

Report to: **Council**
Date: **19th July 2022**
Title: **Fusion Solar Investment Proposal**
Portfolio Area: **Leisure – Cllr T Leech**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: Immediately following this meeting.

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RECOMMENDATION

That the Council:

- 1) Approves a change to the funding proposals to facilitate the investment in and installation of solar panels on the Council's two leisure centres such that:
 - i) The Council funds the acquisition of the solar panels direct as part of its Capital Programme for 2022/23 (instead of making a loan to Fusion to do the same) and approves a capital budget of £300,000 for solar panel investment on the Council's leisure centres, funded by either PWLB borrowing or internal borrowing depending on prevailing interest rates.**
 - ii) A separate management agreement is drawn up between the Council and Fusion, to the benefit of the Council, so that the Council annually receives an income payment from Fusion of the same amount of the repayments that the Council would have received from Fusion from the loan repayment.****

- 2) Grants an exemption to its procurement rules such that it can rely upon the procurement that Fusion have undertaken to get a contractor ready to install the panels for the price agreed.**
- 3) Delegates approval to the Section 151 Officer, in consultation with the Leader, the lead Hub Member for Leisure and the Director of Place and Enterprise, to agree any necessary contract amendments, the management agreement between Fusion and the Council referred to in 1ii) above and the structure of the borrowing referred to in 1i) above as part of the Council's overall Capital Programme.**

1. Executive summary

- 1.1. The Council approved an investment of up to £300k in solar panels across both Council leisure centres to reduce the centres' utility bills and aid their financial sustainability. The investment was to be a commercial loan which would also have derived a small income stream for the Council.
- 1.2. Detailed treasury management advice has been procured to deliver this Council ambition, which has highlighted some risks around state aid and subsidy control, which can be mitigated but there has been clarity that this will take some time and would have slowed down the delivery of the project.
- 1.3. In view of the delivery timescales for the project, an alternative and simpler approach is now recommended, to achieve an identical outcome. This would see the Council paying the supply chain direct for the installation and the solar investment and the £300,000 would form part of the Council's Council Programme for 2022/23 (with technical oversight from both Fusion and the Council).
- 1.4. A separate management agreement would be drawn up between the Council and Fusion, to the benefit of the Council, so that the Council annually receives an income payment from Fusion of the same amount of the repayments that the Council would have received from Fusion from the loan repayment.
- 1.5. This approach reduces treasury management risks, expedites the programme, but does require the Council to rely upon a private sector procurement process (conducted by Fusion) and as such requires an exemption from the Council's Contract Procedure Rules.

2. Background

- 2.1. The Council is committed to reducing carbon emissions in West Devon, through its Scope 1,2 and 3 emissions. Having measured the Council's carbon footprint, and identified that the carbon emissions of the leisure centres are one of the biggest emitters, the Hub Committee and Council resolved to loan money to Fusion so that solar panels could be installed as below:

HC 86/21 - RESOLVED

1. *That the progress on plans aligned to the aim of the Council being net-zero by 2030 and increasing biodiversity on its own land by 10% by 2025, be noted;*

That Council be RECOMMENDED to delegate authority to the Section 151 Officer, in consultation with the Leader of the Council and the lead Hub Member for Finance to:

2. approve and agree the lending terms to Fusion Leisure for a loan of up to £300,000 to facilitate solar panel installation across both WDBC Leisure Centres over the remaining term of the leisure contract, in accordance with treasury management advice; and
3. update the Council's Capital Strategy, Investment Strategy and Treasury Management Strategy for 2022/23 for a £300,000 loan provision to Fusion Leisure for the solar installation, in accordance with treasury management advice.

- 2.2. The Director of Strategic Finance and Director of Place and Enterprise have been working to deliver against this Council decision with Fusion including procuring detailed Treasury Management advice, to ensure that the loan can be granted without subsidy control and state aid risks.
- 2.3. In doing so, it has become apparent that a simpler route to achieve an identical outcome is available. Rather than loan Fusion the money for them to install the solar panels, the Council can instead pay for the installation of the panels direct to the suppliers and set up a separate management agreement so that the Council annually receives an income payment from Fusion of the same amount of the repayments that the Council would have received from Fusion from the loan repayment.

- 2.4. This approach overcomes the following issues:
 - 2.4.1. The risk of any State aid challenges
 - 2.4.2. Ownership of solar panels (they will be owned by the Council this way)
 - 2.4.3. Risk of default on the loan (as there won't be a loan structure with this route)
 - 2.4.4. Timeline – there has been clarity that resolving the treasury management issues would have taken some time and would have slowed down the delivery of the project.
- 2.5. To follow this proposal, the Council would need to rely on the procurement process that Fusion have undertaken to line up a supply chain and get quotes for the works. Officers have reviewed this process, which included approaching three suppliers. A local supplier provided a full quote and undertook multiple site visits.
- 2.6. Fusion's procurement process does not meet the processes and procedures that the Council is required to follow had it been leading the procurement process and therefore we would require an exemption from these requirements to be approved, so as to proceed.
- 2.7. Therefore the Council will require an exemption from its Contract Procedure Rules to be approved.
- 2.8. Technical data on the relative outputs and performance of the proposed solar arrays for each leisure centre are contained in Appendix A. Notably, they show a forecast saving of over 135,000 Kge of CO2 per year across the two centres.

3. Outcomes/outputs

- 3.1. The outcome of this report is purely to change the approach and financial treatment of the project previously approved by the Hub Committee and Council to facilitate installation of solar panels on the two leisure centres in West Devon.
- 3.2. Officers recommend a change to the approach, with the Council making the investment directly with the supply chain, and no longer needing to loan the money to Fusion.
- 3.3. This approach will expedite the delivery of the project and mitigate treasury management risks.

4. Options available and consideration of risk

- 4.1. The risk of this approach is one of procurement and delivery oversight as follows:
 - 4.1.1. The private sector does not need to meet public sector procurement regulations and so the supplier that is lined up to deliver the solar panels was sourced through a light touch market engagement.

4.1.2. The Council would need to grant an exemption from its procurement regulations so as to rely upon this approach and ensure that the project gets delivered in a timely manner with no treasury management risk (risk of challenge against subsidy control and state aid).

4.1.3. As the Council would be responsible for the delivery of the solar panels, it would also need to oversee the project. To mitigate this risk, Fusion have offered to give technical oversight to the project (as they would have done had they been paying the supply chain). This mitigates a significant amount of the project management requirement for the project and leaves only the Client oversight which will be resourced by the Assets team.

5. Proposed Way Forward

5.1. That Council support the recommendation to ensure the previous Council decision can be delivered in a timely manner, with less treasury management risk.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	y	<p>The Public Contracts Regulations 2015 prescribe the procedures by which contracts for goods, services, supplies and works above prescribed thresholds must be awarded. In the case of a works contract the threshold is £5,336,937 (including VAT). Below that threshold the Council is able to determine its own procedure rules to promote good procurement practice, public accountability and to deter corruption.</p> <p>The contract for the installation of solar panels to provide electricity is a works contract. As such it is subject to the Council's Contracts Procedure Rules. The Contract Procedure Rules as at the date of writing require the procurement of all such contracts to comply with the Rules. However, the Council and the Hub Committee can authorise exemptions from the requirement to seek quotations or invite tenders. This is in addition to the ability of exemptions to be granted in exceptional circumstances by certain officers in consultation with specified officers and members.</p>

Financial implications to include reference to value for money	y	<p>A separate management agreement would be drawn up between the Council and Fusion, to the benefit of the Council, so that the Council annually receives an income payment from Fusion of the same amount of the repayments that the Council would have received from Fusion from the loan repayment. An illustration of this was set out in Appendix A of the Hub Committee report on 12th April 2022.</p> <p>Installing solar arrays will reduce carbon emissions, reduce Fusion's energy bill costs and add to Fusion's financial resilience by lessening their exposure to energy price rises. The savings that Fusion will make on their energy costs will enable them to pay the income payments as part of a separate management agreement.</p> <p>The Council's Capital Programme is funded overall by borrowing, capital receipts and Government grants. The solar panel investment for the Council's two leisure centres would be funded either by PWLB borrowing or internal borrowing depending on prevailing interest rates (and the financing of the Capital Programme as a whole) and repaid by the income received from the separate management agreement with Fusion.</p>
Risk		See above
Supporting Corporate Strategy		Climate Change – see 2.8
Climate Change - Carbon / Biodiversity Impact		As previous report to Council
Comprehensive Impact Assessment Implications		
Equality and Diversity		N/A
Safeguarding		N/A
Community Safety, Crime and Disorder		N/A
Health, Safety and Wellbeing		

Other implications		
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Supporting Information

Appendices:

Appendix A – Solar Array Performance Details

Background Papers:

Hub Committee report – 12th April 2022 – Climate Change and Biodiversity Action – Council net-zero approach