

DEAL REPORT: ELEMENTAL INFRASTRUCTURE'S ACQUISITION OF ZENITH ENERGY

NOVEMBER 2020

This edition of the Deal Report focuses on the \$156 million acquisition of Zenith Energy Limited (ASX: ZEN) by Elemental Infrastructure BidCo Pty Ltd, by way of a scheme of arrangement that was implemented on 21 August 2020.

PARTIES

Target: Zenith Energy Limited (**Zenith**).

Bidder: Elemental Infrastructure BidCo Pty Ltd (**Elemental**), an entity controlled:

- + initially by PEP Investor Administration Secure Assets A Pty Ltd as trustee for Pacific Equity Partners Secure Assets Fund A (Australasia) and certain other entities associated with Pacific Equity Partners (**PEP**); and
- + at completion of the transaction by PEP, together with Apex Opportunities Fund Pty Limited as trustee for the Apex Trust (**Apex**) and OPSEU Pension Plan Trust Fund (together, the **Apex Consortium**).

TRANSACTION SNAPSHOT

The transaction involved the acquisition by Elemental of all of the issued securities in Zenith for a mixture of cash consideration, and equity interests to certain key managers, by way of a scheme of arrangement (**Transaction**).

The execution of a Deed of Amendment and Restatement of the Scheme Implementation Deed in respect of the Transaction (**Revised Scheme**) was announced on 29 May 2020, and was the result of an earlier scheme proposal by Elemental being amended so that a new party, Apex, could join the Transaction via an equity stake in the group holding structure of Elemental.

Apex became a party to the Transaction after acquiring a substantial interest in Zenith on-market, which resulted in Elemental forming the view that it would be difficult to implement its initial scheme proposal without the direct involvement of Apex.

The execution of a further Deed of Amendment and Restatement of the Scheme Implementation Deed was announced on 21 July 2020, under which the offer price was increased from \$1.01 to \$1.05 per Zenith share (**Further Revised Scheme**).



REVISED SCHEME AND ACQUISITION OF PRE-BID STAKE BY APEX

The Transaction was initially announced on 9 March 2020 after Zenith entered into a Scheme Implementation Deed with Elemental, an entity which was then controlled exclusively by PEP, whereby Elemental would purchase Zenith for \$1.01 per share via a scheme of arrangement (**Initial Scheme Proposal**).

After the announcement of the Initial Scheme Proposal, Apex began acquiring shares in Zenith. By 24 April 2020, Apex held a 17.61% stake in Zenith.

Following Apex's acquisition of a substantial holding in Zenith, Elemental formed the view that it would be difficult to implement the Initial Scheme Proposal if Apex voted against it. Accordingly, Elemental sought Zenith's approval to provide the Apex Consortium with access to confidential information in relation to the Initial Scheme Proposal with a view to allowing the Apex Consortium to join Elemental's bid for Zenith.

The end result of the above arrangements was that PEP reached an agreement with the Apex Consortium, whereby Apex would take an equity stake in the Elemental group holding structure and join the Transaction, which led to the Revised Scheme announced on 29 May 2020.

As a result of this agreement, the controllers of Apex and the PEP entities that controlled Elemental jointly lodged a Form 603 (notice of initial substantial holder), attaching a Co-operation and Process Deed between those parties, under which they agreed to work together on an exclusive basis by way of a joint venture to revise the Initial Scheme Proposal to the Revised Scheme.



EUROZ 'NO' VOTE AND FURTHER REVISED SCHEME

Following the Apex Consortium joining the process and the Revised Scheme being announced, Westoz Funds Management Pty Ltd (**Westoz**), a shareholder in Zenith controlled by Euroz Securities, began acquiring shares on market until its holding in Zenith increased to 12.94%, representing 22.25% of the eligible votes on the Revised Scheme.

On 10 July 2020, Westoz submitted a proxy vote against the Revised Scheme. This was reported to have formed part of a tactic by Westoz to seek a higher offer price, which was ultimately successful. On 21 July 2020, the offer price was increased from \$1.01 to \$1.05 per Zenith share. Zenith advised the market that Westoz had confirmed its intention to vote in favour of the Further Revised Scheme, in the absence of a superior proposal.

The Further Revised Scheme was subsequently approved by shareholders on 31 July 2020, approved by the Court on 6 August 2020 and implemented on 21 August 2020.



REVISED SCHEME EQUITY DIVISION

The equity structure of Elemental following Apex's involvement in the bid according to the Co-operation and Process Deed (summarised below) was:

- + PEP – 41.86%
- + Apex Consortium – 58.14%



CONSIDERATION

The price offered under the Revised Scheme was \$1.05 per Zenith share in cash consideration.

Three senior managers, entities controlled by them and Apex had the right to elect to receive scrip consideration, thereby placing them in a separate class of shareholder for voting purposes.



TRANSACTION VALUE

The cash consideration price of \$1.05 per share valued Zenith's equity at ~\$156m and implied an enterprise value of ~\$259m, which was ~9x EBITA for the 2019 calendar year.



PERMITTED DISTRIBUTION

Zenith paid a dividend of \$0.14 per share which formed part of the cash consideration (i.e. not in addition to \$1.05 per share) and was funded via an unsecured loan from Elemental.



BOARD RECOMMENDATION AND BENEFITS

Zenith's board unanimously recommended the Further Revised Scheme.

Two board members who were among the three senior managers that had the right to receive scrip consideration also benefited from certain retention bonuses and loan forgiveness arrangements in connection with the Further Revised Scheme. As a result, their recommendation was expressed separately from the other Zenith directors and was qualified by disclosure of the amounts payable to them.



PREMIUM

The cash offer of \$1.05 per Zenith share represented:

- + a 51.1% premium to the last closing price of Zenith shares prior to the Initial Scheme Proposal announcement;
- + a 51.4% premium to the 1-week volume weighted average price (VWAP) of Zenith shares to 6 March 2020; and
- + a 46% premium to the 3-month VWAP of Zenith shares prior to 6 March 2020.



CONDITIONS PRECEDENT

- + FIRB approval
- + No legal restraint which prohibits the transaction
- + ASIC and ASX both approve the Revised Scheme
- + The independent expert concludes that the Revised Scheme is in the best interests of Zenith's shareholders
- + The support of Zenith's shareholders by the requisite majorities
- + Court approval of the Revised Scheme
- + No prescribed event in respect of Zenith (such as a reduction in share capital, a buy-back, issuing securities, etc)
- + No material adverse change in respect of Zenith:
 - triggered by diminution in EBITDA of at least \$3 million or 15% of Zenith's net assets
- + All of Zenith's performance rights have been vested and converted into Zenith shares
- + No breach of representation or warranty
- + Both Zenith and Elemental receive necessary consents, exemptions or waivers under contracts with third parties



EXCLUSIVITY

Customary suite of no-shop, no-talk, no due diligence and matching right provisions.





BREAK FEE

\$1.51 million (being approximately 1% of the implied equity value).

Payable if:

- + a competing proposal is publicly announced at any time prior to the second court date and, within nine months of announcement, the competing proposal completes or the proponents of the proposal become the legal holders of at least 50% of Zenith's shares;
- + any director of Zenith fails to recommend, withdraws or adversely changes their recommendation in regards to the Revised Scheme (or makes any public statement to that effect, including a statement in support of a competing proposal), unless the independent expert concludes that the Transaction is not in the best interests of Zenith shareholders or Zenith is entitled to terminate the Transaction in accordance with the Scheme Implementation Deed; or
- + Zenith is in material breach of a term of the Scheme Implementation Deed, and Elemental terminates the deed in respect of that breach.



REVERSE BREAK FEE

No reverse break free.



TERMINATION

Either party may terminate:

- + for a material unremedied breach;
- + if any director of Zenith fails to make a recommendation or voting intention statement in favour of the Revised Scheme, or withdraws or adversely changes their recommendation in regards to the Revised Scheme, or makes any public statement to that effect (including a statement in support of a competing proposal);
- + for the non-fulfilment of a condition precedent; or
- + if the Revised Scheme has not become effective by the agreed sunset date.



CO-OPERATION AND PROCESS DEED

In connection with the shared ownership structure of Elemental, the parties that controlled Elemental executed a Co-operation and Process Deed (**Deed**), which gave rise to a relevant interest in each other's equity holdings in Zenith. The Deed was released to the market accompanying an ASX Form 603 filing, which notified the ASX of each party's relevant interests as required by section 671B of the Corporations Act.

The Deed set up the governance structure of Elemental's controllers in relation to the Revised Scheme (and any revisions thereto), and included customary provisions including:

- + the establishment of a joint venture relationship between the parties;
- + the parties agreeing to work together for the purposes of implementing the scheme;
- + the parties agreeing to satisfy the conditions precedent under the Scheme Implementation Deed;
- + customary no-shop and no-talk provisions;
- + a notification requirement in the event that any party became aware of a competing proposal; and
- + basic warranties with respect to each party's incorporation, power and capacity to execute and comply with the Deed.

The Deed also contained a term sheet which was to be used as the basis for negotiating Elemental's shareholders' agreement after the scheme was implemented. The Deed contained an obligation for the parties to co-operate and negotiate with one another, with a view to finalising and executing a shareholders' agreement in respect of Elemental which was materially consistent with the term sheet.

The term sheet contained a summary of customary provisions to be included in Elemental's shareholders' agreement, including:

- + **subscription mechanics:** Elemental will be capitalised through a subscription agreement to be executed by all of the parties contemporaneously with the shareholders' agreement;
- + **board size:** no more than eight directors unless unanimously increased by the directors;
- + **board composition:**
 - each investor group that holds 15% of the issued capital will be entitled to nominate one director per full 15% shareholding;
 - a member of management approved by the directors will be appointed as a director;
 - the CEO will be a director; and
 - the board may appoint or remove other independent directors; and
- + **transfer restrictions:** there will be permitted transfers as well as drag along rights, tag along rights, and rights of first refusal.

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