



Cabinet

Item
7(ii)

22 November 2023

Report of	Managing Director (Interim) Colchester Commercial (Holdings) Ltd (CCHL)	Author	Richard Carr ☎ 282421
Title	Hibernation of Colchester Amphora Energy Ltd (CAEL)		
Wards affected	All wards		

1. Executive Summary

- 1.1 In the context of the proposed Amphora Future Strategy contained elsewhere on the agenda, to approve the formal hibernation of Colchester Amphora Energy Ltd (CAEL) and the transfer of its assets to Colchester City Council, as supported by the Colchester Commercial (Holdings) Limited Board on 26 September 2023 and recommended by the Governance and Audit Committee on 17 October 2023. Delays with the development of the Northern Gateway, due to factors outside of the company's control, have impacted the completion of the low carbon heat network. The absence of customers in the foreseeable future for the heat that the network would supply means that the company is incurring costs which it is unable to recover for the time being. The proposed hibernation would leave the City Council with options for the completion of the project in the future.

2. Recommended Decision

- 2.1 That Cabinet accepts the recommendation contained in minute 385 of the Governance and Audit Committee of 17 October 2023 that Colchester Amphora Energy Limited should be placed in hibernation.
- 2.2 That the Cabinet approves (as shareholder) the recommendations contained in the minutes of Colchester Commercial (Holdings) Limited's Board meeting of 26 September 2023 contained at Appendix 4 of this report.
- 2.3 That Colchester Amphora Energy Limited is prepared for, placed into and maintained in a dormant state as detailed in section 2 of Appendix A of this report.
- 2.4 That Colchester Amphora Energy Limited's contracts and agreements are transferred or otherwise dealt with in accordance with recommendations detailed in the table below and at section 8 of Appendix 1 to this report:
- 2.5 That the employment of Colchester Amphora Energy Limited's staff is transferred in accordance with arrangements set out under section 8 of Appendix A of this report.

3. Reason for Recommended Decision

- 3.1 Given delays with the development of the Northern Gateway, the company is unable to complete the delivery of the low carbon heat network on a commercial basis, in the foreseeable future. This position may change in the future but for the moment, transferring the assets created to the City Council and hibernating CAEL, would keep open options for the completion of the scheme in the future, whilst curtailing the costs currently being incurred.

4. Alternative Options

- 4.1 Alternatively, the City Council would need to agree to continue to underwrite the costs of CAEL, in the knowledge that there is no realistic prospect of an offsetting income in the foreseeable future.

5. Background Information

- 5.1 The background is set out in Appendix A of this report.
- 5.2 The Governance and Audit Committee as part of its terms of reference acts as the Council's shareholder committee and makes recommendations to Cabinet regarding Colchester Commercial (Holdings) Limited and its subsidiary companies. At its meeting on 17 October 2023 the Committee considered a report on the proposed hibernation of CAEL. The Committee recommended to Cabinet that CAEL be hibernated for the reasons contained in this report and its appendices. This recommendation is appended to this report at Appendix B of this report.

6. Equality, Diversity and Human Rights implications

- 6.1 The proposals set out in Appendix A of this report do not impact on the City Council's obligations covering equality, diversity and human rights.

7. Strategic Plan References

- 7.1 The proposals contained in Appendix A of this report flow from the proposed Amphora Future Strategy that sits elsewhere on the agenda. That Strategy describes the links to the Council's Strategic Plan and objectives.

8. Consultation

- 8.1 CAEL employs one member of staff who has been consulted on their intended transfer to Colchester Amphora Trading Limited either at or before the point of hibernation.

9. Publicity Considerations

- 9.1 The rationale for the proposed decision should help with the public explanation of the proposals.

10. Financial implications

- 10.1 The report highlights that hibernation is essentially unavoidable and therefore needs to take place. Without any immediate prospect of income generation, the costs incurred to date by CAEL fall on to the Council and will need to be accounted for within the 2023/24 Accounts.
- 10.2 The report highlights the actions required to put the company in to dormancy. As part of the proposed hibernation process, CAEL's assets and liabilities will be acquired by the City Council.

- 10.3 The activity and exploratory work of CAEL was undertaken at the request of the Council on the back of a specific Grant allocation from the Government, (through the Department for Business, Energy & Industrial Strategy), for schemes of this type. All costs incurred to date have been incurred against this allocation.
- 10.4 The Council gave CAEL a working capital advance in the form of a loan to enable it to fund the development of the Heat Network, which has resulted in assets (eg. boreholes). Part of putting CAEL into dormancy will require this loan to be unwound and require the assets and liabilities held within CAEL to be transferred to the Council. This forms part of the wider transaction and will be applied against the Grant allocation, except for the interest charged to CAEL by the Council, which is not eligible for Grant funding and will therefore need to be written off.

11. Health, Wellbeing and Community Safety Implications

- 11.1 The proposals set out in Appendix A of this report have no particular health, wellbeing and safety implications.

12. Health and Safety Implications

- 12.1 There are no specific health and safety implications associated with the proposals set out in Appendix A of this report.

13. Risk Management Implications

- 13.1 Given the understandings reached with the City Council, the proposed hibernation of CAEL effectively extinguishes the principal risks to the company which are associated with its inability to complete the project for which it was established and to recoup income from customers, for reasons outside of its control.
- 13.2 The residual risks stem from a failure of the arrangements with the City Council to be fully completed. However, given the discussions that have taken place with the City Council, this risk is considered manageable although it will need careful monitoring and management.
- 13.3 The risk of the company being reactivated inadvertently referred to at section 6 of Appendix a of this report should also be noted.

14. Environmental and Sustainability Implications

- 14.1 The proposals entail the hibernation of CAEL which was established to progress the delivery of a low carbon heat network. For circumstances outside of CAEL's control and explained in the report, this is not possible in the way envisaged originally but the assets created are proposed to transfer to the City Council to enable this to be taken forward in the future.

Appendices

A. Report on the Hibernation of CAEL.

1. CIPFA Report (confidential) – exempt from publication para 3 of schedule 12A etc.
2. Report on Governance & Decision Making, by Anthony Collins Solicitors
3. Report on Agreements Review, by Anthony Collins Solicitors
4. CCHL - Shareholder Resolution

B. Minute from Governance and Audit Committee dated 17 October 2023