

CABINET	AGENDA ITEM No. 6
21 SEPTEMBER 2020	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. Delegate to the Acting Corporate Director Resources and Director of Law and Governance the ability to finalise matters 1 and 2 above. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following a referral from CMT on 9 September 2020.

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 amendment of the current loan facility from a construction loan facility to a long term loan facility.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.12. ‘(i) *Approval of changes to service agreements in respect of KPIs, service levels and service standards.*’

2.3 There are exempt appendices attached to this report that are NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because they contain commercially sensitive information. The public interest test has been applied to the information contained within these exempt annexes 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 both the Council and ECS Peterborough 1 and disclosure would also be damaging to the Council’s current and future 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 £3.2m in the last five years from this loan and to the 31 March 2020 received £90k per month.

4.2 Extensions to the PCC Funding Facility

The original loan facility was contracted to terminate in October 2017 but within the original agreement the Council was given the opportunity to extend to March 2019 to continue to fund the existing and new projects.

All new projects were completed by March 2018 and from that date the facility has been extended by a series of Cabinet Member Decisions which are listed in paragraph 10.1, the last of which was in January 2020 extending the Facility to the end of September 2020 (JAN20/CMDN/75).

The proposed extension in January 2020 was approved in order to allow the Council two further months to complete a refinance process with Global Tower Solutions, and for a further six months in the event that discussions with an alternative long-term funder had commenced.

4.3 Progress since February 2020

Global Tower Solutions had concluded their due diligence on the portfolio and were in a position to proceed, however their long term funding facility, from which this project was to be financed, was put on to hold due to the COVID-19 emergency.

Due to the uncertainty within the financial markets at this time the Council requested its financial advisor, Deloitte LLP to undertake a review of the loan and the facility.

The focus of the review was the funding basis of the existing loan facility. When the original agreement was made in 2014 the Council provided a facility for the construction phase of the project and the interest rate was commensurate with commercial loans made for such purposes. The construction phase of the project was completed some time ago, but the interest rate payable was held at construction finance levels as re-financing talks were progressing. The portfolio now needs to be re-profiled in order that the loan interest rate reflects the commercial rate of a long-term funding partner as the portfolio construction has now completed. By re-modelling the loan and interest rate payable, loan repayments will be able to be made from the income the project receives.

The portfolio financial model has now been re-profiled to provide the Council with a commercial rate of interest reflecting the proposed amended loan facility and providing for loan principle repayments to be made alongside interest payments. Within this model ECSP1 will remain the owner of the assets and will continue to maintain the solar portfolio.

This new facility will enable the social and financial benefits to the tenants and social landlords to be maintained and with Empower remaining stewards of the portfolio, this will give them the longer term assurance of continuity to drive improved solar yields and electricity generation alongside investing in new technology which will increase the income generated by the 7,700 rooftops on which the solar panels are located. This additional investment is to be sourced by Empower and will not require additional funding from the Council.

4.4 **Key features of the new long term loan facility**

The loan will be paid to the Council at a commercial rate of interest and loan repayments will be made in accordance with an agreed process. The amended loan facility will be for a period of 15 years and interest and loan repayments made on a 6 monthly basis.

The Council will retain the rights from the original agreement in which it has the ability to 'step in' to take control of ECSP1 in a situation where there is a default on the loan

Periodic monitoring reports will be provided to the Council which will consist of a quarterly operating model report, quarterly management accounts, semi-annual financial statements and updated financial model and annual financial statements together with an annual budget. In addition, on an annual basis, a forecast of operating and maintenance charges and a lifecycle plan for replacement of inverters, modules and modems will be provided.

The financial covenants will include commercial Historic and Forecast Debt Service Cover Ratios and other commercial financial undertakings in relation to expenditure made from ECSP1 bank accounts.

The Council will also have the right to be consulted each time an election in relation to export tariffs can be made as well as the right to direct any renewal of power purchase agreements or FIT licensee agreement.

4.5 **Future of the Loan**

By re-modelling the loan facility the project will be put on a long term basis giving Empower the security to exploit the existing and emerging potential of the project which has always been to provide social and financial benefits to tenants and social landlords and to alleviate fuel poverty and provide a community benefits.

The Council will be able to remain as the long-term funding partner for this project, however it will retain the right to sell the loan if this fits in with its long-term strategic priorities when the financial markets are less volatile.

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. Empower have also been consulted.

6. **ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 The facility for the outstanding loan of £23m to ECSP1 will be amended to a long-term loan facility at a corresponding commercial rate of interest.

7. **REASON FOR THE RECOMMENDATION**

- 7.1 Due to the unprecedented effects on the financial markets arising from the COVID-19 pandemic, there is an opportunity for the Council to protect its investment in ECSP1 by re-modelling the loan on to a long-term funding basis. This will then allow the Council to either continue to receive a long term income from its investment and exploit any future benefit deriving from this source of

renewable energy and its location on roofs of 7,700 properties while placing itself in a position to sell the loan when market conditions stabilise.

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Take control of the assets

If the Council fails to extend the loan, then on 1 October 2020 the loan repayment will be due in full and if it is not paid, 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 which 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
2. It would require considerable 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.

Do Nothing

This is not an option as the current construction loan facility no longer reflects the portfolio position. The loan must be remodelled to reflect the completion of the construction phase of the project and to start the scheduled repayment of the outstanding loan.

9. IMPLICATIONS

9.1 Financial Implications

9.1.1 ESCP1 will continue to be funded by the Council during the period of the loan at a commercial rate of interest (in accordance with Market Economy Investor Principles).

9.1.2 The Council will receive returns from the interest income on the investment and loan repayments according to an agreed schedule.

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.

9.1.4 MRP Policy

The Council's MRP policy relating to secured loans is:

Secured Loans to third parties repaid in bullet form. : No MRP will be charged each year as reliance can be placed on the capital receipt that will be generated when the loan is repaid or, in the event of a default, the realisation of the security. If realisation of the security does not equate to the original loaned amount the Council will recognise the associated impairment and will charge MRP for the outstanding loan amount over the next MTFS periods.

The statement currently describes loans to third parties repaid in bullet form. This will be clarified in the next MRP policy update to make it clear that this also includes fully secured loans with partial repayment through the life of the loan.

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 The Council must consider whether the long-term loan is subject to state aid regulations. 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 in this instance 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.

9.4 **Carbon Impact Assessment**

9.4.1 This decision is only a recommendation to approve the amendment of an existing loan facility and as such has no current carbon impact. However, by continuing to fund the portfolio on a long-term basis, any new or emerging technologies reducing carbon impacts may be attached to this source of renewable energy and its location on 7,700 domestic rooftops.

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
Cabinet Report SEP19/CAB/43
Councillor Member Decision Notice NOV19/CMDN/59
Councillor Member Decision Notice JAN20/CMDN/75

11. **APPENDICES**

11.1 Exempt Appendix 1 – Heads of Terms for the amended loan facility
Exempt Appendix 2 – Statement by Financial Advisors Deloitte LLP

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