

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

Cabinet portfolio holder: Responsible Director:	Councillor Seaton, Cabinet Member for Resources Peter Carpenter – Acting Director Corporate Resources
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: YES Unique Key decision Reference from Forward Plan: KEY/09JUL18/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	YES Appendix 1 – Project Plan of the refinance process which contains commercially sensitive information

RECOMMENDATIONS

The Cabinet Member is recommended to:

1. Approve the amendment of the terms of the Strategic Partnership with Empower Community Management LLP, by extending the term of the existing loan facility for a further 2 months to expire on 30 November on the terms set out below
2. Approve the amendment of the financing agreement with ECS Peterborough 1 LLP
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.

1. PURPOSE OF THIS REPORT

- 1.1 This report is for (enter title of decision maker) to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (f).
- 1.2 Appendix 1 is NOT FOR PUBLICATION in accordance with paragraph (s) 3of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to commercially sensitive information, namely the project plan. 'The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so would prejudice the commercial interests of both Empower and the Council.'

2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for 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 Award Report in October 2017, decision MAR18/CMDN/123 and Directors Exercise of Delegated Authority Reports in March, April, May and June 2018 and decision JUL18/CMDN/01.

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 finance providers Triodos Bank and Thrive Renewables have also been consulted.

5. ANTICIPATED OUTCOMES OR IMPACT

- 5.1 The facility for the outstanding loan of £23.m to ECSP1 will be extended on 1 October 2018 for 2 months, subject to the conditions set out in paragraph 6.3.

6. REASON FOR THE RECOMMENDATION

Proposal to Extend the PCC Funding Facility

- 6.1 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.*
- 6.2 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.
- 6.3 The decision MAR18/CMDN/123 provided in recommendation 5 to delegate to the Corporate Director, Resources the ability to extend the funding facility on a monthly basis for up to 4 months based on the methodology for extending the facility set out in the report The Corporate Director Resources extended the facility for a further month at the end of March, April, May and June 2018 respectively.
- 6.4 Decision JUL18/CMDN/01 approved the extension of the facility for a further two months to the 30 September 2018
- ### **Progress since August 2018**
- 6.5 The refinance of the Council's loan facility has been progressing with Triodos Bank to provide the senior debt and Thrive Renewables the junior debt to Empower
- 6.6 The offers are subject to technical due diligence and completion of legal agreements, and both of these processes are progressing. The outstanding items for completion are:

- Gentoo board approval of the revision of operations and maintenance agreements
- Execution of the Direct Agreements with the 8 social landlords of the solar portfolio
- Finalisation of the calculation of the portfolio yield

6.7 It is anticipated that technical and legal due diligence and finalisation of the refinancing arrangements generally will complete after the current final month's loan extension period expires on 30 September 2018. It is therefore proposed that a further two month extension is granted to Empower to accommodate the completion of the refinancing arrangements.

6.8 **Proposed Extension of Bridge Loan Facility**

The grant of a further 2 month loan extension by the Council to Empower 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.
2. Charge by the Council of a fee of £10,000 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 monitor the agreement and seek input from advisors;
3. Payment of the Council's advisor fees (to Pinsent Masons' and Deloitte's) by ECSP1 to date and any additional advisor fees incurred will be payable in accordance with the agreed payment plan
4. A weekly progress call with Empower and the Council's legal and financial advisors

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

7. **ALTERNATIVE OPTIONS CONSIDERED**

7.1 If the Council fails to extend the loan, then on 1 October 2018 the loan repayment will be due in full and if it 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. The current refinancing arrangements currently in progress with Triodos and Thrive would most likely be abandoned.
3. 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.
4. Taking ownership of ECSP1 back into the Council may potentially reduce its attractiveness and subsequent value on the open market.

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

Financial Implications

- 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 the long term funding process 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 October 2018 are not considered to be the best option at this point in time, although this position is regularly reviewed.

Legal Implications

- 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.

Equalities Implications

- 8.3 There are no equalities implications related to this decision.

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
Councillor Member Decision Notice MAR18/CMDN/123
Councillor Member Decision Notice JUL18/CMDN/01

11. APPENDICES

11.1 Appendix 1 – Updated project plan of the refinance process