
ANNEX 3

**PROPOSED COMPULSORY ACQUISITION OF LAND LEASED TO WESTERN RIVERSIDE
WASTE AUTHORITY AS PART OF THE ORDER SOUGHT BY CORY FOR DEVELOPMENT
CONSENT FOR THE RIVERSIDE ENERGY PARK**

NOTE ON IMPACT (WASTE MANAGEMENT SERVICES AGREEMENT)

1. On 31 May 2002, the Western Riverside Waste Authority (“**WRWA**”) signed a Waste Management Services Agreement (“**WMSA**”) with Cory Environmental Limited (“**CEL**”), pursuant to which, amongst other things, an Energy from Waste Facility (“**EfW Facility**”) to thermally treat WRWA’s residual waste was to be constructed by Cory Riverside on a plot located at Belvedere, Kent (the “**Site**” – See Appendix 1 to this Note, edged red). The relevant provisions are summarised in a note on the WMSA, which is at Annex 1 to WRWA’s written representation.
2. A special purpose vehicle, Riverside Resource Recovery Limited (“**RRRL**”) was set up to design, finance, construct, own and operate the EfW Facility, on a project finance basis.
3. On 31 July 2008, the WMSA was amended and restated to accommodate the construction of the EfW Facility on quasi-PFI terms. As part of the arrangement and amongst other things:
 - (a) New clauses which only related to the river transportation and waste disposal services at the EfW Facility were introduced to make RRRL bankable in the PFI funding market. Those parts of the WMSA which related to the EfW Facility and the river transportation services formed the “**EfW Contract**” which was severable from the remainder of the WMSA (the “**ASS Contract**”), so that if CEL defaulted in relation to the Authority Site Services, the EfW Contract would continue. The EfW Contract would only terminate if its own set of termination requirements were met, thereby putting RRRL in control of its own destiny;
 - (b) Pursuant to these new clauses WRWA undertook to buy RRRL/RRRL’s assets in the event that the WMSA terminated early for whatever reason (the price determined by the reason for the termination);
 - (c) In recognition of the capital contribution WRWA was making to the development of the Site through the payment of gate fees under the WMSA, pursuant to a Residual Value Agreement (“**RVA**”) WRWA was granted residual value rights for the remainder of the EfW Facility’s design life (i.e. from the WMSA expiry date of 4 October 2032 to 11 October 2046) on similar terms to the EfW Contract, allowing WRWA to either continue to send a pre-determined tonnage to the EfW Facility during this period or take a royalty on the tonnage allocation it releases back to RRRL for use by third parties; and
 - (d) WRWA was granted a lease over the Site for 50 years (i.e. to 30 July 2058) (the “**Lease**”) which was and then leased back to RRRL for 50 years less one day (i.e. to 29 July 2058) (the “**Sub-Lease**”).

4. It will be apparent that the Lease is a crucial part of the balance of commercial interests within the WMSA, agreed by WRWA to promote and protect its position in the public interest (as the statutory body responsible for dealing with the waste of nearly one million Londoners). The Lease land offers security in relation to the risks accepted by WRWA under the WMSA. As such, it is important to WRWA that the integrity of the Site is maintained (see below). The Lease/Sub-Lease arrangement served to prevent RRRL from selling off parts of the Site, as nobody would purchase a freehold subject to the terms of the Lease, under which no rent was payable and which enabled WRWA to terminate the Sub-Lease (and thereby deny occupation of the Site by third parties) upon any termination of the WMSA/RVA. Further, the Sub-Lease contains a total prohibition on partial assignments of the Site by the tenant (which in this case is also the freeholder) (clause 4.7(b)) combined with an obligation not to knowingly permit or suffer any such assignment by a third party (clause 2.5).
5. The special status afforded to the Site can be contrasted with the different approach taken in relation to the land owned by RRRL to the south of the Site (see Appendix A edged blue). In relation to this "Belvedere Surplus Land", WRWA agreed that RRRL could dispose of it at will, as long as the proceeds of sale were applied in prepayment of RRRL's senior debt (Sch.15 para 26).
6. If the parts of the Site subject to WRWA's Lease are now made subject to compulsory acquisition this will frustrate the purpose of the Lease/Sub-Lease arrangement and significantly affect the carefully negotiated and agreed risk allocation under the WMSA against WRWA and in favour of Cory Riverside (see below). For ease of reference, the proposed area subject to the compulsory acquisition proposals is shown hatched navy blue in Appendix B.

7. STRATEGIC ADVERSE CONSEQUENCES

(a) During the currency of the WMSA/RVA

- i. WRWA's change in law exposure to Cory Riverside will be significantly increased. Under the terms of the WMSA, WRWA is required to keep Cory Riverside whole in circumstances where changes in law require the treatment of waste other than by mass burn incineration and tonnage has to be diverted away from Cory Riverside as a result (EfW Qualifying Change in Law (g)). Such changes in law are a real risk. For example, the Government's Resources and Waste Strategy, published in December 2018 (the "**Government's Waste Strategy**"), proposes that food waste will in future be required to be treated separately from the remainder of the waste stream. However, until the detail of the Government's Waste Strategy is finalised it is difficult to be sure exactly what technology type will best address the Government's requirements.

In order to partially offset WRWA's change in law exposure, and given the lack of alternative available sites within the control of the WRWA's constituent councils, WRWA was granted a contractual right for land at the Site to be made available to WRWA should recycling or diversion changes in law come into effect which lead to a drop in tonnage (Sch.15

para 6.1A). This would enable WRWA to pay for and/or build new facilities at the Site rather than divert tonnage away from CEL/RRRL and indemnify CEL/RRRL for the tonnage so diverted and makes the maintenance of availability of land at the Site for the development of alternative technology facilities strategically important to WRWA.

- ii. RRRL's ability to adapt to mitigate the effects of changing circumstances over time will be restricted by the lack of land on which to expand either temporarily or permanently, for example as a result of a contamination event occurring or a change in law which requires additional infrastructure. This not only increases the likelihood of a RRRL default requiring WRWA to step in and take over, but where WRWA is required to compensate RRRL (e.g. in a change in law scenario) the recoverable costs may well be higher due to the inability of RRRL to mitigate on site.

(b) Upon an early termination of the WMSA/RVA

- i. Upon any early termination of the WMSA, WRWA is required to buy RRRL/RRRL's assets (including the Site). In certain circumstances (including EfW Force Majeure, Corrupt Gifts, and Breach of Refinancing/Equity Restructuring Provisions) the compensation paid bears no relationship to the value of the assets transferred and include the repayment of the senior debt.
- ii. The compulsory acquisition of part of the Site would not only reduce the physical footprint of the land transferred to WRWA, but such land would be encumbered with all the other strategic and operational problems associated with its shared usage with a competitor and its physical constraints. In other words, WRWA is concerned that it would have to pay the same compensation as before the compulsory acquisition but for assets of considerably lesser value.
- iii. WRWA is both the funder and owner of last resort of RRRL. Having potentially overpaid for the assets upon e.g. a Force Majeure termination, it could have sought to mitigate its losses by developing the spare land itself much as Cory Riverside is seeking to do now. This opportunity would be denied to it if the spare land is compulsorily acquired.

8. OPERATIONAL ADVERSE CONSEQUENCES

(a) During the currency of the WMSA/RVA

- i. Under the terms of the WMSA Payment Mechanism, in applicable circumstances, WRWA is entitled to an energy payment on electricity and heat sales (Sch.8 para 6), together with a revenue share on third party gate fees above a certain threshold (Sch.8 para 9). Cory Riverside intends to build a new energy from waste facility next to the existing one, which will lead to competition between the two both in terms of tonnage origination and local electricity and heat offtake. Local offtake

opportunities include the supply of electricity and/or heat to the proposed datacentre, the supply of heat to neighbouring residential and/or commercial properties and the proposed battery farm. Competition will only not occur in circumstances where:

1. there are saturation levels of waste and quality offtake opportunities available for both facilities. WRWA notes that Cory Riverside contends that there is an abundance of waste for both facilities. However, their view is not shared by everybody including most notably the Mayor of London. The local offtake opportunities (such as those mentioned above) are likely to be limited in number and it is difficult to see how there will be enough for both facilities; or
2. Riverside Energy Park Limited (“REPL”) is made subordinate to RRRL and only accepts opportunities which RRRL cannot accept (for example due to capacity or technical constraints).

The competition will reduce the likelihood of WRWA receiving the same level of revenue as it could legitimately have otherwise expected to receive. By purchasing part of the Site at less than its opportunity value the competing facility is being given a cost and time saving, and thereby a competitive advantage, over RRRL.

- ii. The doubling of tonnage passing over the bottleneck jetty inevitably increases operational risk. This is a matter addressed in summary in the Technical Note produced by Wood (appended to the Written Representation). Financially, this risk rests with RRRL but WRWA is also concerned as a customer that its service is not disrupted, particularly at its transfer stations. It also increases the risk of an EfW Force Majeure Event (and ultimately an EfW Force Majeure termination) occurring, especially contamination and/or the risk of the RRRL’s business becoming uninsurable, since the acts and omissions of REPL will be treated as those of a third party for force majeure purposes and the physical proximity of the two plants and increased river and road traffic will make major insured incidents affecting both plants more likely, putting stress on insurance premiums and ultimately the insurability of RRRL’s operation.

(b) Upon an early termination of the WMSA/RVA

- i. WRWA considers it highly likely that RRRL and REPL will remain associated companies. The constraints of the Site are such that only related companies could reasonably be expected to operate successfully in such close proximity. However, in circumstances where there is a termination of the WMSA/RVA any such harmonious cooperation will no longer be present, as the ultimate ownerships of RRRL and REPL will differ (as WRWA or its nominee will own RRRL). A termination of the WMSA/RVA will realistically only occur when RRRL finds itself in such severe hardship that both RRRL’s banks and shareholders have given up on the business.

In these circumstances, having a competing facility sharing the same site and sharing the same infrastructure will not assist WRWA in recovering its losses. Indeed, it is highly likely that RRRL's business (other than WRWA's own tonnage) will have been lost to REPL during the confusion and disruption leading up to the WMSA/RVA termination.

- ii. Upon an early termination, all of the operational risks that RRRL has to contend with as set out in (a) above become WRWA's problem, save to the extent that they are caused by contractual arrangements which are capable of being terminated. However, in order to make REPL bankable REPL's arrangements will need to be secure and as such it is anticipated that any such extraction may prove difficult, if not impossible.

17 May 2019

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APPENDIX B

LAND LEASED TO WRWA (the "Site")

(EDGED GREEN)

LAND PROPOSED TO BE MADE SUBJECT TO COMPULSORY ACQUISITION

(HATCHED NAVY BLUE ON PINK)

