CABINET

CLIMATE CHANGE INVEST TO SAVE PROJECTS

URGENT BUSINESS

Report of Heads of Environmental Services, Health and Housing and Community Engagement

PURPOSE OF REPORT					
To seek Cabinet's approval to the proposals set out in the report					
Key Decision	**X**	**Non-Key Decision**		**Referral from Cabinet Member**	
Date Included in Forward Plan	**20/12/2011**				
The main part of the report is public. However, Appendices 1 and 2 are exempt from publication by virtue of paragraph, 3, of Schedule 12a of the Local Government Act 1972					

RECOMMENDATIONS

(1) That Cabinet re-affirms its decision of the 4 October 2011, namely :

That Cabinet approves the allocation of £750,000 from the General Fund's Invest to Save Reserve to install solar photo voltaic (PV) panels on the Council's municipal buildings.

That Cabinet approves the allocation of £1M from the Housing Revenue Account's Major Repairs Reserve to install solar photo voltaic (PV) panels on council housing communal buildings.

That a further report is brought back to Cabinet on developing the Council's wider approach to the use of renewable energy.

(2) That Cabinet notes the recent judicial review of the government's proposed changes to the tariff rates and the government's intention to appeal that decision in January 2012 and that Cabinet authorises officers to continue with this project and delegates to the chief executive the authority to proceed even if the parameters are changed, as long as the estimated payback period for the overall project does not exceed 15 years.

1 INTRODUCTION

1.1 In developing its Corporate Plan for 2010-13 Cabinet redefined the priority around climate change: "Prioritising reducing the council's energy costs and increasing income" should be the focus of Lancaster City Council's objective to "Tackle the challenges of climate change". (Cabinet Min No. 67 9/11/2010 refers).

1.2 At the 4 October meeting Cabinet considered an urgent business report on 'Climate Change Invest to Change Projects' and resolved that -

(1) That Cabinet approves the allocation of £750,000 from the General Fund's Invest to Save Reserve to install solar photo voltaic (PV) panels on the Council's municipal buildings.

(2) That Cabinet approves the allocation of £1M of from the Housing Revenue Account's Major Repairs Reserve to install solar photo voltaic (PV) panels on council housing communal buildings.

(3) That a further report is brought back to Cabinet on developing the Councils wider approach to the use of renewable energy. (minute no. 45 refers)

1.3 The decision was made because it supports the Economic priority in respect of 'Energy Coast' and Climate Change and the redefined priority around climate change: 'prioritising reducing the council's energy costs and increasing income' as the focus of the City Council's objective to 'tackle the challenges of climate change.'

1.4 The new financial incentives for renewable energy generation can provide income streams over the long term and other significant opportunities. In addition to the obvious benefits (free energy, long term cost savings and income generation) there are potentially wider benefits for our local communities, (greater energy security, CO_2 emissions reductions and a potential boost to the local economy).

2 REPORT

2.1 On Monday 31st October the Government published a document 'Feed –in Tariffs scheme: consultation on Comprehensive Review Phase 1 – tariffs for solar PV'.

2.2 The document made clear that the Coalition Government is committed to increasing the deployment of renewable energy across the UK in the sectors of electricity, heat and transport.

2.3 However it also makes it clear that it thinks that the current level of Feed in Tariffs that are paid to incentivise Solar PV projects is unsustainable especially within the context of dramatically reduced costs of solar panels and associated installation costs.

2.4 These changes were the subject of a Cabinet briefing note sent to members on the 7 November 2011

2.5 The Government's proposal will mean that for schemes starting after 12 December the feed in tariff rate will be reduced from 43p to 21p for small installations (up to 4 KW- eg house sized) and from 33p to 15.2p for the next size up (10-50KW)

2.6 In addition it proposes that multi-installation schemes that are commissioned after April 1, 2012 will be paid at 80% of these rates. What we are planning on doing would appear, at this stage, to be what the Government would call a multi-installation scheme; however, this position could change.

2.7 Also from April 1, 2012 there is a proposal that for schemes commissioned after that date only buildings that meet targets with regard to insulation will be able to qualify for Feed in Tariffs.

2.8 The impact of these changes is that the estimated payback period quoted in the 4 October report (7-8 years) now extends to between 11-13 years as suggested in the briefing note, which estimated 14 years.

2.9 A judicial review of the government's changes to the tariff system has declared them to unlawful in certain aspects and the government were not given the right to appeal. The judge refused the Energy Secretary permission to appeal against his ruling, saying his "prospects of success" were insufficient to justify permission. The minister must now ask the Court of Appeal itself to hear his case in the new year . So a possible best case scenario is we that revert back to our original 7-8 year payback period.

2.10 Since the October much work has been taking place to implement the project with the aim of having the panels installed and producing solar energy before the end of the financial year. A multi agency team has been assembled including City Council and County Council officers, independent legal, health and safety and technical expertise and advice.

2.11 A decision was taken early on in the project to develop a 'Framework Agreement' for renewable energies over a four year period with a number of contractors. A framework agreement is defined as an agreement with suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and quality as opposed to a one off tendering exercise.

2.12 A framework agreement has the benefit of reducing tender costs. A client can carry out one tender exercise for a number of projects rather than tendering each project separately, there will be a cost benefit. There is the possibility of economies of scale. The framework agreement will require the contractor to tender a price mechanism for the contracts that may be called off under the framework agreement.

2.13 The project team have called for submissions from a number of companies to be partners in this framework agreement. These have been received and evaluated by the project team and it is now ready to place a number of selected companies onto the framework and call off the first contract which will be to deliver solar PV installations to a number of municipal and communal housing buildings before the 31 March 2012

3 OPTIONS

	Option 1: Do not invest in solar PV installations.	**Option 2:** Reaffirm the decision to invest in solar PV technology and approve the establishment of a Framework agreement as the best way of delivering those schemes.
Advantages:	Allows Cabinet to consider other uses of the Invest to Save budget, either for other invest to save initiatives (potentially to generate savings sooner), or for alternative proposals to support its other proposed priorities (or indeed to help support service provision more generally)	Accesses the long term estimated financial benefits offered by the FIT scheme, reduces our energy costs and carbon footprint. Solar PV is a proven technology
Disadvantages:	Misses the opportunity to secure the estimated financial benefits offered by the FIT scheme, reduce our energy costs and carbon footprint. Not showing community leadership in developing energy efficiency technologies across the district addressing social and environmental issues as well as economic	Does not generate financial savings until the longer term – does not help with short / medium term budget strategies. Estimated pay back periods are not guaranteed. Shows community leadership in developing energy efficiency technologies across the district addressing social and environmental issues as well as economic

RISKS

The Council has no expertise in solar technology. Whilst it is mainstream activity in many other authorities the Council will need to continue to rely on independent expertise in this first phase.

It may be that it will not prove possible to invest the whole amount by 31 March 2012. But any significant delay in decision-making will increase that risk still further (or make it a certainty). It is anticipated there will be further changes to the tariff scheme post April 2012. Also, whilst solar PV is a proven technology, the estimated life of equipment is not guaranteed and inevitably there will be technological advancements in this field – these, the timescales for implementation and the general risks involved in making financial projections over a fairly long period mean that payback periods are by no means guaranteed and if Cabinet approves progress of the scheme, these risks must be accepted. In time, it could well be that the projects prove primarily environmental, rather than invest to save.

A further uncertainty relates to government policy in this area which is currently the subject of legal action, as set out in the legal implications below. Our understanding is that this report represents the government's current position on this matter though this may change subject to appeal. Again though, over the longer term potentially there could be other developments in policy, which could affect the financial aspects. On balance and given recent events, there is greater risk that any future changes are likely to worsen the financial pay back position rather than improve it.

4 OFFICER PREFERRED OPTION

Option 2 is the preferred option. It is further advised, however, that additional parameters should be adopted regarding the financial pay-back aspects; a maximum of 15 years is preferred, in view of the uncertainties but also to give some flexibility on the assumption that the Council is keen to deliver against its associated energy/environmental priorities. This maximum pay back parameter could be shortened, but it is not advised to lengthen it any further.

5 DETAILS OF CONSULTATION

This proposal has not been subject to any consultation.

6 SUMMARY

The new financial incentives for renewable energy generation can provide income streams over the long term and offer significant opportunities.

The technology is tried and tested, cost effective and productive.

In addition to the obvious benefits (free energy, long term cost savings and income generation) there are potentially wider benefits for our local communities, greater energy security, CO_2 emissions reductions and a potential boost to the local economy)

Whilst the tariff changes alter one part of the equation, what needs to be considered also is that unit costs of installed PV units have fallen significantly and electricity costs continue to rise so the relevant cost factors do change all the time.

The estimated net effect of these proposals is that based on reasonable assumptions, at this point in time, the payback period for an installation would increase from around 8 years to around 11-13 years maximum.

Therefore, Cabinet need to be aware, that from a financial context the proposed reduction has a significant impact on the returns that can be expected.

However, there is nothing else in the Government's proposals that we can foresee would cause us to reconsider the timescale within which we propose to deliver the project. In fact it reaffirms the need to move quickly.

Furthermore, the project needs to be considered within the context of the wider environmental, social and economic benefits that it aims to deliver.

All those points made, there are some fairly significant risks attached to implementation timescales and the pay back periods more generally, which must be recognised.

RELATIONSHIP TO POLICY FRAMEWORK

CORPORATE PLAN Supports Economic priority in respect of 'Energy Coast' and Climate Change

CONCLUSION OF IMPACT ASSESSMENT

Reducing emissions will provide a positive impact to the local environment.

FINANCIAL IMPLICATIONS

The detailed financial implications of the project (based on using the contractor who scored highest in the tendering exercise) are provided in –

EXEMPT APPENDIX 1- this provides the financial model of the project assuming it can be completed by the end of the financial year and assuming the feed in tariff rate that the government imposed on Dec 12th (which is now the subject of legal challenge).

EXEMPT APPENDIX 2- this provides the financial model of the project assuming that only a proportion of it can be completed in this financial year and the remainder is completed in 2012/13. It also assumes that the government will introduce a reduced tariff for multi installations on April 1 2012 and will insist on buildings being energy compliant to qualify for the feed in tariff.

The recommendations in this report are to invest in the installation of PV panels on the Council's municipal buildings held within the General Fund and communal buildings /flats held within the Housing Revenue Account. Full financial appraisal of each individual scheme cannot be done at this stage however based on initial discussions with industry experts it is expected that a typical investment in PV panels will generate income over 25 years, with payback potentially between 11 to 13 years. Payback is longer than the general guidance given in the MTFS, but the schemes may be considered (within the requirements of the Prudential Code) as they meet the Council's priority on climate change and should continue to generate income for long after the initial outlay have been recovered.

It is not known which municipal or HRA buildings can be fitted with PV panels or the final size of the system that can be housed on each building; this will be determined by survey carried out by the supplier as part of the tender and construction process.

However, the financing options of the proposals set out in this report are set out below:

i) GF - MUNICIPAL BUILDINGS
Within the 2011/12 budget, Council has set aside £1.44M for Invest to Save schemes, of which a maximum investment of £750K is being proposed in this report, to be used to finance investment in PV panels. £175K from this reserve has been earmarked for boiler and other heating works at Lancaster Town Hall.

ii) HRA - COMMUNAL BUILDINGS/FLATS
The HRA does not currently have a specific reserve set up for Invest to Save initiatives, however, the proposals in this report to invest a maximum of £1M, can be met from the Major Repairs Reserve which currently stands at £6.9M and was set up for the purpose of funding major works to the Council Housing Stock.

Each individual scheme will be subject to full business case appraisal by the established Invest to Save project board.

Returned tenders are within the budgets identified above.

To date approximately £20K has been set aside to cover costs incurred to date for legal and health and safety advice, project management capacity and technical expertise and advice to guide the project team through this process.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and her comments reflected within the report. She would reiterate the need to consider the potential benefits (and risks) of applying the funds identified for solar PV against other potential uses of the funds, in reaching a final decision.

LEGAL IMPLICATIONS

In the recent High Court case referred to in the report, the claimants applied for judicial review of a decision of the Secretary of State for Energy and Climate Change concerning proposed modifications to feed-in tariffs that were payable for electricity generated by solar panels. The Secretary of State had introduced a scheme in relation to small solar panel systems to encourage the installation of electricity-generating technology, requiring licensed electricity suppliers to pay money to owners for every kilowatt hour of electricity generated. By the Energy Act 2008, the Secretary of State could modify the conditions of electricity licences granted by OFGEM but was required, before making such a modification, to allow a consultation period with relevant persons. The Secretary of State proposed to reduce the feed-in tariff under the scheme with the intention that the modifications would take effect prior to the expiry of the consultation end-date. The issues to be determined in the case were whether (1) judicial review was available to challenge the Secretary of State's proposal, which had not yet been passed as law; (2) whether the 2008 Act gave the Secretary of State power to amend the feed-in tariff; (3) whether the proposal was to effect a modification to the feed-in tariff retrospectively. The claimants submitted that the proposal had a significant impact on the market and that the proposal amounted to a retrospective change.

Although the full judgment of the 21st December is not yet available, it is understood that the court held: (1) that where it was intended to give effect to a proposal by a statutory resolution or other similar procedure, the lawfulness of the proposal could be subject to judicial review, especially where, as in the instant case, the proposal had a significant impact on the market, (2) that it was doubtful whether the Secretary of State had a power to amend the feed-in tariff. OFGEM had been given the power to modify standard conditions, including those relating to feed-in tariffs, which was subject to a veto by the Secretary of State, not directions. There was a strong argument that Parliament had intended that, once the scheme had been established, it was for OFGEM, not the Secretary of State, to make changes. (3) that on the assumption that the Secretary of State did have such a power, there was a strong presumption against retrospective legislation which might be overridden by express language or clear Parliamentary intention. In the instant case, Parliament had expressly provided that the Secretary of State had to consult before making a modification. The whole tenor of the scheme was prospective, and in circumstances where the proposal had an adverse impact, such modifications could not be made before consultation. Therefore the proposal was unlawful and if, following the proposal, such a modification was made it would be unlawful.

It is not yet known whether the Secretary of State will seek leave to appeal, and therefore the effect of the judgment is uncertain at this stage.

Following the Cabinet decision of the 4th October 2011, independent legal advice has been procured leading up to the development of the Framework agreement referred to in the report, and this will continue to be provided up to the point of contract award.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and her comments are incorporated in the report.
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