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| DECISION TITLE: AMENDMENT TO LOAN ARRANGEMENT |
| COUNCILLOR SEATON – CABINET MEMBER FOR FINANCE |
| January 2020 |
| Deadline date: 31 January 2020 |

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| Cabinet portfolio holder: Responsible Director: | Councillor Seaton – Cabinet Member for Finance Peter Carpenter – Acting Corporate Director Resources |
| Is this a Key Decision? | YES If yes has it been included on the Forward Plan: YES KEY/09DEC19/05 |
| Is this decision eligible for call-in? | YES |
| Does this Public report have any annex that contains exempt information? | NO |
| Is this a project and if so has it been registered on Verto? | NO |

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

It is recommended that Cabinet:

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. PURPOSE OF THIS REPORT

- 1.1 This report is for Cabinet Member for Finance 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 (e).

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. BACKGROUND AND KEY ISSUES

3.1 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 return of over £2.8m in the last four years from this loan and currently receives a net return of £70k per month. This return has been impacted by the increase in PWLB borrowing costs by 1% on 9 October 2019.

Extensions to the PCC Funding Facility

The Facility has been extended from March 2018 by a series of Cabinet Member Decisions and a Cabinet Decision in September 2019 which are listed in paragraph 10.1. The Cabinet Member Decision in November 2019 extended the Facility to the end of January 2019 (NOV19/CMDN/59).

The proposed extension in November 2019 was approved in order to enable the completion of the current refinance process as legal due diligence and documentation had not been fully completed.

Progress since November 2019 and proposed further extension to the Loan Facility

Legal documentation has been progressing, however this has not yet fully completed so a further small two month extension is required in order to complete the refinancing process with Global Tower Solutions. The Council is still confident that the Loan will be re-financed in this further period and is confident that now that a degree of financial stability has returned to the UK economy the re-financing process will proceed at pace.

However if completion does not take place within this further period, a further extension of six months will be required in order to progress the refinancing with an alternative long term investor. This alternative investor's proposal was evaluated in the summer but the decision was made to progress with Global Tower Solutions in preference, as the Global Tower Solutions proposal offered the residents additional benefits in conjunction with its intention to take ownership of the assets.

Progress will continue to 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 two month 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.

If the Council decides to progress with the second long term investor:

1. The Loan Extension will be extended by a further six months;
2. The Council will continue to receive the interest accruing on the existing loan;
3. The Council will receive regular progress calls from the new long term investor and its advisors;
4. The Council will retain and reserve all rights during this period of facility extension.

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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 initially be extended on 1 February 2020 for two months to enable completion of the current refinance process, and for a further period of six months if discussions with an alternative long term funder have been commenced

6. REASON FOR THE RECOMMENDATION

- 6.1 This initial 2 month short extension supports the loan refinance process and enables the smooth transition of the loan from the Council to Global Tower Solutions. In the event this has not completed or no longer offers the best value to the Council the additional six month extension will allow the Council to progress the refinancing of its loan with an alternative long term funding institution.

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.

7. ALTERNATIVE OPTIONS CONSIDERED

- 7.1 If the Council fails to extend the loan and wishes to continue the refinancing process with GTS, on 31 January 2020 the loan repayment will be due in full. 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 and Deloitte 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 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.

8. IMPLICATIONS

Financial Implications

- 8.1 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.

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

Carbon Impact Assessment

- 8.5 This decision is only a recommendation to approve the extension of an existing loan facility and as such has no carbon impact

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
Councillor Member Decision Notice NOV18/CMDN/57
Councillor Member Decision Notice MAR19/CMDN/98
Cabinet Report SEP19/CAB/43
Councillor Member Decision Notice NOV19/CMDN/59

11. APPENDICES

11.1 None.