



SUPPLEMENTARY AGENDA

CABINET

MONDAY, 9 SEPTEMBER 2019 AT 4.00 PM

EXECUTIVE MEETING ROOM - THE GUILDHALL

Telephone enquiries to Joanne Wildsmith, Democratic Services Tel 9283 4057
Email: joanne.wildsmith@portsmouthcc.gov.uk

Membership

Councillor Gerald Vernon-Jackson CBE (Chair)
Councillor Steve Pitt (Vice-Chair)

Councillor Dave Ashmore
Councillor Suzy Horton
Councillor Lee Hunt
Councillor Darren Sanders

Councillor Lynne Stagg
Councillor Matthew Winnington
Councillor Rob Wood
Councillor Tom Wood

(NB This supplementary agenda should be retained for future reference with the main agenda and minutes of this meeting).

SUPPLEMENTARY AGENDA

10 Victory Energy Supply Limited - Disposal (information item) (Pages 3 - 8)

This report seeks to inform the Cabinet of the outcome of the process to dispose of Victory Energy Supply Limited (VESL) and describe the process required for the upcoming managed winding down of the business.

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Agenda Item 10

THIS ITEM IS FOR INFORMATION ONLY

(Please note that "Information Only" reports do not require Equality Impact Assessments, Legal or Finance Comments as no decision is being taken)



Portsmouth
CITY COUNCIL

Title of meeting:	Cabinet (For information only)
Date of meeting:	09 September 2019
Subject:	Victory Energy Supply Limited - Disposal
Report by:	Director of Finance (Section 151 Officer)
Wards affected:	All
Key decision:	Yes
Full Council decision:	No

1. Executive Summary

- 1.1 A comprehensive process to dispose of Victory Energy Supply Limited has been undertaken which resulted in two offers to acquire 100% of the share capital (of which, one was withdrawn in favour of an alternative investment opportunity) and one offer to enter into a joint venture. Neither of the remaining offers were acceptable in risk terms and therefore, in accordance with the resolutions of the Cabinet on 27th November 2018, the Council has given the Directors of Victory Energy notice that it will no longer provide continuing financial support but will seek to support a managed wind down of the business.

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1.2 The key events through that process are set out below:

- ❖ Appointment of Financial Advisors to facilitate the sale process - Oct. 18
- ❖ Preparation of Information Memorandum and creation of the "Data Room" - Nov.18 to Dec.18
- ❖ Senior Management presentations to prospective bidders - Dec.18 to Jan.19
- ❖ Receipt of two Non - binding offers (subject to due diligence) - Feb .19
- ❖ Bidder B provided an attractive offer which was credible and offered the opportunity to recoup all costs incurred with a potential surplus and without any further investment
- ❖ Receipt of Heads of Terms from Bidder B (subject to due diligence) - April 19
- ❖ Due diligence by Bidder B - April 19 to July 19
- ❖ Withdrawal from process by Bidder B in order to pursue an alternative investment - July 19
- ❖ Re-engagement with Bidder A - July 19
- ❖ Bidder A Joint Venture Offer - July 19
- ❖ Clarification of Joint Venture proposal and attempts to improve offer - July 19
- ❖ Rejection by Council of JV proposal - Aug. 19
- ❖ Notice to VESL Directors of cessation of continuing financial support - Aug. 19

2. Purpose of report

2.1 To inform the Cabinet of the outcome of the process to dispose of Victory Energy Supply Limited (VESL) and describe the process required for the upcoming managed winding down of the business.

3. Background

3.1 On 21st September 2018, the Scrutiny Management Panel considered a "Call In" of the decision taken by the Cabinet on 10th August 2018 which resolved to cease investment into VESL and dispose of the company. The "Call In" was upheld and the matter was re-considered by the Cabinet at its meeting of the 27th November 2018. At that meeting, the Cabinet resolved that, inter alia:

- i) ".....cease investment into Victory Energy Supply Limited"
- ii) "external support be sought to enable the Council to cease its investment in Victory Energy Supply Limited (VESL) and seek to dispose of the Council's interest at the best possible value for the Council and to delegate to S151 and City Solicitor to conclude all of the necessary agreements to facilitate a sale"

4. Sale Process

4.1 In accordance with the resolutions of Cabinet, the Council engaged PKF Francis Clark to lead the search for potential buyers for VESL and to advise and facilitate any subsequent transaction. The process was also supported by the Council's external legal advisors, CMS.

4.2 A full report by PKF of the process, the options and the risks was prepared.

4.3 The report highlights that:

- ❖ The acquisition of the company would have involved substantial financial commitment for start up investment, working capital and collateral to meet wholesale energy trading requirements
- ❖ Given the introduction of the "Price Cap" , the backdrop of energy supply company failures (5 between October 2018 and February 2019) and Brexit, the investment climate for the acquisition of a domestic energy supply company at that particular time was "unhelpful background"
- ❖ That the failure of energy supply companies was not an indicator of VESL's likely success or failure since its strategy was different
- ❖ That from a potential list of over 80 investors, 11 Non-Disclosure Agreements were entered into of which 6 registered serious interest and were followed up with management presentations to those investors

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- ❖ An attractive offer was received from Bidder B, structured on a profit share basis which offered the opportunity to recoup all costs incurred with the potential for further returns on top
- ❖ Bidder B undertook due diligence in parallel with joint working with VESL to adapt the Business Plan for VESL to launch the business across dual locations
- ❖ Bidder B subsequently withdrew their offer in favour of an alternative investment
- ❖ Bidder A remained interested and made the Council an offer on a Joint Venture basis but which would have involved a potential further £2m investment from the Council before returns would commence and involved the loss of management control
- ❖ That the options available to the Council were:
 - i) Retain VESL and wait for market conditions to improve - a sale was considered too high risk and carried continued financial commitment
 - ii) Seek a buyer for the licences on a standalone basis - a sale was considered high risk and the financial return was likely to be low
 - iii) Wind up VESL - the lowest financial risk option
 - iv) Proceed with Bidder A and the joint venture arrangement - a very high financial commitment with limited control and uncertain financial return

5. Outcome of Disposal Process

- 5.1 Following the conclusion of the disposal process and the options available to the Council and given the resolutions of the Cabinet to achieve best value for the disposal of VESL, the Council concluded that all of the options other than winding up VESL presented too great a risk in financial and/or proceedable terms.
- 5.2 Since inception, the cost of setting up VESL and maintaining operations is £3.2m of which £2.8m was written off in 2018/19. The balance of any outstanding costs relating to VESL (including any financial support for the managed wind down of operations) will be met from the Council's corporate contingency in the current year and will not affect any future savings requirements of the Council.

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- 5.3 Having exhausted all disposal options and giving due consideration to the joint venture proposal, the Council gave notice to the Directors of Victory Energy on 28th August that " the Councilcan no longer provide continuing financial support". Additionally, the Council indicated that it would provide financial support for the managed wind down of the company's operations.
- 5.4 In light of the Council's (acting as shareholder) decision to cease to provide financial support to VESL, VESL Directors held a board meeting to agree and set instructions to implement the Council's decision.

6. Process for Winding Down VESL Operations

6.1 The process for winding down VESL's operations is a responsibility of the Directors. The Directors have particular responsibilities conferred upon them pursuant to common law and statute such as the Companies Act 2006 and the Insolvency Act 1986. Those responsibilities include (but are not limited to) obligations to :

- Shareholders
- Employees
- Creditors
- Industry regulator(s); and
- Any appointed liquidator

6.2 The VESL Board meeting of the 28th August has set in train a process which now involves the following:

- Termination of the company's nine employees as well as the full time and two part-time consultants supporting the business
- Securing the company's assets (mainly IT)
- Notifying all of VESL's suppliers of the winding down of business operations
- Negotiating final settlements with creditors
- Seeking financial support from the Council to fund the settlements to creditors in order to facilitate the winding up process.

6.3 Once these activities have been concluded, the VESL Board will meet to consider the next steps to facilitate the agreed process to the wind down the company as well as to provide the regulator (Ofgem) with the required notice.

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6.4 The Directors will also consider an appointment of an Insolvency Practitioner to support the winding up of the company and the court process for doing so will follow.

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Signed by:

Chris Ward
Director of Finance (S151 Officer)

Appendices:

Appendix 1 - Report from PKF Francis Clark "Victory Energy Supply Limited - Disposal Process Summary"

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Cabinet Report 27 th November 2018 "Victory Energy Supply Limited - Expert Review of Business Case (re-consideration)"	W: Drive/HFS/100 Corpfin