



Minutes

Name of meeting	SPECIAL CORPORATE SCRUTINY COMMITTEE
Date and Time	MONDAY 28 SEPTEMBER 2020 COMMENCING AT 3.00 PM
Venue	VIRTUAL (MS TEAMS)
Present	Cllrs R Hollis (Chairman), D Andre, V Churchman, S Hendry, J Hobart, J Jones-Evans, M Lilley and C Quirk
Cabinet Members	Cllrs Paul Brading, Steve Hastings, Stuart Hutchinson, Dave Stewart, Brian Tyndall, Councillor Ian Ward and Wayne Whittle
Also Present	Cllrs G Brodie, A Garratt Christopher Ashman, John Metcalfe, Paul Thistlewood, Megan Tuckwell, Chris Ward and Geoff Wild
Apologies	Cllr G Kennett (Co-opted)

1. **Declarations of Interest**

Cllr Lilley declared an interest in Minute 20 as a trustee director of Wight Community Energy.

2. **Call In - Cabinet Decision 21/20 - Loan Investment in Perpetuus Tidal Energy Centre (PTEC)**

The Committee considered the call in of the decision taken by the Cabinet on 10 September 2020. The chairman reminded those present that the Committee could make recommendations or comments to the Cabinet but were unable to amend the decision.

Cllr Michael Lilley, as the lead member, presented the reasons for the Call-In. At its meeting on 8 September 2020, the Corporate Scrutiny Committee supported the recommendation that the Cabinet make no further investment in PTEC at this time, and to authorise PTEC to raise the required funds by selling up to two thirds of the council's shareholding in the company.

At the meeting of the Cabinet on 10 September 2020, additional information regarding the relaxation of loan conditions was made available to the Cabinet and a further recommendation was made; that the council's original loan term be extended for five years, be repayable alongside the other loan which capitalised the company, and the council release its position on the PTEC Board subject to additional funding being secured.

It was believed by Councillor Lilley that if the Corporate Scrutiny Committee had been given the additional information it could have affected its decision to support the proposals. Concerns were raised that the Council may be at risk of judicial review as it was unclear whether there had been sufficient consultation and whether correct procedures were followed.

The Lead Member advised that the intention of the Call-In was to fully scrutinise the information that was not originally provided, and to overcome any concerns that the decision would result in the misappropriation of Council funds in favour of a private company, without scrutiny or consideration of supporting information.

Reference was made to a series of questions that had been submitted prior to the meeting. These questions and their responses are attached as Appendix 1 and form part of these minutes.

The Monitoring Officer confirmed that the decision taken by the Cabinet was lawful. The Director of Finance and Section 151 Officer confirmed that the decision was within the Council's Policy Framework and budget. A statement was provided and is attached as Appendix 2 and forms part of these minutes.

The Leader and Cabinet Member for Strategic Partnerships responded to the statement made by those Calling-In the decision and outlined how and why the Cabinet made its decision. It was advised that a decision to do nothing was likely to lead to the demise of the PTEC project, and without significant progress there was a risk that the project would collapse, along with the loss of the council's existing £1 million investment.

Members of the committee raised questions on a number of issues which included the relaxation of the loan conditions, a change to the project's terms and conditions, and access to EU funding. Clarification was provided by the Leader, the Cabinet Member for Business and Regeneration, the Section 151 Officer and the Chief Executive.

The lead member for the Call-In sought the support of the committee to recommend that the Cabinet not change the terms of the existing loan in any way; and continue to have a place on the Board until an independent report provides evidence that changes to existing arrangements would be of benefit to the Council and Island residents in ensuring the loan is secure, would be repaid, Island interests be protected, and the promised benefits be realised.

The recommendation was lost, and the chairman sought an alternative recommendation. Following discussion, a vote was taken, and it was;

RESOLVED:

THAT the decision taken by the Cabinet continue to be supported.

CHAIRMAN

Corporate Scrutiny Committee: Monday 28 September 2020

Call in of the Cabinet's decision with respect to the, "Loan Investment in Perpetuus Tidal Energy Centre (PTEC)", taken on Thursday 10 September 2020.

Questions (with answers) from Councillor Michael Lilley

- 1. The Additional recommendation made to Cabinet on 10th September 2020, involved the conditions and security of the current outstanding £1M loan from IW Council to PTECH. Please can we have site of the original conditions of this loan alongside the now suggested conditions?**

The details are summarised in the report to Cabinet of the 8 January 2013, when the decision was taken to invest £1m as a loan to PTEC. Paragraph 30 of the report sets out that: *"the council's investment of £1 million will be treated as an unsecured loan (attracting interest at base rate plus 1% per annum)"*

- 2. Was there a risk analysis of this additional recommendation? If so, please can we have sight of this?**

The risk which sets the context for this decision is set out in para 45 of the paper: *"There is a major risk that if the council does not make this investment, the project will end by default and so will never secure the economic and environmental benefits expected from the council's initial investment"*.

And in para 52, *"However, the risk is high that PTEC will not be able to raise the funds through this route and that the project will fail and not deliver the anticipated economic benefits to the Island or the council"*

- 3. What is the financial and legal implications and risks associated with the recommendation to the current loan? What is the advice and opinion of these implications to IWC from the Director of Finance, Chris Ward, and the Monitoring Officer, Geoff Wild? Would it be possible for Mr Ward and Mr Wild to attend Corporate Scrutiny so the Committee could ask questions?**

This advice will be available prior to the meeting.

- 4. As the changes to the conditions of the loan could increase risk of IWC loosing £1M, it could be seen as an issue for Audit? Has the Audit Committee had sight of the PTECH proposals and have the external and internal auditors been referred to and if so, please can we have their comments? Is PTECH listed on Audit's risk register along with a mitigation strategy to ensure IW Council's loan is secure? Please can we have sight of the risk register entry and the mitigation strategy?**

The role of the audit committee (see the constitution) is, *"to provide independent assurance of the adequacy of the risk management framework and the associated control environment including independent scrutiny of the council's financial and non-financial performance to the extent that it affects the council's exposure to risk and weakens the control environment. And to oversee the financial reporting process, including the external audit of the council's"*

accounts and any matters arising from that audit.” Therefore, these issues are without the remit of the audit committee

- 5. IWC have an appointed director on the board of PTECH. Is this appointment listed on IWC outside bodies register, who appoints this director and who is he/she? Would it be possible to ask them to attend the Call-In meeting? Again this would help us.**

Under the original shareholders’ agreement, an officer represents the council on the Board. The role is undertaken by the Economic Development Project Manager and as a formal director of PTEC one of their 7 statutory duties is to promote the success of the company.

- 6. What assets do PTECH currently have and what security is available for the current IWC loan in the event the loan is defaulted?**

The company’s only assets are its licences for the development of the site, which expire shortly. The council’s loan is unsecured (see answer to question 1)

- 7. Originally PTECH requested a further £250K loan in addition to current loan to secure the seabed and other licences needed as they were about to expire? Has the expiry date passed and what is the position on these licences as without them PTECH has no viability?**

These details are set out in para 14 of the report to Cabinet:

“Agreement for Lease (providing the option for a 25-year lease) – issued by The Crown Estate to the Isle of Wight Council in 2012. Renewed under Member’s delegated decision in January 2017 and further renewed for the period to April 2021”.

“Marine Licence and section 36 (s36) consent – granted by the Marine Management Organisation (MMO) - the s36 consent is due to expire in April 2021 and the marine licence will need to be extended”.

- 8. Does PTECH and IW produced tidal energy have an agreement with National Grid that gives them a guaranteed % of output that can be exported to grid with a guaranteed income? For example: IW has an agreed amount of renewable and other energy such as from Cowes Power Station that it can export/sell to National Grid and this output is divided percentage-wise into types of energy produced. What is the % for Tidal Energy set by National Grid/SSE and what is the current value? This would be seen as an asset to PTECH and an asset that you would expect IWC has as security to loan?**

The current arrangements for grid connections are set out in para 14 of the paper to Cabinet:

“Grid connection – PTEC will either negotiate an extension of the current grid connection offer to include a payment schedule linked to project milestones and / or an alternative flexible connection or a new connection application will be made, which at this stage is the likely route forward.”

- 9. The original PTECH proposal was for a Tidal Wave test bed facility for turbines not actually producing energy? What is the current actual proposal?**

The report to Cabinet in January 2013 identified that the project if delivered in full, *“will deliver up to 20 MW of renewable energy into the Island’s grid”*. This was later increased to 30MW, which is the current position.

- 10. Is there any information available within IWC of the current market and trend position of tidal wave produced energy In the UK and World market that would inform the risk to IWC? What is the current price of tidal energy as against other renewables such as Solar and Wind which are not subsidised?**

No information available.

- 11. The planning permission for the land base for the PTECH proposal has expired and what is the Planning Officer’s view of an application in the future? Is the land still available? Does PTECH own the land?**

The cabinet are making an investment decision on basis of the information presented in the report. A view from the authority acting in its capacity as the Local Planning Authority (LPA), distinct from the cabinet acting as an investor, will be sought if necessary.

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Committee	Corporate Scrutiny Committee
Date:	28 September 2020
Report of	Director of Finance (S.151 Officer)
Subject:	Call In - Cabinet 10 September 2020 loan investment in Perpetuus Tidal Energy Centre (PTEC)

Advice of S.151 Officer

Background

The original loan to PTEC was made under the Council's borrowing powers for Capital Expenditure purposes in order to meet its economic and environmental objectives. The loan was not provided for the purposes of seeking a commercial return.

The initial investment, by way of loan, of £1m is the total financial commitment that has been made by the Council in pursuit of these economic and environmental objectives and was intended to provide "start up" funds for a new commercial venture. It is normal for Local Government (or other Central Government Departments) to provide public subsidy where there is a "market failure" or "market viability gap" so long as that subsidy is used to promote activities that it has a legal duty or power to provide.

By definition, new ventures into new markets contain higher levels of risk than more conventional investments into established markets with proven track records. In such circumstances, the Council should ensure that any such investment is consistent with its risk appetite, there is a compelling case for the investment and that it has undertaken an appropriate level of due diligence in order to provide assurance that public funds are not placed at undue risk.

Evaluation

The advice provided by the S.151 Officer to the Cabinet was that the balance of the risks and benefits of continuing to invest was preferable than not providing any further investment. This was judged as follows:

1. The emerging technology remained active in the Government's future energy policy
2. The due diligence report for the Council's appointed experts judged that despite the risks involved, investment was preferable
3. It enabled further external funding to be levered in which in turn provided a greater opportunity for the Council's loan to be repaid and to increase the value of its shareholding in the company
4. There was no known alternative investor that was likely to be found within the required timescales
5. The alternative of no further investment in PTEC was likely to lead to closing of the project and the loss of the economic and environmental benefits plus the

loss of the Council's £1m loan. This view was shared by the Council's appointed due diligence experts.

Commentary on Option E

The S.151 Officer's advice in relation to Option E "authorise PTEC to raise the required funds by selling up to two thirds of the council's shareholding in the company" remains.

Option E facilitates the continued investment in PTEC and therefore the judgments set out previously remain intact.

Option E compared with other "Continued Investment" options provides the following benefits:

1. Reduces the Council's financial exposure into a project that contains risk and uncertainty, thereby not placing further public funds at risk.

In order to enable such an agreement the Council has provided the following in compensation:

1. Waived its "Senior Debt" ranking for its loan such that each loan provided to PTEC is now of equal ranking for repayment
2. Relinquished 10% of its 15% shareholding in the company

Whilst these concessions represent a dilution to the Council's investment, they have provided the opportunity for continued investment into PTEC at no additional cost to the Council, thereby protecting public funds.

In circumstances where the project fails, both the loan and the shareholding would be of no value and all of the Council's investment would be lost.

In these circumstances, in consideration that the investment was made for economic and environmental objectives (not commercial) and in view of the risks, there is a value for money case for the Cabinet to adopt Option E.

The decision requires no further funding and is within the Council's Policy Framework and Budget.

Monitoring Officer advice

In relation to the lawfulness or rationality of the decision being taken. Under the Local Government 2003 Act, there is a general power for an authority to invest for any purpose relevant to its functions under any enactment, and for the purposes of the prudent management of its financial affairs. (s12 LGA 2003). In carrying out its functions of investment, a local authority shall have regard to such guidance as the Secretary of State may issue, including statutory guidance on Local Government investments as well as the statutory codes of practice issued by CIPFA.

If the additional recommendation accords with the codes then the decision will be lawful and the authority has the power to make that decision as provided by s12.