

# Cabinet



Forest Heath  
District Council

<b>Title of Report:</b>	<b>First Year Review of Performance of the Council's Solar Farm and future of its wholly owned Company Greenheath Energy Ltd</b>	
<b>Report No:</b>	<b>CAB/FH/17/052</b>	
<b>Report to and date:</b>	<b>Cabinet</b>	24 October 2017
<b>Portfolio holder:</b>	Councillor Stephen Edwards Portfolio Holder for Resources & Performance <b>Tel:</b> 01799 530325 <b>Email:</b> <a href="mailto:stephen.edwards@forest-heath.gov.uk">stephen.edwards@forest-heath.gov.uk</a>	
<b>Lead officer:</b>	Rachael Mann Assistant Director (Resources and Performance) <b>Tel:</b> 01638 719245 <b>Email:</b> <a href="mailto:rachael.mann@westsuffolk.gov.uk">rachael.mann@westsuffolk.gov.uk</a>	
<b>Purpose of report:</b>	To report on performance since the purchase of Toggam Solar farm in July 2016 and to seek approval of the following:  (i) a request for small company audit exemption. (ii) Support on the future status of Greenheath Energy Ltd	
<b>Recommendation:</b>	<b>It is <u>RECOMMENDED</u> that subject to full Council:</b>  <b>1. Note the First Year Review of Performance of the Council's Solar Farm.</b>  <b>2. Forest Heath District Council as the shareholder of Greenheath Energy Ltd agree to the small company audit exemption being applied and the Council give financial guarantee over Greenheath Energy Ltd; and</b>  <b>3. Forest Heath District Council as the shareholder of Greenheath Energy Ltd support the Directors to apply to strike off</b>	

<b>Greenheath Energy Ltd on their behalf.</b>			
<b>Key Decision:</b>  <i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i>	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>		
<b>Consultation:</b>	The directors of Greenheath Energy Ltd, S151 and monitoring officer and portfolio holder for Resources and Performance		
<b>Alternative option(s):</b>	The Company could continue to be in existence, however it is likely to remain dormant and will continue to demand support of its Directors and Officers through the filing of accounts, returns and inclusion in the Councils own statement of accounts.		
<b>Implications:</b>			
<i>Are there any <b>financial</b> implications? If yes, please give details</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • As set out in this report		
<i>Are there any <b>staffing</b> implications? If yes, please give details</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<i>Are there any <b>ICT</b> implications? If yes, please give details</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<i>Are there any <b>legal and/or policy</b> implications? If yes, please give details</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> A decision is required with respect to the status of Greenheath Energy Ltd following the hive off of Toggam Solar Farm to Forest Heath District Council.		
<i>Are there any <b>equality</b> implications? If yes, please give details</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>Risk/opportunity assessment:</b> <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>			
<b>Risk area [may change to be linked to the decisions]</b>	<b>Inherent level of risk (before controls)</b>	<b>Controls</b>	<b>Residual risk (after controls)</b>
The cost of an external audit of Greenheath Energy Ltd is disproportionate to the value it brings to the councils accounts	Medium	Members to consider support of the small audit exemption	Low
The company is left dormant and draws resources from Forest Heath DC for little future value	Medium	Members to consider future of company and proposed strike off	Low
<b>Ward(s) affected:</b>		All Wards	
<b>Background papers:</b> <i>(all background papers are to be published on the website and a link included)</i>		<a href="#">Report No: CAB/FH/14/010</a> (Developing a Community Energy Plan) - Cabinet: 9 December 2014  <a href="#">Extraordinary Council: 6 August 2015:</a> ( <b>Exempt</b> Report No: COU/FH/15/026) <a href="#">Extraordinary Council: 25 August</a>	

	<a href="#">2015</a> : ( <b>Exempt</b> Report No: COU/FH/15/027)
<b>Documents attached:</b>	Appendix 1 - Greenheath Energy Ltd - Audit Requirements

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## **1. Key issues and reasons for recommendation(s)**

### **1.1 Background**

1.1.1 At its meeting on 27 February 2015, Full Council resolved that,

- The development of a West Suffolk Community Energy Plan, be supported; and
- Appraisal of other energy-related options set out in the report (CAB/FH/14/010) with a view to receiving further investment proposals, be supported.

1.1.2 One of the options discussed in the report was the Council developing its own or buying a solar farm. The benefits of this option included providing the Council with significant long term, stable revenue along with the additional potential opportunities to use some of the electricity in its own and partners' buildings through an arrangement called "sleeving", or sell the electricity to its residents.

1.1.3 As part of the Community Energy Plan's identified opportunities, the Council became aware of a commercial opportunity to buy a fully operational solar farm at Toggam Farm, Lakenheath.

1.1.4 A comprehensive pre-acquisition due diligence process was undertaken to confirm the legal, commercial and technical soundness for investment. In September 2015, the Council approved, subject to conditions being met, the acquisition of the solar farm development company, Greenheath Energy Ltd, incorporating Toggam Solar Farm, a 12.4 MW solar farm in Lakenheath with a purchase price of £14.5 million. The acquisition took place at the end of July 2016, with the Council taking ownership of what is still one of the largest local authority-owned solar farms in the UK.

1.1.5 The solar farm covers 17.5 hectares (43 acres), features 47,748 solar panels, over 300 inverters and 189 miles of cabling. The electricity generated at the site is supplied into the national grid and made available to the wholesale electricity market. This value is augmented by generating benefits that are derived from the state. Toggam Solar is accredited with the energy regulator (Ofgem) and entitled to receive, for a period of 20 years following accreditation, renewable obligations certificates ("ROCs") for each megawatt hour of power produced which are redeemed by holders for a monetary entitlement.

1.1.6 The electricity and ROCs are sold in accordance with a Power Purchase Agreement (PPA) to a licensed energy supply company via the grid. When the Council purchased Greenheath Energy Ltd, the solar farm was operating under a one year PPA with OPUS Energy with a total (power sales and ROC) value of £77.12 per MWh which ran to the end of March 2017.

1.1.7 FHDC entered into a new 12 month PPA with a value of £104 per MWh which will run to the end of March 2018. This PPA was achieved using the renewable energy auction platform E-POWER, with OPUS Energy being the successful bidder.

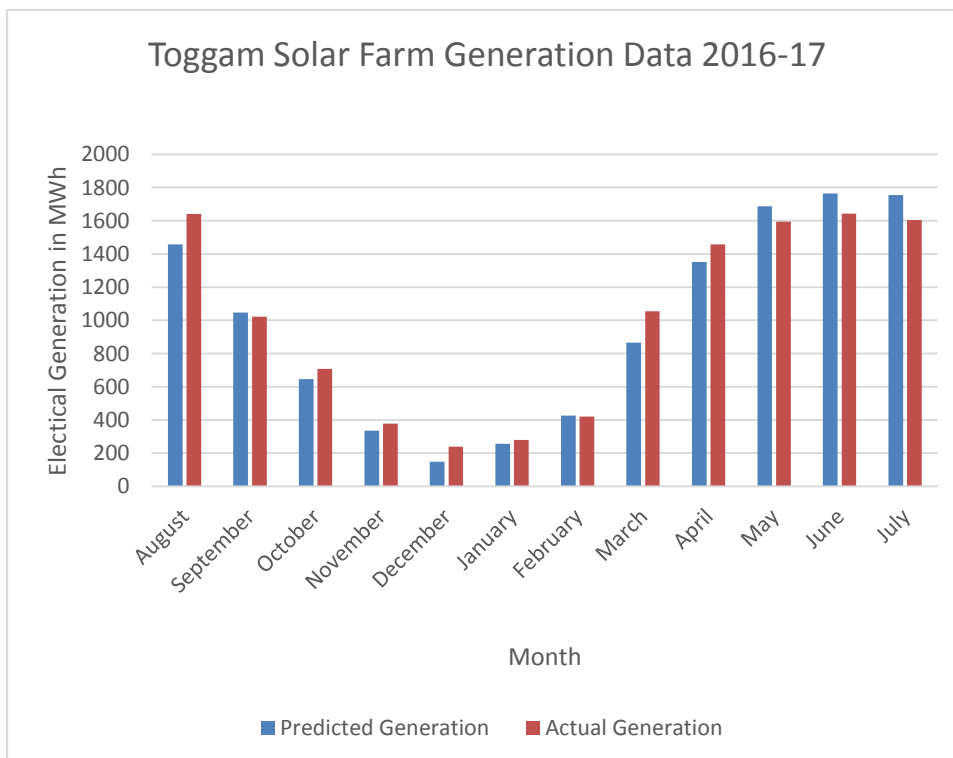
1.1.8 The financial business case for the acquisition of the solar farm at Toggam Farm, predicted a net revenue benefit (after allowing for the capital outlay to be recouped) at around £300k for the first year, raising each year of the 25 year project.

## 2. Year 1 performance

2.1 The data below sets out the performance of the site during the first 12 months of ownership to the end of July 2017.

2.2 Overall, the site has outperformed the modelled performance data for this period. It was predicted that the site would produce 11,737MWh of electricity, but the actual generation was 12,039MWh, an uplift of 2.51%. The solar farm generation is enough electricity to power around 3,000 homes and offset CO2 emissions from 2,000 cars.

2.3 This has resulted in a net benefit of £308k (compared to a predicted £300k net benefit) to be re-invested into the delivery of much valued district wide services. The total income for the project reached £1,183,457 for the first year, compared to a predicted total income of £1,144,000 for the same period. These income totals are before allowing for the sites operational costs and the capital outlay to be recouped.



2.4 The site has an Operational and Maintenance (O&M) contract in place, which is currently delivered by Greenheath Ltd and the solar contractor which built the farm, Greencells. The Council receives a monthly report highlighting all performance and operational issues, as well as details on the bi-annual preventive maintenance work. To assist with the ground maintenance, sheep are now grazing on the land. This initial O&M contract covers the first three years of operation so work will begin in 2018 to procure the next contract.

2.5 The site is currently covered by an Engineering, Procurement and Construction

(EPC) contract in relation to the design, supply, installation, testing and commissioning of the solar farm and associated connection to the local power grid. This contract ensures the site performs to a guaranteed standard specified within the contract and covers the first two years of operation.

- 2.6 In line with the EPC contract, the site is currently being independently tested under the first year 'Interim Acceptance Test', with a further test in 12 months' time (the 'Final Acceptance Test'). The Council has retained the technical consultants, Fichtner Consulting, used during the pre-acquisition due diligence, to conduct and verify these acceptance tests. Should the results of testing show that the site is not meeting performance standards set out in the contract, the Council may claim liquidated damages from the contractor although at this time operational performance monitoring has shown that the site has been performing above the contract standards.
- 2.7 Having recently conducted some market engagement, it appears the value of the electricity for March 2018 PPA will be similar to the current rate of £104 per MWh. Ultimately the value of the electricity is determined by the market, although the value of the ROCs are generally linked to consumer prices indexation. Work will shortly begin on procuring the next PPA agreement.
- 2.8 The first year of ownership of Toggam Solar has seen its successful introduction into the Council's asset portfolio. Officers will continue to manage the site with the purpose of ensuring that the solar farm continues to meet expected performance. Furthermore, officers are already working on ways to uplift the value of the asset with any proposals being the subject of future reports.

### **3. Greenheath Energy Ltd Financial Performance**

- 3.1 Following advice of the specialist legal advisors retained as part of the pre-acquisition due diligence, Eversheds Sutherland, the commercial advisors, PwC, and in discussion with the Councils Section 151 officer, then Monitoring Officer, and the Directors of Greenheath Energy Ltd, the solar farm and its associated lease, contracts and rights were hived off (transferred) to Forest Heath District Council from its wholly owned company Greenheath Energy Ltd. The hive up was completed and backdated to the date that Forest Heath District Council purchased Greenheath Energy Ltd, being the 29<sup>th</sup> July 2016.
- 3.2 A copy of the final statement of accounts for the period up to 29<sup>th</sup> July 2016 can be found at the following link to companies House <https://beta.companieshouse.gov.uk/company/07611773>.
- 3.3 The only value currently sitting within Greenheath Energy Ltd accounts is from the intercompany loan created as a result of the hive up outlined in 3.1 above.

### **4. Next steps – Small Company Audit Exemption**

- 4.1 Since the Council purchased Greenheath Energy Ltd in July 2016, the appointed Directors have undertaken their fiduciary duties in the interests of the company and its shareholder, the Council. This has included submission of company reports to Companies House and Value Added Tax and Corporation Tax reports to Her Majesty's Revenue & Customs.
- 4.2 As a standalone company, Greenheath Energy Ltd would be subject to the

small company exemption from an external audit as whilst they have the intercompany asset balance, their turnover is less than £10m and they have less than 10 employees (they have no employees).

4.3 In order for small company audit exemption to be applied, the following conditions are needed to be satisfied by a company: that

- the shareholders agree that an audit is not required by them;
- the Directors acknowledge in the statement of accounts their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts; and
- the accounts have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime.

4.4 Entitlement to this general small company audit exemption changed when the company was purchased by Forest Heath District Council. As a subsidiary of Forest Heath, it is only exempt from audit now where it meets the requirements under s.479A-C of the Companies Act 2006. The table attached at appendix 1 benchmarks Greenheath Energy Ltd against the criteria.

4.5 To allow Greenheath Energy to continue to be entitled to the small company audit exemption (whilst it is still a live company) and in line with Directors' proposals and having consulted with the Section 151 Officer and Monitoring Officer, it is proposed that the Council, as the shareholder, agrees to the small company audit exemption being applied and the Council give financial guarantee over Greenheath Energy Ltd and its liabilities.

## 5. Next steps – The future of Greenheath Energy Ltd

5.1 Now that the solar farm sits within the direct control of Forest Heath District Council, Greenheath Energy Ltd is not actively trading. Advice has been sought from legal colleagues on the options for Greenheath Energy Ltd following the hive up. This advice has also taken into consideration that the company had been trading under different ownership with Articles of Association established for its original purpose, which are now less likely to suit the future needs of the Council as current shareholder, and the fact that the company does not have any value other than the intercompany loan created as a result of the hive up referred above. The key options comprise:

Option	Implication
Retain the company in its current form with the Council as the sole shareholder and leave dormant	Although the company is effectively dormant, there is still a degree of filing required with Companies House and the company's Articles of Association will need to be rewritten to support its purpose and how it operates.
Retain the company in its current form with the Council as the sole shareholder and use as a delivery vehicle for future energy activities	The Company has previously traded under different ownership and was one of a group of companies the remainder of which are still privately owned. The Articles of Association were established for its original purpose, and are now less likely to

	suit the future needs of the Council as current shareholders. It is also very straight forward to set up a company with a small set up fee required, the Articles of Association would be fit for purpose and the company's history would be clean.
Selling the company	Necessary work will be required to close the intercompany loan. Then as a dormant company with no assets, the company has very little value to sell. Further, the company's history is not clean in that it was a private company (part of a group of companies) and then a company wholly owned by the Council.
Dissolving the company	Necessary work will be required to close the intercompany loan and then the Directors apply to strike off the company on the shareholders behalf.

- 5.2 Consideration has been given to the need for, and the steps that need to be taken to establish, a special purpose vehicle to deliver current and future energy-related business for the Council. Officers' views at this time are that it would be more prudent and relatively straight forward to set up a new vehicle at the time of need and designed for the required purpose than to use Greenheath Energy Ltd.
- 5.3 Therefore, based on the advice received (and with the support of the Council's S151 and Monitoring Officer) and work that has been undertaken to ensure that there are no residual liabilities sitting within the company, the Directors recommend that they apply to strike off the company on the shareholders' behalf, once the intercompany loan has been removed and any residual proceeds, assets or liabilities are transferred to Forest Heath District Council.