

Report of: Director of Environment and Neighbourhoods

Report to: Member Management Team

Date: 31st January 2012

Subject: Membership of CO2Sense CIC

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. CO2Sense has made a specific request for Leeds City Council to become a member of CO2Sense CIC, with Cllr Mark Dobson (in his role as Executive Member for the Environment) appointed as a member of CO2Sense CIC.
2. The Council has a clear ambition to promote the low carbon economy locally, in order to create jobs, meet carbon reduction targets and tackle fuel poverty. CO2Sense is in a unique position in that it was established by the RDA with a specific remit to develop the low carbon economy within Yorkshire.
3. Due to the abolition of the RDAs, CO2Sense must change its legal structure and governance arrangements but remains committed to its original aims. Part of this changing governance requires membership of the CIC from external bodies, such as the Council.
4. The Council therefore has an opportunity to support CO2Sense through this transition and at the same time to benefit from the expertise and insight that CO2Sense brings.
5. Legal advice has been taken and no concerns have been raised regarding becoming a member of CO2Sense CIC.
6. Governance advice has been sought and they recommend that Member Management Committee be asked to nominate a councillor to act as the Council's representative at CO2Sense CIC meetings.

Recommendations

1. To note the contents of this report and to acknowledge that CO2Sense and the Council share a common interest in developing the low carbon economy.
2. To agree that the Council will become a founding member of CO2Sense CIC, with Member representation on their board, in order to enable CO2Sense to make the transition to CIC status.
3. To categorise the appointment as a Strategic and Key Partnership.
4. To accept the specific request from CO2Sense for Cllr Mark Dobson, in his role as Executive Member for the Environment, to be appointed as a member of CO2Sense CIC.

1 Purpose of this report

- 1.1 To provide background to the request from CO2Sense for Leeds City Council to become a Member of CO2Sense CIC, to enable Member Management Committee to accurately categorise the request and to nominate a suitable Member.

2 Background information

- 2.2 CO2Sense is a not-for-profit low-carbon expert company, based in Leeds, which helps organisations to cut their costs and improve their environmental performance. They have a successful track record in the region, including:
- Advising SMEs on resource efficiency and providing grants of up to £8,000 to cover 50% of the costs of practical improvements. Sixty four SMEs have saved an average of £1,500 for every £1,000 invested.
 - Investing £750,000 in the UK's most advanced anaerobic digestion (AD) plant which opened in April 2011, near Driffield. This 2.1MW plant will generate enough electricity to power around 3,500 homes, while diverting thousands of tonnes of food waste from landfill. CO2Sense helped the owners by providing technical expertise as well as project finance. The investment will provide a return to CO2Sense, which will be reinvested in other projects.
 - Investing £200,000 in a 330kW hydro plant on the River Wharfe at Burley-in-Wharfedale. This investment loan will be repaid and the surplus will be reinvested in further projects.
 - Providing technical support and finance to a number of companies which have developed low-carbon products. CO2Sense's work has helped them to find new markets for their products and to invest in new product development.
- 2.3 They are currently a fully-owned subsidiary of Yorkshire Forward, established in 2007. Following the government's decision to close the RDAs, they are in the process of becoming an independent Community Interest Company (CIC). This will be complete by March 2012.
- 2.4 Once a CIC, CO2Sense intend to retain their not-for-profit status and to continue to support businesses and public-sector organisations to grow, cut their costs and to cut their greenhouse gas emissions.
- 2.5 The Council has committed to reducing CO₂ emissions from Leeds by 40% by 2020. The recent Economics of Low Carbon Cities report (commissioned by Leeds City Region and undertaken by the Centre for Low Carbon Futures, based at the Universities of Leeds and York) identified the potential to achieve this target across the Leeds City Region by 2022. This would require a local investment of over £11bn over 10 years, but would reduce energy costs by £220m pa for every £1bn invested, generate 1,000 new jobs and £50m of additional economic benefits.

- 2.6 In order to achieve these targets however, existing low carbon products and services will need to achieve much greater market penetration and new low carbon products and services will need to be developed and commercialised.
- 2.7 CO2Sense has the track record and ambition to help achieve both objectives. This potential has been formally recognised by the recent appointment of CO2Sense's Chief Executive to the LEP Green Economy Panel.

3 Main issues

- 3.1 In order to complete their transition to a CIC, CO2Sense need to provide the Department of Business, Innovation and Skills (BIS) with a full business plan, including details of their governance structures and members. It is vital for BIS, and CO2Sense's future independence, that the Council takes a decision as soon as possible, with a view to formally becoming a member by the end of February.
- 3.2 CO2Sense have advised us that:
- 3.2.1 "CO2Sense is converting to a CIC company limited by guarantee. The members are the subscribing guarantors and any other members admitted to membership by the directors of the Company.
- 3.2.2 CO2Sense intends to create a number of different membership categories, however, this process needs to be carefully carried out and a full consultation of key stakeholders will be carried out in 2012 in order to ensure that CO2Sense's membership is truly representative of the community which we serve.
- 3.2.3 Although the day to day running of CO2Sense is delegated to the directors, ultimate control of the company and responsibility for major policy and other decisions will rest with the members. The general meeting of CO2Sense's members is its ultimate decision-making body, and members will have statutory rights to require CO2Sense to call such meetings (for example, they can appoint and dismiss the directors, delegate powers to the directors, declare dividends, approve major transactions and change the constitution of the company).
- 3.2.4 Members should not regard delegation to directors as being the same as abdication of responsibility. It is important that the members monitor the performance of CO2Sense and its directors, for example, to satisfy themselves that CO2Sense continues to meet the community interest test and fully involves the community in its activities and development. The light touch regulatory regime operated by the CIC Regulator means that, to a large extent, the CIC Regulator relies on others to bring to the CIC Regulator's attention any matters causing concern about the activities of a CIC. The members clearly have a role to play in drawing such concerns to the attention of the CIC Regulator who will consider whether the CIC Regulator should take any action.
- 3.2.5 Like all other companies CO2Sense has a number of stakeholders such as members, directors, employees, customers etc, but it is an important principle that a CIC should have particular regard to its major stakeholder i.e. the community, which is intended to benefit from its activities.

- 3.2.6 Our annual CIC Report will need to demonstrate specifically what CO2Sense has done to benefit the community and how we have consulted those affected by our activities, including the outcome of such consultation. As detailed above, the involvement of stakeholders as members will be introduced into the corporate governance of CO2Sense in 2012. CO2Sense will also investigate whether it makes sense to create a forum which is enshrined within the company's constitution – this would provide members with a more structured way in which to participate in developing the company strategy in partnership with the directors and executives within CO2Sense.”
- 3.3 As a founding member the Council would become a subscribing guarantor.
- 3.4 In return, as a member we will have the opportunity to influence the way that the company is run and to steer the future strategic direction of the company.
- 3.5 CO2Sense have a track record of practical project delivery and of supporting other organisations to develop innovative new products. As a member, we would be well placed to learn from this and will be exposed to new opportunities before they become more widely known. Whilst, clearly, formal involvement in projects would need to abide by procurement regulations, exposure to this information would help us to strategically plan for a low carbon future in Leeds. It may also provide opportunities to form joint ventures to attract investment from public sources, such as government and the EU, or private sources, such as pension funds or sovereign wealth funds. We could also expect CO2Sense to share their expertise with our partners, through structures such as the Climate Change Partnership, and to provide some intelligence to help project managers in the Council to scope new low carbon projects.
- 3.6 Corporate governance advises that the responsibility for appointing a Councillor to an 'Outside Body' is a Council Function and a matter that Full Council has delegated to the Member Management Committee (MMC).
- 3.7 The Constitution specifies that MMC will determine which Outside Bodies should have Member representation, determine the category of each such outside body and act as the appointing body for those categorised as a Strategic and Key Partnership.
- 3.8 A report should be submitted to MMC setting out the specific request from CO2Sense and asking them to categorise the appointment as a Strategic and Key Partnership and point out the specific request from the organisation.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.7 CO2Sense have discussed the proposal with the Executive Member for the Environment and the Chief Executive, both of whom support the proposal in principle.
- 4.1.8 This matter was also discussed at LMT on the 26th January. The group unanimously agreed that it would be in the Council's interest to become a member

of CO2Sense CIC and recommended that MMC formally accept the request and nominate a Member.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 This is not applicable as the request has no direct bearing upon equality or diversity.

4.3 Council policies and City Priorities

4.4 CO2Sense's corporate aims support a number of the existing targets and priorities contained in the Council's Policy Framework, namely:

- Vision for Leeds.
- Sustainable Economy and Culture City Priority Plan.
- Regeneration City Priority Plan.
- Health and Wellbeing City Priority Plan.

4.5 They also relate directly to other city strategies, most notably the Climate Change Strategy, Affordable Warmth Strategy and the Council's Environment Policy.

4.6 Resources and value for money

4.6.1 There is no specific resource requirement, other than a commitment to attend regular meetings.

4.6.2 Membership of CO2Sense should provide access to high quality intelligence on sustainable energy and waste opportunities, representing a valuable intellectual resource.

4.7 Legal Implications, Access to Information and Call In

4.7.1 The Head of Property, Finance & Technology was asked to review CO2Sense's Draft CIC Articles and his comments are summarised below.

4.7.2 In terms of the Council's powers to participate in the company, in the absence of any more specific power, we can rely on the "well-being" powers in the Local Government Act 2000. This assumes that people in the Council's area receive the well-being benefits, which can reasonably be anticipated from the company's activities.

4.7.3 It is proposed that the Council itself becomes a member of the company, and under Article 9 each member is entitled to appoint one director. The Council's liability would be limited to £1 in the event of a winding-up under Article 7. Article 16 contains a power for the company to indemnify directors, and under Article 17 to arrange insurance for directors, and in order to protect the Council-appointed director CO2Sense should be asked to confirm that these arrangements will be put in place.

- 4.7.4 For as long as the Council has no more than a 19% stake in the company at member and board level (and on the maximum numbers of members and directors, we would be 1 of 8, and 1 of 13 respectively), the requirements in relation to "regulated companies" in the Local Authorities (Companies) Order 1995 won't apply.
- 4.7.5 CO2Sense have been passed these comments and are now working with the Council's Head of Property, Finance & Technology to resolve the issues.

4.8 Risk Management

- 4.8.1 The risks are minimal and have been covered in the legal section above.

5 Conclusions

- 5.1 The Council has a clear ambition to promote the low carbon economy locally, in order to create jobs, meet carbon reduction targets and tackle fuel poverty. CO2Sense is in a unique position in that it was established by the RDA with a specific remit to develop the low carbon economy within Yorkshire. Due to the abolition of the RDAs, CO2Sense must change its legal structure and governance arrangements but remains committed to its original aims. The Council has an opportunity to support CO2Sense through this transition and at the same time to benefit from the expertise and insight that CO2Sense brings.

6 Recommendations

- 6.1 To note the contents of this report and to acknowledge that CO2Sense and the Council share a common interest in developing the low carbon economy.
- 6.2 To agree that the Council will become a founding member of CO2Sense CIC, with Member representation on their board, in order to enable CO2Sense to make the transition to CIC status.
- 6.3 To categorise the appointment as a Strategic and Key Partnership.
- 6.4 To accept the specific request from CO2Sense for Cllr Mark Dobson, in his role as Executive Member for the Environment, to be appointed as a member of CO2Sense CIC.

7 Background documents

- 7.1 CO2Sense Draft CIC Articles
- 7.2 The Economics of Low Carbon Cities