

<b>CABINET</b>	<b>AGENDA ITEM No.4</b>
<b>15 DECEMBER 2014</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement	
Contact Officer(s):	John Harrison Executive Director, Resources	Tel. 452520

## INSTALLATION OF SOLAR PANELS ON ROOF TOPS

R E C O M M E N D A T I O N S	
<b>FROM : Executive Director, Resources</b>	<b>Deadline date : 17<sup>th</sup> December 2014</b>
<p>That Cabinet approves:</p> <ol style="list-style-type: none"> <li>1. That Council enters into a strategic partnership agreement with Empower Community Management LLP to enable a first project to deliver solar PV on private residential properties in Peterborough.</li> <li>2. That the Council enters into a shareholder agreement to become an equal partner in a Community Interest Company with Empower Community Management LLP.</li> <li>3. That the initial target area be the Green Deal Community Fund area set out in section 4.6 of the report.</li> <li>4. An intention to roll out the solar PV project from the initial target area to the remainder of the city.</li> <li>5. That, subject to:               <ol style="list-style-type: none"> <li>a) Council approving the amendment to the treasury management strategy below; and</li> <li>b) Finalisation of the issues set out at 9.1.7 below to the satisfaction of the Executive Director, Resources;</li> </ol>               the Council enters into a finance agreement with the Special Purpose Vehicle (SPV).             </li> <li>6. That Council enters into such further agreements with the Community Interest Company, the Special Purpose Vehicle (SPV) and any other body necessary to facilitate the terms of the strategic partnership agreement and solar PV project set out in this report.</li> <li>7. That Cabinet delegates to the Executive Director, Resources and Director of Governance the ability to finalise any individual matters.</li> </ol> <p>That Cabinet recommends to Council:</p> <ol style="list-style-type: none"> <li>8. Approval of an amendment to the existing treasury management strategy to enable a Special Partnership Vehicle (SPV) between Empower Community Management LLP and Empower Community Foundation to be added to the list of external bodies that the Council is able to undertake capital investment in.</li> </ol>	

### 1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following a referral from CMT.

### 2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to seek approval to enter into a strategic partnership with Empower Community Management LLP (EC), a social enterprise that will, as its primary purpose, deliver the installation of solar PV on residential properties in the city and deliver a community benefit scheme to Peterborough.

- 2.2 This would be the first scheme of its type in the UK and in particular, the first of its kind that involves a Council.
- 2.3 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1 'to take collective responsibility for the delivery of all strategic Executive functions within the Council's Major Policy and Budget Framework and lead the Council's overall improvement programmes to deliver excellent services.

3. **TIMESCALE** (If this is not a Major Policy item, answer **NO** and delete second line of boxes).

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>
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4. **SOLAR PV ON PRIVATE RESIDENTIAL PROPERTIES**

4.1 **CURRENT UK RESIDENTIAL SOLAR PV MARKET**

4.1.1 The Solar PV market across the UK is complex and the ability of residential owners to have solar PV on their properties has been limited and typically only available to:

- Those who are fortunate to have the necessary funds to enable installation. Their investment returns are the free energy generated and feed in tariff income from central government
- Those that are approached by companies who provide the PV installation free and the owner benefits from the free energy (known as 'rent a roof' schemes). Even with these benefits it is often difficult for those approached to understand whether it offers them a good deal.

Both of the above lead to a 'pepper pot' approach and by their very nature exclude the vast majority of owners. In addition, the companies that provide such schemes often only target homes that are east-west in alignment (and therefore have greater exposure to direct sunlight throughout the day) and return maximum benefit whilst ignoring homes which are orientated slightly differently yet still may return some legitimate benefit to the owner.

4.1.2 Solar PV is becoming more common as a feature in social housing – indeed Cross Key Homes are installing PV at their properties. This has also led to a position where residential owners feel "left out", without a solar PV installation model that is easily accessible and affordable to them.

4.2. **A NEW APPROACH FOR PRIVATE RESIDENTIAL PROPERTIES**

4.2.1 The report proposes an approach where solar PV would have the following characteristics:

- Delivery of an area wide programme, backed by the Council
- No cost to the owner for installation
- Free energy generated to the occupier
- A fee for installation paid to the owner
- Creation of a local community fund out of profits
- A fee to the Council out of profits generated
- Investment returns generated by the Council

4.2.2 The delivery via an area wide programme offers greater scope for installation on more houses as less profitable roofs can be subsidised by more profitable roofs. This benefits our community in a way other schemes would not.

4.3 **EMPOWER COMMUNITY MANAGEMENT LLP (EC)**

4.3.1 EC is a social enterprise. Social enterprises are businesses that trade in the market with a social purpose.

4.3.2 The purpose of EC is to provide local communities throughout the UK with efficient, scalable project development and delivery solutions for renewable energy and energy efficiency projects. It was first introduced to the Council as part of an option appraisal for the large scale ground mounted PV projects within the city boundaries.

4.3.2 Whilst it has delivered area wide PV solutions on housing association properties, the discussions on how a similar, community-benefit model could be used more widely led to the creation of a new product in the UK for its delivery in the private sector. The Council will take a key role in developing the model to ensure that it works in the best interests of the community. The Council would also be the first adopter of the model.

#### 4.4 **HOW DOES THE SOLAR PV SCHEME WORK?**

4.4.1 Attached to the report as Annex 1 is a diagram detailing the proposed legal structure of the private residential solar PV scheme, which can be summarised as follows:

- The Council and EC would promote the scheme to the defined area agreed via a jointly owned Community Interest Company (CIC). A CIC is a limited liability company, designed for social enterprises that want to use their profits and assets for the public good. A CIC has the specific aim of providing a benefit to a community and must use its income, assets and profits for the community it is formed to serve.
- In addition to promoting the scheme the CIC will commission contractors to install the solar PV.
- The CIC would have two shareholders one of which will be the Council – with two representatives from each party. This will be one of the Council’s strategic and executive partnerships and the executive seats required by the shareholders agreement will be filled by the relevant Cabinet Members.
- All costs of the CIC would be reimbursed from the successful scheme returns generated by the Special Purpose Vehicle (SPV) referred to below.
- Residential owners would express an interest in solar PV being installed and if successful, would then sign a standard roof lease on typical market terms and conditions.
- The SPV would be created by EC to manage the delivery and installation of the solar PV installations on behalf of the CIC including letting contracts for installation, dealing with maintenance and collecting feed in tariffs. The SPV will take the form of a Limited Liability Partnership.
- The SPV would be funded in the short term by the Council at a commercial rate of interest until such time as the scheme receives long term funding with a private funder. This does not create any state aid issues for the Council as set out more fully in the ‘Legal Implications’ below.
- All profits from the scheme would be allocated on the following basis:
  - £100 paid to the owner every five years under the roof lease;
  - remaining profits split equally between the Council and Empower Community Foundation (the latter of which holds the money on trust for the purposes of a local community fund, as described below).

#### 4.5 **LOCAL COMMUNITY FUND**

4.5.1 Empower Community Foundation (ECF) will hold the local community funds from the scheme. At the local level this in effects creates an earmarked community fund that would be distributed locally within the broad charitable objects of the ECF. The ECF has been set up by EC and is currently in the process of obtaining charitable status.

4.5.2 To enable the local distribution of monies to take place, a local investment committee is established to determine its use. The committee would be made up of Council representatives and other nominations of stakeholders from the local community. The exact composition is for local decision.

#### 4.6 **PROPOSED DELIVERY IN PETERBOROUGH**

4.6.1 Cabinet will be aware that the Council was successful in receiving £3.9m from the Green Deal Community Fund (GDCF) that is currently being delivered in the following target area:

1. Bourges Boulevard
2. Clarence Road
3. Cromwell Road
4. Crown Street
5. Dogsthorpe Road
6. Eastfield Road
7. Gladstone Street
8. Harris Street
9. Lincoln Road
10. St Paul's Road

4.6.2 It is therefore appropriate to seek to deliver the first phase of the private residential PV scheme in this area as:

- The Council is already engaging with the community;
- There are options for economies of scale around delivery e.g. scaffolding; and
- The area is referred to as 'hard to treat' properties with residents in fuel poverty.

4.6.3 Assuming that the programme is a success then the Council would seek to roll this programme out across the city.

4.6.4 It should be noted that it may not be possible for all properties to have PV installed due to certain factors e.g. grid resilience, condition of roof or elevation.

4.6.5 The scheme has been devised in such a way that it can also be adopted by any Council in the UK.

#### **4.7 SPECIFIC ANALYSIS OF THE BENEFITS OF THE SOLAR PV SCHEME**

4.7.1 The benefits to the different stakeholders of the scheme are as follows:

Occupiers receive the free energy generated. The typical benefit is equivalent to circa £200 per annum (net) initially. The value of the benefit should effectively increase as energy prices go up over time.

Owners receive an annual income of circa £20 per annum, aggregated and paid out every 5 years

- The wider community receives the benefit of the Local Community Fund. Based on an assumed take up of 1500 properties the fund would total approximately £1,052,000 over the 20 years of the scheme.

#### **4.8 COUNCIL INCOME AND INVESTMENT**

The Council will also benefit from an income of approximately £1,052,000 generated over the lifetime of the solar PV scheme. Short term investment income of funding the SPV of approximately £83,000 will be received.

#### **4.9 FUTURE DEVELOPMENT OF THE PV SCHEME**

It is envisaged that the second phase of the strategic partnership agreement will consider further roll out of the solar PV scheme to commercial rooftops. This will be subject to a separate decision.

### **5. CONSULTATION**

- 5.1 Once the scheme has received Cabinet approval, full details relating to its scope and delivery will be provided to the public. The success of the scheme will rely upon good levels of public engagement.
- 5.2 The way in which the scheme will be extended beyond the initial target area will be subject to consultation with elected members.

## **6. ANTICIPATED OUTCOMES**

- 6.1 The proposals in the report:
- are in line with the Environmental capital policy of the Council;
  - allow owners to benefit from free solar PV installation
  - generate income for owners;
  - generate free energy for occupiers;
  - will contribute to the alleviation of fuel poverty;
  - delivery an area wide programme
  - will lead to the creation of a local community fund out of profits
  - generate a fee to the Council out of profits generated
  - generate investment returns by the Council

## **7. REASONS FOR RECOMMENDATIONS**

To enable a strategic partnership to be entered into with Empower Community to enable the delivery of area wide Solar PV for private residential owners.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 Do nothing: the Council would lose the significant opportunities devised by the scheme.
- 8.2 Procure a solution on the open market: the Council would need to establish procurement and social enterprise vehicles at significant cost. These are the benefits of partnering with EC.

## **9. IMPLICATIONS**

### **9.1 FINANCIAL**

#### **9.1.1 Financial overview**

The SPV would be funded in the short term by the Council at a commercial rate of interest (in accordance with Market Economy Investor Principles) until such time as the schemes receive long term funding with a private funder. This short-term funding will be used as development finance for the installation of the solar PV equipment, as well as paying for the costs of the CIC's marketing and development services.

The Council will receive returns from two sources:

- Interest income on the investment
- Profit share from the SPV - The SPV's revenue will be built on receipts from FIT and export of excess energy to the distribution network. This will be used to cover the operational costs of the SPV and for residual profit distribution

All figures outlined in this section are based on a take-up of 1,500 properties.

#### **9.1.2 Investment and total returns**

The initial costs of investment for the project is estimated at £4.45m which will be drawn down as set out in table 1 below.

**Table 1**

<b>Investment</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>Total</b>
	<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>	<b>Month 4</b>	<b>Month 5</b>	<b>Month 6</b>	
	<b>Oct-15</b>	<b>Nov-15</b>	<b>Dec-15</b>	<b>Jan-16</b>	<b>Feb-16</b>	<b>Mar-16</b>	
Capital Drawdown	£ 330,000	£ 450,000	£ 600,000	£ 720,000	£ 1,050,000	£ 1,300,000	£ 4,450,000

It is estimated that PWLB interest rates of 1.4% costing £45,000 will be incurred. The SPV will be charged interest on the loan at 6% (£128,000) delivering a net benefit to the Council of £83,000.

Further details of this investment are included in paras 9.1.4 to 9.1.6 below.

The estimated income for the Council over 20 years from the scheme is £1,052,000 with the Community Fund receiving an equal amount.

The total benefit to the Council is shown in table 2.

Table 2

<b>Benefits</b>	<b>£</b>
Interest Earned Net	£83,000
Distributed Income	£1,052,000
Total Benefit	£1,135,000

### 9.1.3 Income –5 year detail

Table 3 shows the 5 year cash flow of the scheme and table 4 shows the income that will accrue for the Community Fund.

The Council will receive net income of £286,800 (including interest on loans) while the Community Fund will receive £203,800.

Table 3 - Net Benefits to PCC

<b>Five Year Cash Flow</b>	<b>Year 0</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	
<b>Year Commencing</b>	<b>01/06/2015</b>	<b>01/04/2016</b>	<b>01/04/2017</b>	<b>01/04/2018</b>	<b>01/04/2019</b>	<b>01/04/2020</b>	<b>Total</b>
<b>PCC</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Interest Earned Net	£16,600	£66,400					£83,000
Income from SPV			£94,685	£30,580	£30,408	£48,127	£203,800
Net Benefit PCC	£16,600	£66,400	£94,685	£30,580	£30,408	£48,127	£286,800

Table 4 - Net Benefits to Community Fund

<b>Five Year Cash Flow</b>	<b>Year 0</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	
<b>Year Commencing</b>	<b>01/06/2015</b>	<b>01/04/2016</b>	<b>01/04/2017</b>	<b>01/04/2018</b>	<b>01/04/2019</b>	<b>01/04/2020</b>	<b>Total</b>
<b>Community Fund</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Income from SPV			£94,685	£30,580	£30,408	£48,127	£203,800

The costs of marketing and community engagement undertaken by the Council will be fully recovered from the CIC. These costs, as yet not known have not been included in the above tables.

9.1.4 Within the Council's accounts, it is expected that the bridging loan to the SPV will be treated as Capital Expenditure. Within the definition of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (the "Regulations") section 25 states that expenditure of a local authority will be treated as capital expenditure if:

‘the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure’

- 9.1.5 The capital expenditure will be funded through the invest to save capital budget. As the Council will make a margin plus returns from the SPV on the loan, this use will meet the criteria for use of that budget.
- 9.1.6 At its meeting of 8<sup>th</sup> October 2014, Council approved an amendment to the Treasury Management Strategy providing the relevant accounting treatment to allow for the loan to Axiom housing. It will need to be recommended to Council that the SPV is added to the list of organisations that the Council undertake capital investment with in this manner.
- 9.1.7 Commercial discussions with Empower are currently on-going, and it will be recommended that delegated authority is approved for the Executive Director Resources to finalise the commercial discussions. These issues to be finalised will include:
- The financial control of arrangements with the SPV where the funds will be placed (the arrangements may be that loans are only made as and when payments are due. This would reduce risk, but would also impact the interest return made by the Council).
  - The security arrangements for the bridging investment. This will include finalising the Council’s step-in rights to take ownership of the assets and resultant income if the SPV should fail.
  - Confirming that the interest rate payable by the SPV is a commercial rate of interest (in accordance with Market Economy Investor Principles)
  - Confirming that the final loan arrangements meet the definition of capital expenditure outlined in para 9.1.4 above (if they are classed as a treasury investment, then there are different risk issues to consider).
  - Exit arrangements for when the loan is repaid, and whether the Council should have a cap on exposure.

## **9.2 LEGAL**

9.2.1 This section considers:

- Powers of the Council to:
  - Participate in the CIC;
  - participate in the Peterborough Community Fund;
  - lend money to the SPV.
- Procurement
- State aid

### **9.2.2 POWERS OF THE COUNCIL**

#### **Participation in the CIC**

Under the Localism Act 2011 the Council has a general power of competence, which allows it to enter into a shareholder agreement with EC to form the CIC and perform services on behalf of the CIC.

A CIC is a limited liability company, designed for social enterprises that want to use their income, profits and assets for the benefit of the community. All CICs must satisfy an on-going "community interest test". This test as well as several statutory restrictions must be followed to ensure that the purposes of the CIC, and the exercise of those purposes, act in the interest of the community. The agreement between EC and the Council creating the CIC and the CIC's constitutional documents will therefore adhere to these requirements.

The Council and Empower shall appoint an equal number of directors to the board of directors of the CIC. The directors will have equal voting rights. No board resolution will be passed without at least one director appointed by the Council and one director appointed by EC voting in favour of it. If a chairperson is appointed, she or he will not have a casting vote.

Under the Companies Act 2006, the directors appointed by the Council will have duties to the CIC, including (among others) to promote the success of the company for the benefit of the shareholders as a whole; exercise independent judgment and avoid conflicts of interest. As such, the Council's directors cannot be fettered in their discretion to fulfil these duties.

The Council is also familiar with the statutory Guidance issued to local authorities operating as part of a company and will adhere to that Guidance in its participation within the CIC.

### **Participation in a Local Community Fund**

As described at 4.5, the Council will be involved in a local community fund (Empower Community Foundation). This entity will not have legal personality itself but will act as the committee that decides how to spend the profit that the SPV gives the Empower Community Foundation. Again, the Council has power to take this role under its general power of competence.

In order to ensure that the local community fund performs its role correctly and that it has appropriate control over how the money held by the ECF is spent, the Council will work with ECF to devise the agreements that will govern how the money is managed and decisions are made on how it is spent.

### **Lending to the SPV**

The Council has the ability to lend to the SPV under the Local Government Act 2003 "power to invest" as well as under the general power of competence.

In making any such investment the Council is required to give regard to the Government's commentary to the Guidance on Local Government Investments, as well as the statutory guidance issued by the Secretary of State and specific guidance published by the Chartered Institute of Public Finance and Accountancy. Furthermore, any such investment must be consistent with the Council's Annual Investment Strategy.

#### **9.2.3 Procurement**

As the Council will be an equal partner in the CIC, this means that the CIC will not be considered a "contracting authority" for the purposes of the procurement regime. The CIC will therefore not be required to comply with the Regulations in its procurement processes or face other regulatory constraints applicable to wholly Council owned companies. However, this situation will continue to be monitored to ensure that as the commercial terms of the CIC are finalised, the Council remains compliant with the requirements of procurement law.

#### **9.2.4 State aid**

Unlawful state aid occurs where a benefit is granted from a public resource for free or on favourable terms which distort competition. The scheme structure follows market principles and as such there is no unlawful state aid implication. However, this situation will also continue to be monitored to ensure that no state aid issues arise as commercial terms are finalised.

#### **9.2.5 Conclusion**

For the reasons set out in this section, there are no adverse legal implications arising from the strategic partnership with Empower or the private residential solar PV scheme described in this report.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)



<http://empowercommunity.co.uk/>

Office of the Deputy Prime Minister: General Power for Local Authorities to Trade in Function Related Activities Through a Company.

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