

CABINET	AGENDA ITEM No. 11
23 SEPTEMBER 2019	PUBLIC REPORT

Report of:	Peter Carpenter – Acting Corporate Director Resources	
Cabinet Member(s) responsible:	Councillor Seaton – Cabinet Member for Finance	
Contact Officer(s):	Carole Coe – Commercial Finance Manager	Tel. 384562

AMENDMENT TO ARRANGEMENTS WITH EMPOWER

R E C O M M E N D A T I O N S	
FROM: Acting Director Corporate Resources – Peter Carpenter	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. 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. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following a referral from CMT on 11 September 2019

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to:

- receive an update on the progress of the refinancing of the Council’s loan facility provided to ECS Peterborough 1.
- to authorise the extension of the current loan facility for a further two months to enable the loan refinance progress to complete.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.12. (f) ‘The determination of any lending facilities to the Council’s companies, partnerships and charities.’

2.3 There is an exempt annex attached to this report that is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it contains commercially sensitive information. The public interest test has been applied to the information contained within this exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it. To release the details of the refinancing agreement would disclose commercially sensitive information about Empower and the refinancing party and disclosure would also be damaging to the Council’s commercial interests

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

4.1 Background

In December 2014 the Council entered into a strategic partnership agreement with Empower Community Management LLP to deliver solar panels on residential properties. As part of this arrangement and subsequent additions to the original scheme, the Council invested capital funds totalling £23m which resulted in over 7,700 rooftop installations which have been providing free electricity for the householder. The Empower Loan is fully secured over the solar rooftop assets of ECS Peterborough 1 and is returning a commercial rate of return to the Council. This return is contributing towards the Budget position of the Council and helping to support the delivery of services. By continuing to finance the loan the Council is receiving income which is assisting with the alleviation of its Budget pressures.

The Council has received a net return of over £2.6m in the last four years from this loan and currently receives a net return of over £90k per month.

4.2 Proposal to Extend the PCC Funding Facility

The Facility has been extended from March 2018 by a series of Cabinet Member Decisions which are listed in paragraph 10.1, the last of which was in March 2019 extending the Facility to the end of September 2019 (MAR19/CMDN/98).

The proposed extension in March 2019 was approved in order to allow the Council to explore the proposals from seven major refinancing organisations who submitted Expressions of Interest in refinancing the Council's loan to ECS Peterborough 1.

4.3 Progress since March 2019

The seven Expressions of Interest were evaluated by the Council and its financial and legal advisors, Deloitte LLP and Pinsent Masons LLP. Following this evaluation two of the proposals were explored further.

Meetings were held between representatives of these two potential refinancing institutions, the Council and its advisors. Following those negotiations and further evaluation of the proposals, it was decided to proceed with one counterparty Global Tower Solutions (GTS). This was subject to a Directors Award Notice on 5 June 2019.

GTS is a financial investor in renewable assets whose aims are to acquire, construct and own/operate large scale clean energy generating assets globally.
(www.globaltowersolutions.com)

From the date of signature of the exclusivity agreement GTS and its representatives have been working on their technical, financial and legal due diligence.

This has been progressing well with the majority of the technical due diligence completing in August. The legal and financial advisors are currently working on the documentation required to complete the refinancing transaction. Further details are disclosed in exempt Appendix 1.

Although this work is well in progress, a short extension to the end of November is required to enable the legal transfer of ownership to complete in a structured way.

Under the ownership of GTS the social and financial benefits to tenants and the social landlords will be enhanced. In part, this will be driven by a more technologically advanced and reactive driven stewardship and maintenance programme which will improve solar yields and electricity

generation. GTS will also be offering the opportunity of a retrofit battery system to both landlords and tenants, again improving savings to the tenants and at no further cost to either party. Over time GTS will also be offering further data driven services which, if chosen to be implemented, will add further value to the landlords and tenants

4.4 Proposed Extension of Bridge Loan Facility

Progress will be monitored by a regular progress call with Global Tower Solution's advisors and the Council's legal and financial advisors to maintain momentum. During the period of the facility extension:

1. Interest accruing on the existing loan will continue to be paid by ECSP1 on existing commercial terms to the Council, in accordance with an agreed payment plan.
2. A weekly progress call will take place with Global Tower Solution's advisors and the Council's legal and financial advisors to monitor progress.

The Council will retain and reserve all rights during this period of facility extension.

5. CONSULTATION

- 5.1 Consultation on the proposed refinance has been undertaken with the Council's advisors, Pinsent Masons LLP and Deloitte LLP as part of the due diligence process. Long term finance providers have also been consulted.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The facility for the outstanding loan of £23.m to ECSP1 will be extended on 1 October 2019 for two months to enable completion of the current refinance process.

7. REASON FOR THE RECOMMENDATION

- 7.1 This short extension supports the loan refinance process and enables the smooth transition of the loan from the Council to Global Tower Solutions. During the period of the extension the Council will continue to receive an income from the interest which will contribute to the Council's MTFs savings targets.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 If the Council fails to extend the loan, then on 1 October 2019 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 concludes the long term financing process. 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 time to acquire the additional skills and personnel required to operate the ECSP1 business, in addition it would require additional advice from its legal and financial advisors Pinsent Masons LLP and Deloitte LLP and would need to procure a specialist technical advisor for this process.
2. The refinancing negotiation progress with Global Tower Solutions would be subject to considerable delay and incur further legal expense in order to reflect the change of ownership.

The Council can choose to continue funding for ECSP1 over the life of the solar panel assets, but:

1. the current loan was not constructed as a long term facility and a long term loan will require the implementation of a new loan facility; and

2. this course of action does not fit within the Council's current financial strategy.

9. IMPLICATIONS

9.1 Financial Implications

9.1.1 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.

9.1.2 The Council will receive returns from the interest income on the investment.

9.1.3 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 October 2019 are not considered to be the best option at this point in time, although this position is regularly reviewed.

9.2 Legal Implications

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 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.

9.3 Equalities Implications

9.3.1 There are no equalities implications related to this decision.

10. BACKGROUND DOCUMENTS

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

- 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
- Councillor Member Decision Notice NOV18/CMDN/57
- Councillor Member Decision Notice MAR19/CMDN/98

11. APPENDICES

- 11.1 Exempt Appendix 1 – Refinance proposals and process information