

CABINET	AGENDA ITEM No. 5
27 February 2017	PUBLIC REPORT

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

R E C O M M E N D A T I O N S	
FROM: John Harrison, Corporate Director: Resources	Deadline date: N/A
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. Approve the amendment of the terms of the Strategic Partnership with Empower Community Management LLP; 2. Amend the financing agreement with ECS Peterborough 1 LLP to include the purchase of ground mounted solar PV and the purchase of solar PV installed on local authority residential social housing properties; 3. Approve the due diligence measures proposed; 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 5. Delegate to the Corporate Director, Resources and Director of Governance the ability to finalise any individual matters. 	

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 use of the existing lending facility to ECS Peterborough 1 LLP (to which the Council already provides finance as authorised by DEC14/CAB/112 and OCT15/CMDN/85 and a decision on 13 July 2016 by Council to increase the Invest to Save budget) to finance the acquisition of newly constructed and commissioned ground mounted PV systems on a range of Anglian Water sites across the East of England.
- 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?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. **BACKGROUND TO DECISION**

4.1.1 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 photovoltaic panels (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 the special purpose LLP (ECS Peterborough 1 LLP) created to deliver the solar PV. The value of this decision was £4.45m.

4.1.2 By subsequent Cabinet Member Decision Notice 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.

4.1.3 Cabinet Decision SEPT16/CAB/53 approved a further £30m increase to allow ECS Peterborough 1 LLP to expand its portfolio of residential property installations.

4.1.4 The total amount currently allocated from the Invest to Save budget to the Empower scheme is £77m

4.2 **Amendment of the terms of the Strategic Partnership and financing agreement to include ground mounted solar PV**

4.2.1 Empower Community Management LLP (ECM) has been working in partnership with HBS Group Southern Ltd and successfully bid to install and operate ground mounted solar PV arrays on a range of Anglian Water sites across the East of England with a funding requirement of up to £25m. ECM has offered the opportunity to the Council to fund the solar arrays once they are completed and commissioned via ECS Peterborough 1 LLP through which it is currently funding solar PV systems on residential roofs. Further ground mounted opportunities may follow subject to any current overall Empower funding limit.

4.3 **Amendment of the terms of the Strategic Partnership and financing agreement to include the purchase of solar PV installed on local authority residential properties**

Gravesham Borough Council has a portfolio of 1,092 solar PV systems that are set up and running on its social homes. It has approached Empower to take over and manage these operational schemes. The funding required by ECS Peterborough 1 LLP for the acquisition of these schemes is up to £4.5m.

4.4 **Due Diligence**

4.4.1 ECS Peterborough 1 LLP will undertake due diligence on and will also oversee the construction of each ground mounted PV scheme at Anglian Water sites. The Council would fund a project once its construction is complete and the relevant documentation signed (including a power purchase agreement (PPA) whereby Anglian Water will purchase not less than 90% of the power produced from each project).

4.4.2 ECS Peterborough 1 LLP will undertake due diligence on its purchase of the Gravesham Borough Council operational housing PV scheme.

4.4.3 The Council, as funder of ECS Peterborough 1 LLP, will also undertake its own due diligence in order to give a sufficient level of assurance as the Council has the right to 'step in' and take control of ECS Peterborough 1 LLP in the event of default. This due diligence will be 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.

4.5 ECS Peterborough 1 LLP - refinancing

4.5.1 The total value of the funding amount available to ECS Peterborough 1 LLP is currently £77m. This company 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 Appropriate professional consultation has been sought and further input planned as set out in this report.

6. ANTICIPATED OUTCOMES

6.1.1 The proposals in the report:

- are in line with the Environment capital policy of the Council; and
- will generate additional investment returns by the Council.

7. REASONS FOR RECOMMENDATIONS

7.1. The proposal will generate a surplus income which will contribute to the Renewable Energy Savings targets in the MTFS

7.2 The proposal supports the Council's aspirations to be the UK's Environment Capital by facilitating the 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 funding of additional projects of this kind is considered to be likely to enhance the refinancing terms which Empower may be offered in quarter 2017. Whilst the Council will be repaid as part of that refinance, it will have a continued interest in ECS Peterborough 1 LLP due to the profit share arrangements in place in respect of projects undertaken in Peterborough. That being the case, the Council could see an ongoing benefit in the event that more favourable refinance terms can be secured. If the Council decides not to provide the additional funding it will also 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 ECM 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 Council will continue to accrue interest income on the investment which will be received when the project is refinanced. The objective is to refinance in the second quarter of 2017.

- 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 has a right to 'step in' to take control of ECS Peterborough 1 LLP in a situation where there is a default on the loan
- 9.1.3 The financial benefits to the Council will be increased by the funding of the additional schemes set out in this Report. Funding in relation to the purchase of ground mounted PV systems located on Anglian Water sites, will generate a net income to the Council for the financial year 2017/18 of £125,000. Funding in relation to the Gravesham Borough Council project will generate a net income to the Council for the financial year 2017/18 of £50k.

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 While the Council's arrangements with Empower do not currently amount to doing things for a commercial purpose under local government legislation, the Council is mindful of the need to keep this under review and continues to monitor the situation.
- 9.2.3 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)

- 10.1 None.