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

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| 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: No (Urgency Procedures Invoked) Unique Key decision Reference from Forward Plan: N/A |
| Is this decision eligible for call-in? | NO (Waiver of Call-in Procedures Invoked) |
| 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
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.
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 report is for Cabinet Member for Resources 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- 1.2 Appendix 1 is NOT FOR PUBLICATION in accordance with paragraph (s) 3of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to commercially sensitive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. To release the details of the project plan would disclose commercially sensitive information about Empower and the terms of the refinance agreement and disclosure would also be damaging to the Council's commercial interests

1.2 With the approval of the Chairman of the Growth, Environment and Resources Scrutiny Committee Urgency, Special Urgency and waiver of call-in procedures have been invoked to suspend the requirement to advertise the decision for 28 days, publish the decision for 5 days prior to publication, and to suspend the 3 day call-in period.

1.3 The urgent timescale is driven by external commercial factors. The Council had been reassured by Empower that full refinancing was progressing within agreed timescales. When it became clear that neither was the case the Council needed to spend time investigating and understanding why the outcome of Empower's refinancing process was not as expected, while considering the range of options now available to it. Those refinancing and other options currently under discussion with Empower LLP and external parties have only now reached a point at which specific recommendations and decisions can be made. The loan facility currently expires on 30 November 2018.

2. **TIMESCALES**

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| Is this a Major Policy Item/Statutory Plan? | NO | If yes, date for Cabinet meeting | N/A |
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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, decision JUL18/CMDN/01 and OCT18/CMDN/40

4. **CONSULTATION**

4.1 Consultation on the proposed refinance has been taken with the Council's advisors, Pinsent Mason and Deloitte as part of the due diligence process. Long term finance providers 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 December 2018 for 4 months, subject to the conditions set out in paragraph 6.8.

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 ECSP1 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

6.5 Decision OCT18/CMDN/40 approved the extension of the facility for a further two months to the end of November 2018. During this time the Council continued to receive a commercial rate on the loan and all advisor costs were recharged to Empower.

6.6 **Progress since October 2018**

The refinance of the Council's loan facility was progressing with Triodos Bank to provide the senior debt and Thrive Renewables the junior debt to Empower during October and November. The Council continued to receive a commercial rate on the loan and all advisor costs continue to be recharged to Empower

6.7 The due diligence process has now completed and following from this process the suitability of the original proposed refinance proposal is now to be reviewed in the light of alternative sources of finance available in the long term renewables financing market.

The details of the due diligence completed and a summary of the alternative sources of finance options and providers are detailed in Appendix 1

6.8 **Proposed Extension of Bridge Loan Facility**

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. This decision will also be subject to the following 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

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 December 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 refinancing negotiation 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 1 December 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 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
Councillor Member Decision Notice OCT18/CMDN/40

11. APPENDICES

- 11.1 Appendix 1 – (Exempt) Project plan of the refinance process