

WARRINGTON BOROUGH COUNCIL
RECORD OF DECISION TAKEN BY AN OFFICER

DECISION TITLE: SOLAR FARM INVESTMENT - COMPLETION

Executive Board Decision No and/or Forward Plan No (Executive decisions only)	EB EB69 & EB73 - 8 th October 2018
Directorate Ref No (Non Executive decisions only) If applicable	N/A
Decision detail	<p>Further to the Executive Board reports of 8 October 2018 and 11 February 2019 approval was obtained to acquire two solar farms in Hull and York from Gridserve at the cost of £62.34m.</p> <p>The Executive Board delegated the authority to approve the exact method of acquisition to the Director of Corporate Services and the Head of Legal and Democratic Services, after consultation with the Executive Board Member, Corporate Finance. The Record of an Officer Decisions (Records) of 31 October 2018, 21 December 2018, 31 January 2019 and 14 February 2019 set out the proposed acquisition method and transactional arrangements for each of the solar farms.</p> <p>The delegation from the 8 October 2018 Executive Board authorised the final acquisition method to be approved by the Director of Corporate Services and the Head of Legal and Democratic Services.</p> <p>The Council is not funding the build of the solar farms at each site, the construction is being carried out by one of the Gridserve group companies and the project has been split into two with the York site being developed first with construction scheduled to start in April 2019 and commissioning and completion expected by October 2019. That will be followed by Hull with construction scheduled to start in October 2019, after completion of York, and commissioning and completion expected by April 2020.</p> <p>The chosen method of acquisition is the same for both farms; that the Council acquires both the Hull and York sites by way of acquisition of the shares in the Special Purpose Vehicle (“SPV”) which owns each solar farm (those companies being Energy Store 4 Ltd and Energy Store 6 Ltd who own all relevant rights in respect of both sites) from Gridserve WBC Limited which currently holds all shares. More specifically, the Council will acquire 100% of the shares in both SPVs upon practical completion of the construction of each site, whilst making staged payments into an escrow account. To confirm this escrow account will be held by Investec, who are funding the construction of initially the York site, however the funds in this escrow will at all times be controlled by the Council.</p>

The York project and all associated construction costs are being funded by Investec (80%) and Pure Leapfrog (20%), however final finance arrangements are not yet in place for Hull. Gridserve are in negotiations with Investec in relation to the Hull site, however should finance not immediately be approved for Hull, the impact on the Council could be that the construction, and therefore commissioning and completion, of the Hull site may be delayed, or not proceed. There is however a longstop date of July 2020, after which time, the sites are not completed, there will be no obligation on the Council to acquire the shares in the SPVs. Officers and external lawyers working on the project are considering what other protections can be put in place in this regard.

As reported to the Executive Board on 11 February 2019, as part of the Pure Leapfrog funding, there is an expectation of commitment from the Council to invest £85k pa for 25 years through a community benefit vehicle to provide community investment in Warrington. The £85k per annum contribution will be met by profits from the schemes and these costs have been run through the solar farm financial model, with little effect on the financial viability of the farms. At this stage the Council do not know the exact terms of the Leapfrog commitments and a further detailed report on the community investment commitment will be reported to a future Executive Board for consideration and recommendation.

In order to complete the transaction as set out above, a number of documents have been negotiated on the Council's behalf by Geldards LLP with technical input from Peter Walker of APSE Energy. The key documents for the transaction are listed below with a brief synopsis:

- **Share Purchase Agreement ("SPA")**

This is the document under which the Council will purchase the shares in the York SPVs in respect of the York site. In summary, the Council will be obliged to purchase the shares upon practical completion and commissioning of the York site, subject to a number of conditions which must be achieved by a Long Stop Date of the end of July 2020. Those conditions include:-

- A Completion Inspection Report from the Technical Advisor ("TA") confirming Works Completion has been achieved in accordance with the EPC;

Provision of:

- Operations and Maintenance Manual (as defined in EPC);
- Copies of the relevant Title Indemnity Insurance policies;
- Notices of discharges of relevant conditions under the Planning Permission from the relevant planning authority.

There is also a number of other protections in the agreement, including:-

- The ability to make deductions from the final price, up to a cap of £500k;
- The provision of various warranties both on exchange and on completion
- Lease Payments to be deducted from the Purchase Price if these have not been paid prior to Completion
- Obligation on Gridserve to comply with their obligations under the TA appointment which will include payment for their services

- Provisions relating to how the SPA proceeds will be distributed i.e. to the funder and then to pay the final payment to the Contractor under the EPC
- Gridserve EMEA DEPC Ltd and Gridserve UK Projects Ltd acting as Guarantors under the SPA
- Various pre-completion undertakings limiting what the SPV can do prior to acquisition and provisions requiring the Council and the TA to be kept informed and involved in the completion of the Works in the EPC.

- **Technical Advisor Short Form Agreement (“SFA”)**

As stated above a report from a TA will be required to confirm Works Completion has been achieved, the proposed TA is Garrad Hassan and Partners Limited (“DNV GL”). They will also be monitoring progress under the EPC and will provide a range of services to both the Council and the Funder during the construction period. To protect the Council’s position an SFA is being entered to confirm the scope and terms of their appointment.

- **Disclosure Letter**

A Disclosure Letter is provided on exchange of the SPA from Gridserve WBC Ltd (Vendor), Gridserve EMEA DEPC Ltd and Gridserve UK Projects Ltd (Guarantors). This sets out their general disclosures (for example, the relevant agreements and everything in the dataroom is disclosed) as well as some specific disclosures against the warranties.

- **Deed of Release**

Under the SPA, Gridserve are to repay the Council the advance monies paid pursuant to the October Agreement in relation to York only on exchange. On receipt of these monies, the Council will release the security it has over the York SPV. The security arrangements will continue in respect of the Hull SPV until those monies are repaid.

- **Side letter**

This letter provides for Gridserve and the Council to use reasonable endeavours to agree the future operational agreement for the SPV which will be the Operations Management and Maintenance Contract (OMM), the power purchase agreement and the battery management agreement.

- **Supply and Installation Contract (“EPC”)**

This is effectively the build contract in place between the SPV and the Gridserve group company (Gridserve EMEA DEPC Ltd) that will be carrying out the build. The Council is not a party to this agreement, however the agreed form of EPC will be annexed to SPA. It is intended this entered into at the same time as the SPA. Upon completion, we will own the SPV that is a party to the EPC. It is important to note that the Council is happy with the proposed EPC terms after extensive negotiation through Geldards LLP.

As stated above, similar documents will need to be entered into in relation the Hull SPV once the funding arrangements are determined.

As well as the above documents, there will be a requirement for an Operation,

	Maintenance and Management Contract (“OMM”) to be put in place on behalf of the SPV to ensure that the site is managed and maintained after completion. This will be negotiated throughout the construction phase and in any event the parties will seek to agree this within 6 weeks from the date of the SPA being entered into under the terms of the side letter.
Reason for decision	<p>The Executive Board delegated the approval of the acquisition method as well as completion of all necessary contracts and any related documents to complete the transaction to the Director of Corporate Services and the Head of Legal and Democratic Services.</p> <p>The previous Record of an Officer Decisions recorded the decisions taken by the Head of Legal and Democratic Services and the Director of Corporate Services, which was a decision that was delegated from Executive Board on 2 October 2018 and 11 February 2019.</p> <p>This Record sets out the structure of the acquisition and the documents required.</p>
Decision Maker/Responsible Officer	<p>Lynton Green, Director of Corporate Services</p> <p>Matthew Cumberbatch Monitoring Officer and Head of Legal and Democratic Services</p>
Directorate	Corporate Services
Lead Executive Board Member consulted (if applicable)	CLlr Russ Bowden – Executive Member Corporate Finance
Decision Date	19 February 2019
Date Decision was published / notified (normally within 2 clear working days of decision being made)	5 March 2019
Summary of options considered	Apart from the method set out above, there are very few alternative options to proceed with the acquisition of the Hull and York solar sites.
Interests declared	None
Background Papers (if applicable) <i>(period expires after 4 years from date of</i>	<p>Executive Board Report 8 October 2018 and 11 February 2019.</p> <p>Record of an Officer Decision 31 October, 21 December 2018, 31 January 2019 and 14 February 2019.</p>

<i>decision)</i>	
Confidential / exempt information Category (if applicable)	Part 2 report Category 3, Schedule 12A

NB. This form expires after 6 years.