

WARRINGTON BOROUGH COUNCIL
RECORD OF DECISION TAKEN BY AN OFFICER

DECISION TITLE: SOLAR FARM INVESTMENT

Executive Board Decision No and/or Forward Plan No	EB 73 of 8 th October 2018
Directorate Ref No (Non Executive decisions only) If applicable	N/A
Decision detail	<p>The Director of Corporate Services and the Head of Legal and Democratic Services, after consultation with the Executive Board Member, Corporate Finance, have decided on the proposed acquisition method and transactional arrangements for each of the solar farms as detailed in the Executive Board report of 8th October 2018.</p> <p>The report delegated responsibility to the Director of Corporate Services and the Head of Legal and Democratic Services, in consultation with the Executive Board Member, Corporate Finance:</p> <p style="text-align: center;"><i>“for approval of the final acquisition method, the options being set out at section 8.5.2 of the Part 2 report, for each solar farm”.</i></p> <p>The chosen method of acquisition is the same for both farms and is that the Council acquires both sites by way of acquisition of the shares in the Special Purpose Vehicle (“SPV”) for each solar farm (those companies being Energy Store 4 Ltd and Energy Store 6 Ltd) from Gridserve UK Projects Ltd (“Gridserve”). The proposed method is that the Council will acquire 100% of the shares in both SPVs upon practical completion of the construction of both solar farms, whilst making staged payments into an escrow account, however the exact proposed final form of acquisition will be set out in a separate Officer Decision Notice to follow.</p> <p>In the meantime, in order to secure the grid connections with Northern Powergrid (without which the project will not be able to proceed) the Council will need to make a staged payments to the SPVs of £359,640.70 plus VAT in respect of the Hull site and £372,000.00 plus VAT in respect of the York site (“the grid connection monies”), both of which will be then paid by the SPVs to Northern Powergrid. The reason that a staged payment is proposed is due to the deadline for the grid connection monies, which is required to be made on about <u>31st October</u>. Gridserve have not been able to secure external finance for this portion of the grid connection monies due to the tight timescales.</p> <p>The Council will also be required to make payment to Gridserve</p>

of £139,750.00 plus VAT in respect of Hull and £140,000.00 plus VAT in respect of York, both of which relate to payments made previously by Gridserve to Northern Powergrid (“Gridserve NPG costs”). Gridserve have confirmed that this is a red line and will not proceed with the transaction should this not be paid.

The Council have agreed to make the payments detailed above to ensure that the grid connection payments are made ensuring that the project can continue. A failure to make such payments could lead to the grid connections being lost and potentially the collapse of the project.

In order to protect the Council’s position, an agreement will put in place between the Council, Gridserve a number of Gridserve’s subsidiary companies including both SPVs, to document the staged payment to Gridserve in respect of securing the grid connection.

The agreement ensures that the grid connection monies will be paid by the Council to the SPVs, who will in turn pay Northern Powergrid which will secure the grid connections for both sites, ensuring the project can continue. In summary, the agreement sets out that:

- the Council makes the staged payments in respect of the grid connection monies and the Gridserve NPG costs
- Gridserve will repay the grid connection monies and the Gridserve NPG costs once they have secured finance for the overall project and in any event by no later than **31 December 2018**;

There is a risk that Gridserve/the SPVs do not secure external finance for the project and are unable to make payment to the Council of the above costs by 31 December 2018. In order to protect the Council’s position a number of securities have been put in place, which include:

i. A legal charge over shares in both SPVs.

The charge would be put in place upon completion of the agreement and would mean that upon any default by Gridserve the Council would be entitled to enforce the share charge and take control of the SPVs which in turn hold the grid connections and the options for the leases.

ii. Novation

As well as the security at (i), an alternative protection is that the SPVs and the Council will enter into a novation agreement

with Northern Powergrid. The agreement will be signed by the Council and the SPVs and will be held by the Council. Should Gridserve default the SPVs will be obliged to procure Northern Powergrid's signature, this would then result in the grid connections being novated to the Council. This gives us an alternate option to the one set out at (i) above if we decided not to exercise the share charge i.e. if the SPVs had unacceptable liabilities.

iii. Option on leases

The leases set out the legal right to occupy the land in question. Without the lease and the grid connections above, there can be no solar farms. As with the novation agreement above, this is an alternate option to (i), if we decided not to exercise the share charge.

With (i) above, or (ii) and (iii) above, the Council would in effect be able to develop out the sites ourselves, by way of a properly procured third party contractor. Alternatively the Council may decide to sell the sites (by way of the shares and the lease options), APSE Energy have advised that the sites with the grid connections would be valued in the region of £3.2m (which equates to £50k per megawatt), significantly more than the proposed first staged payments.

Further protections include:

iv. Warranties

There are a number of warranties put in place from Gridserve and the SPV's in relation to the information given to date and their course of dealing.

v. Company guarantee

As well as the above warranties, there is a Company Guarantee from Gridserve EMEA DEPC Ltd, a group company with seven years of trading history. The effect of which is that if Gridserve default on their obligation to repay by 31 December and the Council do not wish to proceed with the exercise of the securities at (i), (ii) and (iii), the guarantor would have to repay the monies.

vi. Reserved matters

Finally, there are a number of matters that the SPVs would not be able to do without consent of the Council until repayment of the monies, such matters include but are not limited to changing the SPV's articles of association, appointing directors and disposing of assets.

Reason for decision	<p>The Executive Board delegated the approval of the acquisition method as well as completion of all necessary contracts any related documents to complete the transaction to the Director of Corporate Service and the Head of Legal and Democratic Services.</p> <p>The above proposal is considered to be within the delegation from the Executive Board as set out at section 8.5.2 of the Part 2 report, and the payments will be made to the SPVs, as authorised in section 5.7 of the report</p>
Decision Maker/Responsible Officer	Lynton Green, Director of Corporate Services and Matthew Cumberbatch, Head of Legal and Democratic Services
Directorate	Corporate Services
Lead Executive Board Member consulted (if applicable)	ClIr Russ Bowden – Executive Member Corporate Finance
Decision Date	31 October 2018
Date Decision was published / notified (normally within 2 clear working days of decision being made)	6 February 2019
Summary of options considered	Should the Council choose to decide not to proceed in the way proposed in this ODN, the opportunity to proceed with the investments in both solar farms will be lost.
Interests declared	None
Background Papers (if applicable) <i>(period expires after 4 years from date of decision)</i>	Executive Board Report 8 th October 2018.
Confidential / exempt information Category (if applicable)	Part 2 report Category 3, Schedule 12A

NB. This form expires after 6 years.