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.

<u>Commentary on Option E</u>

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.