

Norfolk County Council Waste PFI Project

Final FBC

Clarifications matrix

Authority Contact: Joel Hull – Project Director; Adrian Tyas – Project Manager

WIDP clarifications lodged: 22 July 2011
 NCC first responses returned: (in plum) 26 July 2011
 NCC second responses returned: (in plum) 04 Aug 2011
 WIDP second iteration of clarifications (in blue): 15 Aug 2011
 Second iteration responses (in green) returned: 22 Aug 2011
 WIDP third iteration (in red): 31 Aug 2011
 Third iteration responses () returned:

WIDP PROGRAMME OFFICE NOTE FOR EIR: ROWS 1 – 20 HAVE BEEN REMOVED AS THEY ARE OUT OF SCOPE OF THE REQUEST

Clarification		Response	WIDP Comment	Status
No	Ref			
Policy compliance and Waste Management Objectives				
		Planning Longstop Date – 10 June 2012.	10 June 2013 is correct	
21	App B	Understand that the correct date is <u>June 2013</u> . <ul style="list-style-type: none">When will the EPC contract be signed i.e. is it at financial close?	Yes – the EPC contract will be signed at close As set out in the latest version of the Credit Agreement dated 17 th July 2011:	Open

Waste Infrastructure Delivery Programme
 July 2011

	<ul style="list-style-type: none"> What is the availability period for the Senior Debt? To what extent this Planning Longstop Date can be adjusted if financial close is delayed? 	<p>Availability Period means:</p> <p>(a) for the Term Loan Facility and SDF Loan Facility, the period from Financial Close up to and including the earlier of:</p> <p>(i) the Planned Term Loan Availability Expiry Date provided that if the conditions set out in Clause 4.3 (Further specific condition precedent to a Term Loan or SDF Loan) are not satisfied by the Planned Works Commencement Date, the Availability Period shall be extended on a day for day basis up to the date on which such conditions are satisfied subject to a maximum extension equal to the number of calendar days from (and excluding) the Planned Works commencement Date to (and including) the Planning Permission Longstop Date; and</p> <p>(ii) if the Authority requests ProjectCo to provide a draft Revised Project Plan the date falling [twelve] 12 months after the date on which the Contractor is requested to provide a draft Revised Project Plan under paragraph 3.3.1 of Schedule 26 (Planning) of the Project Agreement (or such later date as may be agreed by the Majority Lenders),</p> <p>Planned Term Loan Availability Expiry Date means the earlier of:</p> <p>(a) the date falling six months after the Actual Completion Date; and</p> <p>(b) the date falling six months after the Scheduled Completion Date.</p> <p>Now that the planning application has been submitted and validated, the Planning Longstop Date is fixed. Any delay to financial close would not impact the planning process already started</p> <p><u>Sent on 09.08.2011:</u> You confirmed that the Planning Long Stop Date is 10 June 2013, which is 2 years from the actual planning submission date. We noted that you also assume that planning determination is expected in Feb 2012.</p> <ul style="list-style-type: none"> In light of the public reaction to the proposal, have you considered, in the context of the planning timetable (i.e. when a clear planning outcome will be obtained), scenarios such as 	
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		<p>a) a negative planning outcome in February 2012, b) the application being called in (by SoS) prior to determination by the Planning Authority, c) others.</p> <p>Yes this has been fully considered and has for instance influenced the Authority's FX hedging strategy which has been to adopt a forward option. To address your scenarios: (a) A negative planning outcome is not expected. However, if there were a negative outcome depending on why this decision would either be appealed by the applicant or measures taken to overcome the refusal for instance through re-submission of an application to address the reason for refusal. However as stated above this is not expected, the site was specifically purchased for the project due to its suitability from a planning perspective and this decision was supported by all the bidders who made their submissions based on using the site following their own assessments of its suitability. (b) The prospect of an application being called in prior to determination is not expected. The Authority has already received correspondence from Eric Pickles' office on this matter stating that the Secretary of State would not be minded to call in a process that should be addressed locally and that decisions would only be called in if they were of national significance. (c) A full range of other options has been considered and the most likely was perceived to be a positive planning decision with a failed application for a JR which fits within the timeframe.</p> <ul style="list-style-type: none"> • In addition, what will happen to the PFI contract and private sector funding availability (noting that there are significant costs involved if a new funding package will need to be brought in). <p>Just to give an example, in a recent waste PFI's planning application approved by the SoS, it took 6 months for the appeal to be prepared and submitted. From that point it took around 1yr 8 months for the public inquiry etc until the final SoS decision.</p> <p>Whilst it is expected that planning permission will be granted in February 2012, the contractual provisions that address planning occurring later are entirely standard. For example, with respect to the availability of private sector funding and any impact on the PFI contract, following 3.3 of Schedule 26, CW will be asked to provide a Revised</p>	
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			<p>Project Plan which will detail "how the Contractor intends to finance the Revised Project (3.3.3 (q)) and any "amendments required to the Contract and any Ancillary Documents" (3.3.3 (i)).</p> <p>Further, with respect to 3.3.3 (i) of Schedule 26, CW has been requested to consider modifying the draft Credit Agreement such that failure to achieve a Satisfactory Planning Permission by the Planning Permission Longstop Date would not constitute an Event of Default should the Authority request that a Revised Project Plan be provided. This will mitigate the risk of significant costs being incurred to bring in a new funding package and any other negative impacts on the PFI contract.</p> <p><u>WIDP: 25.08.11:</u> It should be noted that In using the standard contractual provision, the Authority and its advisers should be mindful that</p> <ol style="list-style-type: none"> A realistic timetable (incl. Planning Long Stop Date) is required. The timetable should accommodate amongst others a scenario such as a "negative" planning outcome in Feb 2012 but following an appeal, a positive planning outcome is obtained; and In light of the high comp on term following planning failure agreed by the Authority in this project, the Authority will be put in a difficult position if the Revised Project Plan (which will detail "how the Contractor intends to finance the Revised Project (3.3.3 (q)) and any "amendments required to the Contract and any Ancillary Documents" (3.3.3 (i))" requires a significantly higher Unitary Charge (e.g. not affordable) due to the requirement to obtain a new funding package. <p>It is noted that the Authority has requested CW to modify the Credit Agreement to mitigate the above.</p> <p>Could you please provide an update on the outcome of this request?</p>		
22			<p>WIDP PROGRAMME OFFICE NOTE FOR EIR: ROWS 22 HAS BEEN REMOVED AS IT IS OUT OF SCOPE OF THE REQUEST</p>		