from carrying out any of its primary activities
- brings the co-operative into disrepute
- acts contrary to one or more of the co-operative principles.

The procedure for expulsion is governed by the rules (see rule 9). Once expelled, the member's share capital is cancelled and forfeited. The share capital is repayable by the co-operative to the member, less any amounts owed by the member to the co-operative (see rule 11).

#### Cancelled due to inactivity

Membership must be cancelled if the member does not comply with the active membership rule for 3 calendar years (see rules 4 and 20).

The shares of a member whose membership is cancelled due to inactivity must also be cancelled and repaid subject to any terms of issue of those shares and less any amounts owing by the member to the co-operative.

The Co-operatives National Law (CNL) provides rules for the repayment of shares of cancelled members as well as resigning or expelled members, including the substitution of securities for those shares.

#### Liability

The co-operative is a separate legal entity and has limited liability.

Members are not liable for any debts of the co-operative. If the co-operative is wound up and there are insufficient assets of the co-operative to satisfy the co-operative's debts then members bear no personal liability for those debts.

If the co-operative is wound up in insolvency:

- members may lose their share capital
- members will be liable for any fines imposed on them by the co-operative, or any charges payable by them to the co-operative as

- required by the rules of the co-operative
- members who owe money to the co-operative under a contract will be liable to pay those amounts to the co-operative.

### 3.4 Voting rights of members

Active members of the co-operative each have one vote at co-operative general meetings. The right to vote is a right of membership and is not related to the number of shares that may be held by a particular member.

### 3.5 Ceasing membership and forfeiture of shares

A person will cease to be a member and may have his or her shares forfeited in the following circumstances:

- if the member is expelled or resigns
- if the membership is cancelled due to inactivity
- for a member that is a natural person – if they become bankrupt or on their death
- for a member that is a corporation – if the corporation becomes insolvent or is deregistered
- if the membership contract is cancelled because of a misrepresentation or mistake in law
- if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding
- if the member's total shareholding is forfeited under the CNL or these rules
- if the member's total shareholding is purchased by the co-operative under the CNL or these rules
- if the member's total shareholding is sold by the co-operative under any power in the CNL or these rules and the purchaser is registered as shareholder in the member's place.

### 3.6 Benefits of membership

Members will be supporting the burgeoning renewable energy sector. The intention is that a portion of the co-operative's surplus funds will be distributed to them.

It should be noted that it is intended to also allocate a portion of the surplus funds to a community fund to provide benefits to disadvantaged people in the community who are not necessarily members of the co-operative.

## 4. PRIMARY ACTIVITY AND ACTIVE MEMBERSHIP

### 4.1 Primary activities

The co-operative's active membership rule identifies the co-operative's basic reason for existence, or primary activity, as being developing and

operating renewable energy projects.

## 4.2 Active membership

Members must satisfy the following obligation in order to be active. Failure to comply with this obligation will mean that a member is not entitled to vote. The co-operative is required to cancel the membership of any member who has been inactive for the period of 3 calendar years.

In order to be active, a member must:

- participate in at least one meeting or event of the co-operative each full calendar year; and
- subscribe to the co-operative's electronic information service.

## 5. OPERATION OF THE CO-OPERATIVE

### 5.1 Carrying on primary and other activities

CE4G has been successful in obtaining a \$2.1 million grant from the NSW government through the Regional Community Energy Fund for the construction and commissioning to commercial operation of a community-owned 1,800kW DC/1,200kW AC solar farm with a 400kW/800kWh battery on a site in Bridge Street, Goulburn.

It will be the only community-owned renewable generator on the national energy market which incorporates a utility scale battery.

Under CE4G's funding agreement with the NSW government, the co-operative will be the vehicle for community investment in the project to raise the further \$2.1 million required for the facility to be built.

CE4G has also entered into a development agreement with Komo Energy Ltd (Komo) to build the solar farm. It is agreed between the parties that ownership of the solar farm will be handed over to the co-operative upon successful completion of the construction of the solar farm.

The electricity generated will be sold via one or a combination of:

- long term Power Purchase Agreement (PPA) with a major institution;
- local electricity users via a retailer; and
- on the market utilising the best spot pricing available

The co-operative will also seek to sell energy direct to the energy market at the higher yields available for such supply. Once the solar farm has been constructed, ongoing operations are largely automatic and may require ongoing input from the co-operative's resources.

Local contractors will be used during the construction phase wherever possible, and for administrative tasks such as communications, accounting and surplus distribution, but it is not anticipated that, once



established, there will be significant labour costs apart from minimal maintenance costs.

## **5.2 Details of any pre-registration contracts that have been or will be entered into before registration of the co-operative**

CE4G has a contractual arrangement with the NSW Department of Planning, Industry and Environment to receive funding upon completion of certain milestones.

CE4G has also entered into a development agreement with Komo for the finance, procurement and construction of the solar farm.

It is agreed that both of these agreements will be novated to the co-operative when it is registered. A deed of novation is currently being drafted.

There are no pre-registration contractual obligations, guarantees and indemnities, contingent liabilities, unresolved or pending law suits that would require ratification or assumption of any liability by the co-operative once formed.

## **5.3 Details of any contracts members will have to enter into with the co-operative**

There are no contracts members will have to enter into with the co-operative.

## **5.4 Contracts with promoters or other parties**

There are no contracts with promoters.

## **5.5 Details of any interest of proposed directors or members in any contract or proposed contract**

The promoters and the proposed directors of the co-operative do not have any direct or indirect interest in any contract or proposed contract with the co-operative.

The co-operative will be committed to corporate governance best practice with a comprehensive conflicts of interest policy in place.

# **6. MANAGEMENT OF THE CO-OPERATIVE**

## **6.1 Board of directors**

The board must have at least 3 directors and no more than 9.

Directors must be over the age of 18 years and either:

- an active member of the co-operative or a representative of a

- corporation that is an active member of the co-operative; or
- not an active member but someone who possesses special skills in management or other technical areas of benefit to the co-operative as specified by the board from time to time.

The business of the co-operative is to be managed by or under the direction of the board of directors, and for that purpose the board has and may exercise all the powers of the co-operative that are not required to be exercised by the co-operative in general meeting.

Directors are entitled to be paid expenses for attendance at meetings. Any other remuneration will be approved by the members at the AGM or at a special general meeting to consider remuneration. Indemnity insurance will be provided.

## 6.2 Election of directors

The first directors are elected by poll at the formation meeting of the co-operative.

The term of office of directors is to be 3 years except for the first directors whose terms of office shall be either 2, 3 or 4 years, and will be determined at the formation meeting in order to provide for staggered director elections over a three-year cycle.

## 6.3 First directors and officers

The names and experience of those who have consented to being nominated for election as directors are:

Dr John Hewson AM, BEc (Hons) (Syd), MA (Saskatchewan and Johns Hopkins), PhD (Johns Hopkins)

Rowena Cantley-Smith, BEc, LLB, GCLT (Monash), LLM Public International Law, LLD

Kerry Connors, BA (ANU), Graduate Diploma in Foreign Affairs and Trade (ANU), Associate Director - Research at Energy Consumers Australia

Nicky Ison, BA (UNSW), Bachelor Engineering (Hons 1) (UNSW), Energy Transition Manager – WWF Australia

Ben Elliston, Bachelor Engineering (Hons) (UCA), Master Engineering (ANU), PhD (UNSW), Director International Solar Energy Society

Edward Suttle: BA, FAICD. Company Director and General Manager; president of Community Energy For Goulburn Incorporated

Peter Fraser: B.A., B.Div. Dip Ed. Company Director and General

Manager. Committee member of Community Energy For Goulburn Incorporated

Gretchen Alt-Cooper: FIPA, SSA, CFP. Company Director and General Manager, Public Accountant, Committee Member of Community Energy For Goulburn Incorporated

#### 6.4 Day to day management

Peter Fraser B.A., B.Div. Dip Ed. has agreed to be responsible to the board of directors for day-to-day management of the co-operative.

Peter is a committee member of CE4G and an experienced company director and general manager.

Management is to be initially paid and part-time.

### 7. FINANCIAL INFORMATION

#### 7.1 Start-up funds

The capital required for the co-operative at the time of formation is \$2,000.

**Internal Source of Funds:**

The number of persons, who qualify for membership of the co-operative and have indicated in writing their intention to join the co-operative, is 5.

The total number of shares to be subscribed by these persons is 2,000.

Total share capital to be subscribed is	\$2,000
Total entrance fees are	\$50
Total initial subscriptions or levies are	\$50
Total other charges are	\$0

**External Source of Funds:**

The co-operative does not initially have any external source of funds.

A projected income and expenditure statement and a cash flow for the first year of operation of the proposed co-operative follow.

**PROJECTED FIRST YEAR FINANCIALS**

*Assumptions: 500 members  
\$1,000 average member share capital*

**Income and Expenditure**

<b><u>Income</u></b>	Entry fees	\$ 5,000
	Annual subscriptions	\$ 5,000
	Grant funding	\$ 160,000
<b>TOTAL</b>		<b>\$ 170,000</b>

<b><u>Expenditure</u></b>	Formation/establishment costs	\$ 5,500
	Community engagement	\$ 65,000
	Media and communications	\$ 15,000
	Launch events	\$ 10,000
	Administration	\$ 51,600
	Insurance, accounting and legal	\$ 21,000
	Meeting costs	\$ 1,000
<b>TOTAL</b>		<b>\$ 169,100</b>

**PROFIT/LOSS** \$ 900

**Balance Sheet**

<b><u>Current Assets</u></b>	Cash	\$ 500,900
<b>TOTAL ASSETS</b>		<b>\$ 500,900</b>

<b><u>Non Current Liabilities</u></b>	Shares	\$ 500,000
<b>TOTAL LIABILITIES</b>		<b>\$ 500,000</b>

**EQUITY** \$ 900

## 7.2 Formation expenses

The estimated costs of formation are \$5,500 and are to be recouped once the co-operative is formed.

## 7.3 Returns to members

The current intention is that surplus funds of the co-operative that do not need to be retained to build up the resources of the co-operative will be distributed to members by dividend.

It should be noted that dividends are limited under the CNL and the Co-operative National Regulations (CNR) to being not more than 10% more than the maximum rate of the nominal value of interest payable on a Commonwealth Bank 5 year term deposit of \$100,000 offered during the relevant financial year.

## 7.4 Accounting and auditing

Gretchen Alt-Cooper will be responsible for the general accounting and financial functions of the co-operative.

The books of account will be maintained at the registered office and will be available for inspection by any member during normal business hours.

The co-operative's accounts will be set up using an online accounting package such as Xero or MYOB Online. The cost of this package will be paid by the co-operative.

The co-operative will at least initially be a small co-operative, as defined in the CNL, and as such it is not required to appoint an auditor or to provide members with audited financial statements.

The CNR require that a small co-operative will provide its members with basic minimum financial statements prior to each annual general meeting.

Members interested in the financial records and financial position of the co-operative are entitled to request access to these records. Goulburn Community Energy Co-operative Ltd will be committed to member accountability and transparency.

Members have a statutory right to require that the co-operative present audited or reviewed financial statements at any time on reasonable notice.

## 8 RISKS

The risks associated with the establishment of the co-operative are:

### General

- In the unlikely event that the co-operative is unable to secure the contracts or full capital required for the project to proceed, the board will consult with members.
- The total project sum may change due to fluctuations in exchange and interest rates.
- All financial projections included in this document have been prepared using monitored data and an expert solar energy assessment performed by a number of sources. While they are rigorous, these production figures include estimates and judgement and as such there is a risk they will not be met.
- Operational costs may change over the life of the project.

### Solar Energy

- The success of any renewable energy project relies in great part upon government legislation and regulation and its subsequent effect on electricity and renewable energy certificate (REC) markets. Although the REC market has exhibited significant volatility in recent years, both major political parties maintain policies favourable to renewable energy.
- Due to the rapid rate of technological advancement in the field of renewable energy production, new technology may supersede that of the solar farm in future projects, but potentially improve the cost structure in the construction phase.
- Because electricity production is dependent on prevailing sun conditions, long term changes to weather patterns may affect the profitability of the co-operative by altering the amount of electricity the solar farm produces. Likewise, production will also vary in the short and medium term in line with transient weather conditions.

### Equipment

- Mechanical or electrical failure and electricity network limitations (both inside the solar farm and in the electricity network) may affect the amount of electricity the solar farm produces or is able to export into the grid.
- Costs associated with maintenance may increase faster than anticipated over the life of the project. Any of the equipment may be damaged by third parties or natural disasters.

### Contracts

- The co-operative may encounter additional costs during construction of the solar farm due to unexpected conditions or other variations to the project.
- The delivery of panels may be delayed due to prevailing market conditions or third-party logistics.
- The agreed sale price of electricity and RECs generated by the solar farm may not be as high as expected due to changes in legislation and market conditions.
- The board of the co-operative may choose to enter into a PPA or sell

the generated electricity directly into the national energy market as deemed appropriate. As such, the price obtained for energy may fluctuate.

- Grid connection works may take longer or cost more than expected.

#### Management

- The co-operative is a new venture and does not have any experience managing solar energy installations.
- CE4G has engaged Komo Energy to co-ordinate the project through to completion.
- The success of the co-operative will depend largely on the competence of the board. Board membership will change over time pursuant to the rules.

A comprehensive risk management framework will be developed for the co-operative to guide the mitigation of the risks of the enterprise.

Appropriate insurance cover will be obtained and a work, health and safety policy developed.

## 9 FURTHER INVESTIGATION

It is not possible for a disclosure statement to include all material relevant to the proposed co-operative's circumstances and to the circumstances of each prospective member.

Each prospective member is advised to make further enquiries (including the obtaining of professional advice) if they consider this is necessary.

#### DISCLAIMER OF LIABILITY:

This disclosure statement has been approved by the Registrar of Co-operatives for the purpose of section 25(4) of the Co-operatives National Law (NSW) (the CNL). This approval is not to be taken in any way as an indication that the disclosure statement sets out all information that may be relevant to the proposal.

Approval does not relate in any way to the merits or otherwise of the co-operative's proposed activities. No responsibility as to the contents of the disclosure statement and attachments and annexures that form part of this document and the associated Rules which all collectively make up the formation documentation, is to be taken by the Registrar, NSW Fair Trading or by any of its servants or agents.

The responsibility for ensuring that the CNL has been complied with in relation to the preparation of the disclosure statement lies with those issuing the statement. Persons making false or misleading statements in a disclosure statement may be liable for criminal penalties and expose themselves to civil liability to anyone who suffers loss as a consequence.

CERTIFICATION:

We the undersigned, certify that this is a copy of the disclosure statement which was presented to the formation meeting on \_\_\_/\_\_\_/\_\_\_\_\_ for the purpose of forming a co-operative to be known as Goulburn Community Energy Co-operative Ltd.

\_\_\_\_\_  
Signature Chairperson of formation meeting

\_\_\_\_\_  
Signature Secretary of formation meeting