

Date: 17 October 2023

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

**1. Executive Summary**

1.1 In the context of the proposed Amphora Future Strategy contained elsewhere on the agenda, to recommend the formal hibernation of Colchester Amphora Energy Ltd (CAEL) and the transfer of its assets to the City Council. Delays with the development of the Northern Gateway, due to factors outside of the company’s control, has 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 CAEL is prepared for, placed into and maintained in a dormant state as set out under section 2, Appendix 1 – ‘Report to the Board of CAEL – Placing the Company into Dormancy’.
- 2.2 That CAEL’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:

<b>Agreement</b>	<b>Parties</b>	<b>Recommendation</b>
Heat Pump Agreement	CAEL and GEA	Novate agreement: From CAEL/GEA To Council/GEA
Development Management Services Agreement	CAEL and Council	Instructions from the Council to CAEL to (i) suspend the agreement under clause 9 and (ii) authorisation for CAEL board to terminate the agreement under clause 10.1 if the suspension is for six months or more
Technical Consultancy Agreement	CAEL and WSP	Novate agreement: From CAEL/WSP To Council/WSP

		Novation agreement to incorporate terms and conditions of WSP's appointment from the GLA framework agreement
Facility Agreement	CAEL and Council	Terminate the agreement by Deed of Termination and Release to provide for simultaneous termination of the agreement and release from the debentures. Removal of charges from Companies House. Provision incorporated in the Deed of Termination and Release for the partial write-off of the outstanding loan.
Grant Agreement	CAEL and Council	No action required for dormancy
Concession Agreement	CAEL and Council	Terminate by Deed of Termination (mutual agreement)

- 2.3 That the employment of CAEL's staff is transferred in accordance with arrangements set out under section 8 of Appendix 1;
- 2.4 That the G&A Committee resolves to approve the Shareholder resolutions set out in Appendix 5.

### **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 1.

## **6. Equality, Diversity and Human Rights implications**

6.1 The proposals set out in Appendix 1 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 1 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 Ltd 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 As part of the proposed hibernation process, CAEL's assets will be acquired by the City Council which has also agreed to meet the costs incurred by the company, up to the point it becomes dormant. This is set out in a letter from the City Council dated 21 August 2023 (Appendix 6 – Comfort letter).

## **11. Health, Wellbeing and Community Safety Implications**

11.1 The proposals set out in Appendix 1 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 1.

## **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.

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.

The risk of the company being reactivated inadvertently referred to in the attached report, Appendix 1, Section 6 should also be noted.

## **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**

1. Report on the Hibernation of CAEL.
2. CIPFA Report
3. Report on Governance & Decision Making, by Anthony Collins Solicitors
4. Report on Agreements Review, by Anthony Collins Solicitors
5. CCHL - Shareholder Resolution
6. Comfort Letter