

<b>CABINET</b>	<b>AGENDA ITEM No. 5</b>
<b>26 SEPTEMBER 2016</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Councillor Seaton, Cabinet Member for Resources		
Contact Officer(s):	John Harrison, Corporate Director: Resources	Tel. 01733 452520	

**AMENDMENT OF EXISTING LOAN ARRANGEMENTS TO EMPOWER COMMUNITY MANAGEMENT LLP**

<b>RECOMMENDATIONS</b>	
<b>FROM :</b> Councillor Seaton, Cabinet Member for Resources	<b>Deadline date :</b> N/A
Cabinet is requested to:	
<ol style="list-style-type: none"> <li>1. Approve the amendment of the terms of the Strategic Partnership with Empower Community Management LLP;</li> <li>2. Approve amendment of the financing agreement with ECS Peterborough 1 LLP;</li> <li>3. Approve the due diligence on the purchase of the existing operational solar PV installation;</li> <li>4. Approve Council entering into such further agreements with ECS Peterborough 1 LLP and any other body necessary to facilitate the arrangements set out in this report; and</li> <li>5. Delegate to the Corporate Director; Resources and Director of Governance the ability to finalise any individual matters including the amendment as necessary of any existing contractual documents.</li> </ol>	

**1. ORIGIN OF REPORT**

1.1 This report is submitted to Cabinet following a request from Councillor Seaton, Cabinet Member for Resources.

**2. PURPOSE AND REASON FOR REPORT**

2.1 The purpose of this report is to authorise the provision of additional capital finance to ECS Peterborough 1 LLP to which the Council already provides finance as authorised by DEC14/CAB/112 and OCT15/CMDN/85. This follows the decision by Council on 13 July 2016 to increase the Invest to Save budget.

2.2 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**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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**4. BACKGROUND TO DECISION**

4.1 In December 2014 by DEC14/CAB/112 Cabinet resolved to approve that Council entered 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. Cabinet also resolved that the Council entered into a shareholder agreement to become an equal partner in a Community Interest Company with Empower Community Management

LLP and that Council entered into a finance agreement with ECS Peterborough 1 LLP (a partnership between Empower Community Management and another entity within the Empower group). The value of this decision was £4.45m.

4.2 By subsequent Cabinet Member Decision Notices OCT15/CMDN/ 83, 84 and 85 approval was given to:

1. Approve Extension of Qualifying Property Ownership for Private Residential in Peterborough – no additional funding.
2. Extension of Scheme to Axiom Housing Association – value up to £2.5m.
3. Approve investment for Social Housing Schemes outside Peterborough – value up to £40m

The total amount currently allocated from the Invest to Save budget to the Empower scheme is £47m

4.3 Following the extension of the Invest to Save Budget, Cabinet is asked to consider potential future investment opportunities in renewable energy schemes with ECS Peterborough 1 LLP and enable it to expand its portfolio of residential property installations. To facilitate this potential investment opportunity an additional £30m was allocated to the Empower project from the agreed increased Invest to Save budget

#### **4.2 Proposed Investment Opportunity – Gentoo Group operational PV systems on social homes**

4.2.1 Gentoo Group has a portfolio of 3,100 solar PV systems that are set up and running on the social homes of Gentoo Group which are outside Peterborough. It has approached Empower to take over and manage these operational schemes. The funding required by ECS Peterborough 1 LLP from the Council for the acquisition of these schemes is up to £7m. The transaction will involve ECS Peterborough 1 LLP carrying a debt to Gentoo of c£750,000 however that debt will be fully subordinated to the amounts owed to the Council. Only c£12m of the original £47m already allocated to the Empower scheme by the Council has been utilised to date and therefore the deployment of a further £7m is within the amounts previously authorised and is consistent with the extension approved in respect of investment for Social Housing Schemes outside Peterborough pursuant to Cabinet Member Decision Notice OCT15/CMDN/ 83, 84 and 85.

#### **4.3 Extension to current installation Programme**

4.3.1 Empower Community would like to set up new installation programmes and are in discussions with several Councils and ALMO to Councils with a view to including them in the current installation programme if successful.

4.3.2 On the basis of the initial PV programme the estimated total number of installations possible from these programmes is in the region of 95,000 PV systems. This would require additional funding by the Council to ECS Peterborough 1 LLP of up to £22m.

#### **4.4 Due Diligence on the purchase of the existing social housing PV schemes**

4.4.1 ECS Peterborough 1 LLP has undertaken due diligence on its purchase of the operational housing PV scheme. The Council, as funder of ECS Peterborough 1 LLP, is also undertaking its own due diligence to give a sufficient level of assurance as the Council has the right to 'step in' and take control of the SPV in the event of default. This due diligence is being undertaken by the Council with assistance from its advisors, Pinsent Mason, for legal advice, Deloitte for financial advice and Arcadis for technical advice and will be charged to ECS Peterborough 1 LLP

##### **Deloitte LLP has reviewed:**

- Financial projections for the Gentoo Portfolio as acquired by ECS Peterborough 1 LLP funded by the additional £7m and to be refinanced in mid 2017

- Commercial risks of the financing and their mitigations in contracts and other arrangements

Outstanding items:

There are minor amendments to the financial model of the Gentoo portfolio and its financing which do not affect its overall viability

**Arcadis has reviewed:**

- Technical review of the installed equipment
- Review of the FIT claim data
- Technical review of relevant aspects of contracts
- Performance of the assets

Outstanding items:

10 sites designated for transfer are still awaiting FIT registration, if these are not approved before the date of transfer they will be removed from the portfolio. Concerns were raised about the performance monitoring of the sites by Gentoo, but going forward weekly and quarterly monitoring is to be undertaken.

Liquidated damages within the O&M contract are to be amended to widen their scope to losses incurred below the expected yield.

**Pinsent Masons has reviewed:**

- Asset Purchase Agreement (seeking input from Deloitte and Arcadis where appropriate)
- O&M Agreement to be entered into between ECS Peterborough 1 LLP and Gentoo
- Payment schedule annexed to Roof Access Licence (regulating the amounts paid to Gentoo for allowing the PV assets to remain on their rooftops post completion)
- The existing finance documents in favour of PCC to assess amendments required to facilitate the proposed Gentoo acquisition

Outstanding items:

Finalisation of transaction documents (including amendments to existing finance documentation) and of O&M Agreement and Roof Access Agreement. Confirmation of how ECS Peterborough 1 LLP proposes to obtain reliance on all equipment warranties.

**4.5 ECS Peterborough 1 LLP - refinancing**

4.5.1 ECS Peterborough 1 LLP will continue to be funded in the short term at a commercial rate of interest until the scheme is refinanced by long term funding by a private funder and there is an objective to refinance in the second quarter of 2017. Once this has been repaid it was agreed that an extra £50m will be allocated to the Invest to Save budget to enable the funding of future schemes. This additional £50m will only be triggered once ECS Peterborough 1 LLP has been refinanced and the loan repaid to the Council

**5. CONSULTATION**

5.1 Group Leaders have been consulted.

**6. ANTICIPATED OUTCOMES**

6.1.1 The proposals in the report:

- are in line with the Environment capital policy of the Council
- allow owners to benefit from free solar PV installation
- generate free energy for occupiers
- will contribute to the alleviation of fuel poverty
- will deliver an area wide programme
- will lead to the creation of a local community fund out of profits
- additional interest income from the increased loan until the re-financing takes place
- generate investment returns by the Council

## **7. REASONS FOR RECOMMENDATIONS**

- 7.1. Generate a surplus income which will contribute to the Renewable Energy Savings targets in the MTFS.
- 7.2 Supports the Council's aspirations to be the UK's Environment Capital by promoting and facilitating use of sustainable energy sources.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 The Council has a discretion as to whether to advance any additional funding to ECS Peterborough 1 LLP and could determine not to make such further advance. However the Council would lose the opportunity to enhance the refinancing package offered by ECS Peterborough 1 LLP and lose the opportunity to receive the additional interest income from the increased loan until the re-financing takes place.

## **9. IMPLICATIONS**

### **9.1 Financial**

- 9.1.1 ECS Peterborough 1 LLP will continue to 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 scheme receives long term funding with a private investor. The objective is to refinance in the second quarter of 2017.

The Council will receive returns from two sources:

- Interest income on the investment
- Existing profit share from ECS Peterborough 1 LLP in so far as profits generated related to the Peterborough area

- 9.1.2 Security for the loan is taken by way of a Debenture which provides the Council with the right to acquire the assets should the loan not be repaid at the appropriate time. The Council under the finance agreements 'step in' to take control of the SPV in a situation where there is a default on the loan

- 9.1.3 The Council also has further securities in relation to its loan. All cash transactions will continue to be managed by NCM Fund Services Limited an FCA registered company operating to strict criteria set by the Council as to when funds can be released

- 9.1.4 The financial benefits to the Council will be increased by the increased loan to ECS Peterborough 1 LLP for the purchase of the existing Gentoo Portfolio, which will generate a net income to the Council for the financial year 2016/17 of £147k. The projected net income for 2017/18 is £77k but this will be subject to the actual date of the refinancing.

### **9.2 Legal**

- 9.2.1 The Council has the ability to lend to ECS Peterborough 1 LLP 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. Any request for funding from the Invest to Save budget will also be made in accordance with the Council's Constitution and applicable Contract Rules.

- 9.2.2 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 and 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.

**10. BACKGROUND DOCUMENTS**

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

- Cabinet Decision - DEC14/CAB/112; and
- Cabinet Member Decision - OCT15/CMDN/85.

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