PETERBOROUGH CITY COUNCIL

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Amendment of Existing Loan Arrangements to Empower
Councillor Seaton, Cabinet Member for Resources
March 2018

Cabinet portfolio holder: Responsible Director:	Councillor Seaton, Cabinet Member for Resources Marion Kelly – Interim Corporate Director, Resources
Is this a Key Decision?	NO
Is this decision eligible for call-in?	NO
Does this Public report have any annex that contains exempt information?	NO

R E C O M M E N D A T I O N S

The Cabinet Member is recommended to:

1. Approve the amendment of the terms of the Strategic Partnership with Empower Community Management LLP.
2. Approve the amendment of the financing agreement with ECS Peterborough 1 LLP subject to finalising the payment plan for the receipt of interest and fees as detailed in paragraph 6.3.
3. Approve the 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.
4. Delegate to the Corporate Director, Resources and Director of Law and Governance the ability to finalise matters 1 to 3 above.
5. Delegate to the Corporate Director, Resources the ability to extend the funding facility which will be included in the financing agreement at 3. above on a monthly basis for up to 4 months based on the methodology for extending the facility set out in this report.

1. PURPOSE OF THIS REPORT

1.1 This decision is proposed in accordance with the delegations for Councillor Seaton, Cabinet Member for Resources exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of his portfolio at paragraph (a).

2. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	**NO**	If Yes, date for relevant Cabinet Meeting	**N/A**

3. DETAILS OF DECISION REQUIRED

3.1 The decision maker is asked to authorise the extension of the existing funding facility provided by the Council to ECS Peterborough 1 LLP (ECSP1), which was authorised by decision JULY/CAB/16 and extended by a Directors Exercise of Delegated Authority Report in October 2017.

4. CONSULTATION

4.1 Consultation on the proposed loan has been taken with the Council's advisors, Pinsent Mason and Deloitte as part of the due diligence process. The long term refinance agents RM Capital employed by ECSP1 have also been consulted.

5. ANTICIPATED OUTCOMES

5.1 The facility for the outstanding loan of £23.3m to ECSP1 will be extended on 1 April 2018 for up to 4 months, subject to the conditions set out in paragraph 6.3. It will be subject to monthly authorisation by the Corporate Director Resources in consultation with the Council's Director of Law and Governance on a delegated basis after assessing progress of the refinance process and in consultation with our advisors.

6. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

6.1 Proposal to Extend the PCC Funding Facility

JULY17/CAB/16 paragraph 4.2.3 provided that: *The Council's funding facility for ESCP1 is contracted to terminate in October 2017 but the Council has the opportunity to extend the facility to March 2019 and thereby continue to receive the interest on the funding of new projects and existing projects which will complete after September 2017, until they too are completed and refinanced.*

In October 2017 a Director's Award report was signed by the Corporate Director, Resources extending the Facility to the end of March 2018 only. This decision was taken to maintain the attractiveness of the portfolio to long term investors. The longer the term of the portfolio the more attractive it is to that particular investor group.

Empower has been investigating various methods of refinancing since October 2017 with the combined aims of finding a suitable partner and retaining the community benefits inherent within the business model of ECSP1. Empower expects to be in a position to determine a refinance solution in the early part of April 2018. After exploring various options available the following methods have been advised as the most suitable to progress refinancing of the Council's loan.

Option 1 – Unlevered Equity

This options entails Empower agreeing terms with an investor who will provide the long term funding solution by purchasing unlevered equity in ECSP1. This means that after the refinance process ECSP1 will effectively be funded solely by equity and not debt finance.

Option 2 – Bank Debt and Junior Debt

This option entails Empower agreeing terms with a bank lender and a junior debt provider who will both provide long term debt financing at differing levels of security and pricing. This option is likely to enable Empower Community to retain equity in the company and preserve community benefits, but will be subject to final agreed terms.

Option 3 – Private Placement Debt and Junior Debt

This option entails Empower agreeing terms with an institutional lender (such as an insurance company or pension fund) and a junior debt provider who will both provide long term debt financing at differing levels of security and pricing. This option is expected to be able to use inflation-linked debt as the private placement debt, providing a good match to the inflation-linked revenues of the solar installations of ECSP1. This option is likely to enable Empower Community to retain equity in the company and preserve community benefits, but will be subject to final agreed terms.

6.2 **Proposed Extension of Bridge Loan Facility**

The Council has not yet received a Term Sheet, which leaves too little time for necessary due diligence and negotiation to satisfactorily be completed and approved by 29 March. The Council's advisors have supported recommendation that in these circumstances, extension of the Bridge Loan Facility should be considered to ensure that the final refinancing arrangement is properly evaluated and influenced.

Empower are in advanced discussions with potential partners for Option 1 and Option 2 and, although a term sheet has not yet been agreed, the Council has received a letter of intent from the potential party to Option 2 who is a creditable participant in this particular market.

In these circumstances, it is proposed that the Corporate Director, Resources in consultation with the Corporate Director, Law and Governance will authorise extension of the loan facility on a monthly basis under delegation from this report. This decision will be informed by a weekly progress call with Empower and the Council's legal and financial advisors to maintain momentum. In respect of each additional month authorised the Corporate Director, Resources will complete a delegation report in consultation with the Corporate Director, Law and Governance confirming their decision.

6.3 The grant of the further loan extension will be subject to the following additional conditions:

1. Interest accruing on the existing loan will be paid by ECSP1 on existing commercial terms to the Council, in accordance with an agreed payment plan. Agreement of the payment plan is delegated to the Corporate Director, Resources. Interest has previously been settled up to October 2017;
2. Charge by the Council of a one-off arrangement fee to ECSP1 in the sum of £10,000 for the extension of the loan facility (roughly equivalent to one month's interest at circa 0.5% of the loan sum), followed by charging a subsequent fee of £10,000 (calculated on a similar basis) to ECSP1 for each monthly extension of the loan facility, payable in accordance with the agreed payment plan. These

charges reflect additional senior officer time required to resolve and maintain the agreement, plus input for advisors;

3. Payment of the Council's advisor fees (to Pinsent Masons' and Deloittes') by ECSP1 up to March 2018 and any additional advisor fees incurred will be payable in accordance with the agreed payment plan.

7. ALTERNATIVE OPTIONS CONSIDERED

7.1 On 1 April 2018 if the loan repayment is not made ECSP1 will be placed into default and the Council would be required to exercise its security and take over the assets of the company. At this point the Council will then have to operate the company either on a long term basis or on a short term basis whilst it sourced an alternative long term funder itself. This option is not considered to be in the Council's best interests at this time for the following reasons:

1. The Council does not have experience of operating in this market and would therefore need to invest considerable resources to acquire the additional skills and personnel required to operate the ECSP1 business, plus the need for additional advice which it is anticipated will be required from Pinsent Masons and Deloitte.
2. Any due diligence required in connection with ECSP1's proposed new long term debt financing will be more comprehensive and timely if provided by Empower, as they are active in this market.
3. Taking ownership of ECSP1 back into the Council may potentially reduce its attractiveness and subsequent value on the open market.

The Council will retain and reserve all rights while able to assess the position on a month by month basis.

7.2 The Council could choose to continue funding for ECSP1 over the life of the solar panel assets, but the loan was not intended as a long term facility and such funding does not form part of the Council's financial strategy.

8. IMPLICATIONS

8.1 Financial

8.1.1 ESCP1 will continue to be funded by the Council during the period of the loan extension at a commercial rate of interest (in accordance with Market Economy Investor Principles) until such time as a long term funding with an institutional investor/bank is completed.

8.1.2 The Council will receive returns from the interest income on the investment in the meantime, plus monthly arrangement fee of £10,000, intended to fund significant senior officer and advisor time and act as an incentive for ESCP1 to finalise loan refinancing arrangements.

8.1.3 The income to the Council from the proposed facility extension will depend on the length of time taken to refinance and the interest rate charged. The rate charged for each extension period will be subject to separate negotiation.

8.1.4 Security for the existing 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 original agreement may 'step in' to take control of ECSP1 in a situation where there is a default on the loan and thereafter decide to operate ECSP1 or sell it as considered appropriate at the time. For the reasons outlined in this report, the option to exercise step-in rights at 1st April 2018 are not considered to be the best option at this point in time, although this position should be regularly reviewed.

8.2 **Legal**

8.2.1 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.

8.2.2 Unlawful state aid occurs where a benefit is granted from a public resource for free or on favourable terms which distort competition. The lending 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 during the period of the loan.

9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

9.1 None.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

10.1 Cabinet Report JULY17/CAB/16