

CABINET

Date of Meeting	Tuesday, 26 th September 2017
Report Subject	Business Rates – Write Offs
Cabinet Member	Cabinet Member for Corporate Management and Assets
Report Author	Chief Officer (Community & Enterprise)
Type of Report	Operational

EXECUTIVE SUMMARY

For individual bad debts in excess of £25,000, Financial Procedure Rules (section 5.2) requires Cabinet to approve recommendations to write off debts.

Two business rate debts are considered to be irrecoverable for Limited Liability Companies that are no longer trading and have been either placed into administration or have been liquidated. Consequently, there are no assets and successful recovery of the business rate debts is no longer possible and a write off is necessary. The organisations are :

- Lancashire Fuels 4U Limited (In Liquidation) - £73,932.05
- Novo Drinks Limited (In Administration) – £39,415.39

RECOMMENDATIONS

1	Approve the write off of the business rate debts, amounting to £73,932.05 for Lancashire Fuels 4U Ltd and £39,415.39 for Novo Drinks Ltd.
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REPORT DETAILS

1.00	EXPLAINING THE BACKGROUND - NOVO DRINKS LTD
1.01	Novo Drinks Ltd were responsible for business rates on Unit 36, First Avenue, Zone 2, Deeside Industrial Park from 22 nd May 2014 to 11 th September 2016.
1.02	The company had a poor track record of meeting their payment obligations to pay business rates and the Council needed to take action through the Magistrates Court on three occasions in an attempt to secure payment of unpaid business rates. Liability Orders were successfully secured on 10 th October 2014, 11 th March 2016 and 9 th September 2016.
1.03	Despite securing court orders to enforce payment of Business Rates, on most occasions, the Registered Directors of Novo Drinks Ltd continued in their failure to pay or enter into any payment arrangements with the Council. Court Orders were quickly referred to debt enforcement agents in an attempt to secure payment of the debt by taking control of goods at their commercial premises.
1.04	Following the actions and interventions of the Council, debt enforcement agents successfully secured full payment of the debt for 2014-15 by 31 st March 2015.
1.05	For the 2015-16 business rate charges, Novo Drinks Ltd initially made contact with the Council to arrange payment by direct debit and although some payments were made, equating to 50% of the 2015-16 debt, a debt of £20.6k remained and the Council took steps to secure a Liability Order at Mold Magistrates Court on 11 th March 2016.
1.06	Around this time, following a petition by a creditor, the Council received notification that Novo Drinks Ltd was to be struck off the register of listed companies at Companies House. Despite attempts to secure payment of the 2015-16 and 2016-17 business rates, the Council were unsuccessful in obtaining any further payments from Novo Drinks.
1.07	On 7 th September 2016, a further 'winding-up' petition was filed in the High Courts of Justice by HM Revenue & Customers (HMRC) which coincided with the actions by the Council to secure a further Liability Order at Mold Magistrates Court on 9 th September 2016. However, just prior to these actions, on 5 th September 2016, the company's physical assets were all sold by Directors of Novo Drinks to a third party company which was not connected with Novo Drinks Ltd.
1.08	Following the disposal of the assets, all employees had been made redundant and the company had effectively ceased to trade at the time when Seneca Insolvency Practitioners were appointed on 12 th September 2016
1.09	Since the appointment of the Insolvency Practitioners, the Council has concluded there is no prospect whatsoever of recovering unpaid business

	<p>rates of £39k on the basis the company has no assets but also claims/liabilities submitted from other creditors totalling £2.9m. As part of the role of the Insolvency Practitioner, investigations are ongoing into the financial affairs of the company and that of the directors of Novo Drinks Ltd.</p>
1.10	<p>BACKGROUND OF NDR WRITE OFF - LANCASHIRE FUELS 4U LTD</p>
1.11	<p>In the case of Lancashire Fuels 4U Limited, they occupied premises at Riverside Industrial Estate, Saltney from 19th September 2013. The business aimed to process waste such as wood, paper, plastics and refuse derived fuel (RDF) to convert into fuel pellets.</p>
1.12	<p>However, following the early intervention of Natural Resources Wales (NRW), the directors of Lancashire Fuels were ordered in January 2014 to cease all business activities on the site unless the relevant Environmental permits were in place.</p>
1.13	<p>A major fire also broke out at the unit in May 2014 and it took North Wales Fire Service more than one week to fully extinguish. The directors were advised of their continued obligation to pay business rates, since part of the premises was still being used for the storage of waste. Payment agreements were put in place in August 2014 to start paying off business rates but the directors failed to keep to their agreements and no payments were ever received.</p>
1.14	<p>The Council took legal action in the Magistrates Court in January 2015 to secure a Liability Order against the company in an effort to obtain payment of business rates and to protect the public purse, however because of the ongoing legal issues with NRW and the fire damage, the company was unable to pay their business rate liability. Notwithstanding this, the directors still indicated their application for a new operating licence was ongoing and once this was in place they would make full payment of business rates.</p>
1.15	<p>Since the use of enforcement agents/bailiffs was not considered to be a realistic option to secure payment as the company was not trading and had no assets for enforcement agents to take control of, steps were taken in March 2015 to enforce payment of business rates using specialist external lawyers acting on Flintshire's behalf.</p>
1.16	<p>Around this time, steps to liquidate Lancashire Fuels 4U had also begun and the Council joined the petition to wind-up the company. In the High Courts of Justice on 15th May 2015, the Council, along with other supporting creditors, were successful in having the company wound-up under the provisions of the Insolvency Act 1986.</p>
1.17	<p>The Council's costs as creditor supporting the winding up petition were ordered to be paid out of the assets of the respondent company.</p>

1.18	Although the Council has successfully recovered the legal fees associated with taking action in the High Court, it is not possible to recover the unpaid business rates amounting to £73.9k since there were only company assets of £19k available to the liquidator compared to claims totalling £338k from 21 unsecured creditors.
1.19	The liquidators have now completed their work and an application was submitted to Companies House on 19 th July 2017 to remove Lancashire Fuels 4U Ltd from the companies list.
1.20	In other separate action taken by NRW, Paul Baison, one of the directors of Lancashire Fuels 4U Ltd, also received an 11 month suspended jail sentence at Mold Crown Court in October 2016; he has also been banned from being a company director for seven years.

2.00	RESOURCE IMPLICATIONS
2.01	There are no direct financial implications for the Council or local taxpayers by writing off these debts as business rates are borne by the National Collection Pool for Wales. As the Collection Pool is supported by Welsh Government, non-payment of rates does though have a wider impact on the Welsh taxpayer.
2.02	Writing off these debts, amounting to a loss to the National Collection Pool of £113,347.44 is being recommended as a last resort and only on the basis that there is no prospect of successfully recovering these debts.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	All write offs must be approved by the Corporate Finance Manager, but in the case of write offs over £25,000, Cabinet must be consulted before a decision is taken.

4.00	RISK MANAGEMENT
4.01	For those businesses who fail to pay, recovery action is always taken to secure payment. Measures include the use of enforcement agents/bailiffs to take control of goods, and on occasion, steps are taken to 'wind-up' companies.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>Financial Procedure Rules (section 5.2)</p> <p>Register of Companies (company number 07637002) – Lancashire Fuels 4U Ltd</p> <p>High Court of Justice (Chancery Division) (Num 2209 and 2485 of 2015) – Petition to Wind-up Lancashire Fuels 4U Ltd</p> <p>Register of Companies (company number 09038597) – Novo Drinks Ltd</p> <p>Contact Officer: David Barnes, Revenues Manager Telephone: 01352 703652 E-mail: david.barnes@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>Business Rates: are a property based local tax on businesses calculated on the rateable value of the property. Although the rate of tax is set by Welsh Government, rates are administered and collected locally by each local authority and paid into a national collection pool for Wales.</p> <p>National Collection Pool for Wales: all business rates are collected and paid into the Welsh Government’s Non-Domestic Rates Pool. They are then redistributed to local businesses as part of the local government revenue settlement grant each year.</p> <p>Companies House: is the UK’s registrar of companies and is an executive agency of Her Majesty’s Government.</p> <p>Debt Enforcement Agents/Bailiffs: are sometimes used as a way of enforcing Liability Orders for non-payment of Business Rates by either collecting payment in full or taking control of goods to offset against the debt.</p> <p>Company ‘winding-up’: is a legal process submitted by the party or parties to liquidate a company. This may be done by a third party such as a creditor who is owed money by the company.</p> <p>Natural Resource Wales (NRW): is a Welsh Government sponsored body responsible for environmental protection and regulation and the maintenance of natural resources throughout Wales.</p> <p>Liquidation: is an event that occurs when a company is insolvent, meaning it cannot pay its obligations as and when they become due. The purpose of liquidation is for an appointed liquidator to look into the affairs of a company, release all the assets and then pay a return to creditors so they get some or all of their money back.</p>