Confidential Item

CAMPBELLTOWN CITY COUNCIL

Confidential Item

For Council meeting to be held on

Tuesday 16 November 2021 at 7.00 pm

Refer Item 11.13

Confidential Item

11.13 Deed of Novation – Waste Contract

Chief Executive Officer, Paul Di Iulio's Report

Purpose of Report

To seek Council approval for the novation of the 2021 Waste Contract.

Strategic Plan Link

Focus Area 5.3.3 Provide corporate and financial governance that meets the needs of our Community and legislative requirements

Background

Attachments

The following documents are attached to this Report and should be read in conjunction with the discussion below:

Attachment 1 – Letter from IWS dated 2 August 2021 re Acquisition of Integrated Waste Services

Attachment 2 – Email correspondence between the Council, IWS and FSI dated 27 August 2021

Attachment 3 – Letter from First Sentier Investors dated 23 September 2021

Attachment 4 – Corporate Structure Chart First Sentier Investors and Pelican Asset Co Pty Ltd

Attachment 5 – Deed of Novation

Attachment 6 – Item 11.13 of Council Report dated 6 April 2021.

To update the Council regarding the acquisition of IWS (Integrated Waste Services) by First Sentier Investors and the associated implications that the acquisition has on the Council's current contract with IWS for the receipt and processing of residual waste and green organics entered into July 2021 (the 2021 Waste Contract or the Original Contract).

In mid-2021, the Council restructured and extended its contractual relationship with IWS to secure significant savings to the Council which are projected to have a significant impact on the Council's Long term Financial Plan over the next 10 years. At the same time, the Council negotiated a number of new conditions in the contractual relationship to require (among other matters):

- that IWS adhered to certain practices regarding the utilisation of green organics supported by the Council

- that IWS continued to invest in technological advancements with a view to providing additional savings to the Council over the term of the contract, and

- a 'no disadvantage to Council' clause to protect the Council in the event that a competitor develops a new waste processing technology that substantially reduces the cost of waste disposal on offer in the marketplace.

The Council and IWS entered the 2021 Waste Contract on 1 July 2021.

On 2 August 2021, Council received Attachment 1 from IWS that FSI (First Sentier Investors) had acquired the assets of the IWS business and that the Borrelli Family and Veolia had sold their interests in the business. As a result of the acquisition, the FSI and IWS have requested that the Council agree to novate the 2021 Waste Contract from IWS to a FSI subsidiary called Pelican Asset Co Pty Ltd in its capacity as the trustee of Pelican (the Pelican Asset Trust).

Council sought legal advice regarding the proposed novation arrangements.

Discussion

IWS is a waste management business founded by the Borelli Family (Acquista Investments). In 2004, Veolia Environmental Services (Australia) Pty Ltd acquired an interest in the business, forming the IWS Partnership.

In August 2021, Council was made aware that Acquista Investments and Veolia have exchanged contracts with First Sentier Investors so that First Sentier Investors will acquire the assets of IWS and control and run the business.

FSI, formerly known as Colonial First State Global Asset Management in Australia and First State Investments elsewhere, is a global asset management business with reported assets of A$241 billion under their management spread across 17 different streams, 9 countries, 11 offices and 800 employees. FSI have a keen interest in listed infrastructure through projects such as transport, utilities, energy and the communications sectors.

One of the funds that FSI manages is the GDIF (Global Diversified Infrastructure Fund). GDIF is an unlisted, open-ended infrastructure fund and as at 30 June 2021, owned 15 operating infrastructure businesses globally. GDIF, through various corporate entities, has control over Pelican Asset Co Pty Ltd. Pelican Asset Co Pty Ltd is the trustee of the Pelican Asset Trust. A chart showing the relationship between the abovementioned entities is attached to this Report as Attachment 4.

As part of the change in ownership, the Council has been requested to novate the 2021 Waste Contract to Pelican as the new owners of the IWS business.

Under the 2021 Waste Contract the Council can not unreasonably withhold a request by IWS to assign its rights and obligations under the 2021 Waste Contract.

What is a Deed of Novation

A deed of novation is a legally binding document that replaces one party to a contract with another party.

In this case, the outgoing parties are:

- Acquista Investments Pty Ltd ACN 008 048 922 in its personal capacity and as trustee for the Borrelli Family Trust ABN 82 423 163 002, and

- Veolia Environmental Services (Australia) Pty Ltd ACN 051 316 584 t/as Integrated Waste Services ABN 23 043 564 833.

In this case, the incoming party is:

- Pelican Asset Co Pty Ltd ACN 651 535 401 as trustee for the Pelican Asset Trust (the Incoming Party).

In general, unless otherwise agreed in the Deed of Novation, the Incoming Party and continuing party – in this case the Council - will be taken at the time of transfer/completion to be in the same position as if they had been parties to the Original Contract.

In this case, through the novation process, there are only minor changes between the Original Contract and the contract that is formed when the novation is effective (the New Contract). Critically the Council has retained its key rights and entitlements that were agreed between the Council and IWS earlier this year. The question for the Council is therefore whether Pelican intends to and is capable of honouring the terms of the New Contract.

The New Contract Arrangements

The Council made a number of inquiries regarding, and of, FSI and Pelican. In response, FSI and Pelican made a number of representations and undertakings providing assurances to the Council that Pelican intends to, and is capable of, honouring the terms of the New Contract. Those various representations and undertakings have been incorporated in the Deed of Novation so that they are legally binding. They exhibit both the intention and capability of Pelican to honour the terms of the New Contract. The Deed of Novation is attached to this Report as Attachment 5.

The Council's confidence around Pelican's intention and capability is enhanced by the fact that it appears that the arrangements underpinning the New Contract will be the same as the Old Contract – including that the same IWS team will continue to manage the provision of the services to the Council. Attachment 2 and Attachment 3 provide further detail regarding the 'business as usual' commitment of Pelican.

Social Implications

There are no social implications in relation to this report.

Environmental / Climate Change Implications

There are no environmental / climate change implications in relation to this report.

Asset Management Implications

There are no asset management implications in relation to this report.

Governance/Risk management

While the New Contract is technically a 'new' contract, it is on almost identical terms as the current contract (ie the 2021 Waste Contract). The circumstances and market situation that led to the Council resolving not to undertake a competitive tendering process in relation to the entering of the 2021 Waste Contract are substantially the same that apply as at the date of this report and in relation to the entering of the New Contract.

In addition, the New Contract arises as a result of the Council giving effect to a right on the part of IWS to assign the 2021 Waste Contract. In other words, even if it wanted to approach the market to source alternate proposals for the services, the Council is restricted from doing so under the terms of the 2021 Waste Contract.

Community Engagement Implications

There are no Community engagement implications in relation to this report.

Regional Implications

There are no regional implications in relation to this report.

Economic Development Implications

There are no economic development implications in relation to this report.

Financial Implications

There are no financial implications in relation to this report, although Council has incurred legal expenses in reviewing this matter which have been accommodated within the existing budget allocations.

Recommendation

That:

1. **Council enters into the Deed of Novation as set out in Attachment 5 (subject to any minor amendments agreed by the Council's Chief Executive Officer to complete the document) with Pelican Asset Co Pty Ltd ACN 651 535 401 as trustee for the Pelican Asset Trust**

2. **the Council Chief Executive Officer is delegated authority to complete and execute the Deed of Novation on behalf of the Council.**

Integrated Waste Services
Lot 254 Hines & Wingfield Roads
Wingfield, South Australia, 5013
T: + 61 8 8348 5100
F: + 61 8 8348 5101
www.iwsgoup.com.au
ABN 23 043 564 833

2 August 2021

Paul Di Iulio
Chief Executive Officer
City of Campbelltown

Private & Confidential

Dear Paul,

Re: Sale of Integrated Waste Services to First Sentier Investors

Integrated Waste Services (IWS) is a waste management business founded by the **Borrelli Family (Acquista Investments)** in 1984 which has grown considerably over the years. In 2004 **Veolia Environmental Services (Australia) Pty Ltd (Veolia)** acquired an interest in the business, forming the IWS Partnership, which has enabled further growth and investment in the waste management industry.

Both Acquista Investments and Veolia have now exchanged contracts with **First Sentier Investors (FSI)** to acquire the assets of the IWS business and continue that investment in the business, **expected on / around September 2021.**

FSI is a long-term infrastructure investor and currently has $17 billion invested in infrastructure assets globally, including in the waste sector. FSI currently is currently a shareholder in several infrastructure assets locally in South Australia, including Adelaide Airport, Water Utilities Australia and Quantem (bulk liquid storage) and is committed to growing the existing IWS business.

You are among the first to hear this exciting news, because we value you as an important customer. Thank you for your continued partnership over the years.

The IWS Partners (Acquista Investments and Veolia) and FSI are excited about this announcement and see this as a new chapter for the IWS business, one that will enable further investment in waste management offerings both in South Australia and Nationally.

What this means for you

We highlight that all current staff will be offered employment with FSI, Joe Borrelli will remain on in his capacity as Chief Executive Officer and the management team will remain unchanged. It is our priority to ensure that this is a positive and seamless transition for you.

In the coming days I will be in touch with you directly to arrange a time to discuss the next steps.

IWS will continue serving our customers as usual, and your contacts will remain unchanged. If you have any questions about future service or support, please contact the appropriate management personnel below:

IWS Management Team

Joe Borrelli
Chief Executive Officer
E: Joe.Borreli@iwsgroup.com.au
Ph: (08) 8348 5111
Mob: 0416 000 770

Colin Mayberry
General Manager - Environmental
E: Colin.Mayberry@iwsgroup.com.au
Ph: (08) 8348 5113
Mob: 0412 122 057

Matt Cameron
Chief Financial Officer
E: Matt.Cameron@iwsgroup.com.au
Ph: (08) 8348 5115
Mob: 0450 105 002

Andrew Bell
General Manager - Operations
E: Andrew.Bell@iwsgroup.com.au
Ph: (08) 8348 5117
Mob: 0400 273 903

Anne Borrillo
Sales & BD Manager
E: Anne.Borrillo@iwsgroup.com.au
Ph: (08) 8348 5114
Mob: 0447 000 770

Thank you for your valued business, and we look forward to continuing to deliver outstanding waste management outcomes for you.

Sincerely



Joe Borrelli
Chief Executive Officer
Integrated Waste Services

Attachment 2

From: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Sent: Friday, 27 August 2021 1:53 PM
To: Paul Di Iulio <PDiIulio@campbelltown.sa.gov.au>
Subject: Fwd: IWS & FSI Announcement

Hi Paul,

Please see some of your questions answered in green below. I have a call with them this afternoon and I will fill them in on question 5.

Let me know if you need anything else.

Thanks Joe

Begin forwarded message:

<image028.png>

Joe Borrelli
Chief Executive Officer, IWS Group

t: +61 8 8348 5111 | m: 0416 000 770 | f:+61 8 8243 1299
e: Joe.Borrelli@iwsgroup.com.au | w: www.iwsgroup.com.au
a: Lot 254 Hines & Wingfield Roads, Wingfield, 5013

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From: Marc Benscher <marc.benscher@firstsentier.com>
Date: 27 August 2021 at 11:58:11 ACST
To: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>, Matthew Cameron <matt.cameron@iwsgroup.com.au>
Cc: Alan Wu <Alan.Wu@firstsentier.com>
Subject: FW: IWS & FSI Announcement

Hi Joe,

Please find below draft responses in green.

Can we discuss the request in relation to pt. 5 – i.e. "the Council seeks a commercial understanding with FSI as a pre-condition to the novation."

In the meantime, let me search for an org structure which links GDIF to MUFG (i.e. for pt 2).

Thanks, Marc.

From: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Sent: Thursday, 26 August 2021 1:09 PM
To: Marc Benscher <Marc.Benscher@firstsentier.com>; Alan Wu <Alan.Wu@firstsentier.com>; Matthew Cameron <matt.cameron@iwsgroup.com.au>
Subject: FW: IWS & FSI Announcement

Please see email concerns below, let me know what you think .?

Happy to discuss if you wish,

Thanks Joe

<image029.png>

Joe Borrelli
Chief Executive Officer, IWS Group

t: +61 8 8348 5111 | m: 0416 000 770 | f:+61 8 8243 1299
e: Joe.Borrelli@iwsgroup.com.au | w: www.iwsgroup.com.au
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From: Paul Di Iulio <PDiIulio@campbelltown.sa.gov.au>
Date: Thursday, 26 August 2021 at 12:33
To: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Subject: FW: IWS & FSI Announcement

Hi Joe

Further to our initial discussions, we have undertaken some high level due diligence in respect of First Sentier Investors (**FSI**).

With the you and your Family, the Council had a reasonable understanding of the controlling owners of the IWS business, their connections and other financial interests in South Australia and therefore their underlying drivers. However, FSI is a different proposition for the Council.

While it may be reasonable to expect (although not assume) that things will continue on a business-as-usual basis in the near term, the IWS Contract has 10 years to run. The fact that it was the extension of an existing arrangements with an existing partner was significant in the Council's decision to enter a 10-year term.

Therefore, in these circumstances it is appropriate to look forward and consider if FSI will be able to perform under the contract in the same way that the Council expected IWS to. As a starting point we would like to seek to clarify the following:

1. How will the contract with the Council be managed in the short term (while IWS remains in a management capacity) and then subsequently. Will there be a transfer of senior managers and other staff between IWS and FSI? [**FSI**] IWS will continue to be managed by the current IWS management team post completion of the

transaction. Mr Joe Borrelli will continue in his role as CEO. The role of FSI in the business will be as shareholders and board members of the new legal entity (as distinct to the management team). In our role as shareholders and board members, we will ensure that the business is appropriately managed and resourced to deliver the same high quality of service to customers and suppliers, and meet our obligations to the EPA and the community as a whole.

2. What corporate policies/philosophies does FSI and/or its controlling and controlled parties bring to the waste industry and in particular the landfill business it is acquiring from IWS? Can FSI please provide an ownership chart showing the ultimate ownership of FSI and the interposed/related entities through to Pelican Asset Co Pty Ltd?

[**FSI**] Our investment philosophy is to invest in predominantly operating infrastructure assets in developed markets across the globe to deliver sustainable returns to our investors. We are long-term 'invest-and-hold' investors with a focus on sustainability and the consideration of environmental, social, and governance (ESG) issues. Through the application of both capital and expertise, we seek to ensure that our investee businesses can grow and deliver the desired outcomes for stakeholders. Through our active management on the Boards of multiple investments, we have overseen billions of dollars of successful investment across sectors.

As part of our due diligence, we have been impressed with the current operation and growth initiatives identified by the current IWS management team. In our role as shareholders and board members, we are focused on ensuring that the business continues to meet its service standards, regulatory obligations and community responsibilities. We are also very supportive of growing the business including opportunities to recover and re-use greater volumes of waste including the provision of refuse derived fuel (RDF).

While IWS is our first investment in the waste sector in Australia, we have made a number of investments in this sector globally:

- In 2020, we acquired a 49% interest in Rialto Bioenergy Facility (RBF); the largest food waste diversion and energy recovery facility in the North America. RBF has the capacity to convert 250,000 tons per year of organic waste and over 100,000 tons per year biosolids into renewable natural gas;
- In late 2020, we acquired a 45.8% interest in MVV Energie AG (MVV); a leading German integrated utility, which owns and operates a portfolio of energy from waste, biomass, and bio methane plants in Europe. MVV processes approximately 2 million tonnes per year of waste and produces electricity and steam for district heating;
- In 2021, we acquired a 100% interest in enfinium (formerly, Wheelabrator UK / Multifuel Energy); the largest pure-play energy-from-waste portfolio in the UK, with a total waste processing capacity of 2.3 million tonnes per year and a total power generation capacity of 265MW.

As an asset management team, we will be sharing the lessons and insights learned from this collective experience with a view to contribute to the performance of each of the waste businesses.

In terms of ownership, this investment will be wholly owned by the Global Diversified Infrastructure Fund (GDIF) on behalf of investors (as opposed to our shareholder), many of whom are Australian

superannuation funds and insurance companies including from South Australia. The management company for GDIF (and its related party which employs the investment team) is ultimately owned by Mitsubishi UFJ Financial Group, Inc (MUFG). MUFG is a Japanese bank holding and financial services company headquartered in Chiyoda, Tokyo, Japan. It is also important to note that the governing bodies for GDIF have a fiduciary responsibility to manage the fund in the best interest of investors.

Further information on who we are as an asset manager can be found here: https://www.firstsentierinvestors.com.au/au/en/institutional/our-funds/infrastructure-real-estate/unlisted-infrastructure.html

3. Under the current contract there are two key clauses around innovation - one regarding an initiative that IWS has been developing and another to require IWS to match third party initiatives in certain circumstances. The Council requires clarification around FSI's understanding of these two clauses and its intentions around investment into the IWS business. [**FSI**] As part of the novation of the contract, FSI will honor the terms previously agreed with Mr Joe Borrelli; importantly the two clauses identified in your query. It is also important to note that a key driver for our investment in the IWS business is to pursue a number of growth initiatives identified by the IWS management team, including the opportunity to provide RDF which we believe will benefit the business, customers and stakeholders as a whole.

4. FSI has other waste and infrastructure assets in Australia and South Australia. Are there any current or potential conflicts of interest that FSI can advise the Council of? [**FSI**] We do not believe there are any conflicts of interest with our existing investments. IWS is our only investment in the waste sector in Australia (noting a number of other interests globally). Further, our interests in South Australia are in markedly different sectors – e.g. Adelaide Airport and Water Utilities Australia – with limited interrelationship and cross over in service.

5. The Council is currently involved in a dispute around its ability to take its green waste to IWS. The Council seeks a commercial understanding with FSI as a pre-condition to the novation. This would be an important sign of good faith consistent with how the contract has been managed with IWS in the past. [FSI] To discuss with Joe.

6. What is the security interest that FSI proposes to grant to its financiers over the contract? What rights does it provide the financers and in what circumstances? What further documentation will FSI seek the Council to enter into to support this arrangement? [**FSI**] The FSI entity that will own the IWS waste processing business will be entering into a loan arrangement with their financiers and as such will be granting a security interest over all of its assets in favour of its financiers to secure its loan obligation. This includes security over its interest in the contracts it holds and the contracts to be novated from the previous owners.

   In circumstances where there is an event of default by FSI under its loan documentation, the financiers will have the right to enforce the security the financiers have against FSI (ie appoint a receiver to the FSI entity). Any such enforcement rights will only be as against FSI and do not change the contract between FSI and the Council (for example, FSI and any receiver appointed by the financiers will only be

able to assign the contract to a third party in accordance with the terms of the contract).

As such, the interaction between the Council and the financiers will be limited to the Council's consent to FSI's grant of security to the financiers by executing the deed of novation. Importantly, FSI is not seeking any additional documentation from the Council to support FSI's arrangements with its financiers.

7. What will be the net asset position of the Pelican Asset Trust with whom Council will be contracting to provide an essential service? [**FSI**] The net asset position of the Trust will be in excess of A$140 million.

8. In terms of the confidentiality terms proposed, they are challenging for the Council given the Council's broader disclosure obligations. There will need to be some carve outs to the confidentiality provisions proposed by FS. [**FSI**| Would you please identify the carve outs requested for consideration.

These are some preliminary questions to support the Council's consideration of the request for novation of the contract. Once we have answers around the above, then I think we should have a further discussion to consider Council's position and how to move forward in the best interests of all parties

Regards

Paul Di Iulio
Chief Executive Officer

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From: Matthew Cameron <matt.cameron@iwsgroup.com.au>
Sent: Monday, 2 August 2021 4:27 PM
To: Paul Di Iulio <PDiIulio@campbelltown.sa.gov.au>
Cc: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Subject: IWS & FSI Announcement

Hi Paul,

Trust you're well.

As requested, please find attached a copy of the IWS & FSI announcement letter and draft Deed of Novation.

Please let me know if you require any further information.

Regards,
Matt

<image042.png>

Matthew Cameron
Chief Financial Officer, IWS Group

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Attachment 3

First Sentier Investors

Level 5, Tower 3 International Towers
300 Barangaroo Avenue
Barangaroo NSW 2000

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firstsentierinvestors.com.au

23 September 2021

Paul Di Iulio
Chief Executive Officer
Campbelltown City Council
172 Montacute Road,
Rostrevor, SA 5073

Dear Paul,

Re Acquisition of Integrated Waste Services

Thank you for reaching out to us on the acquisition of Integrated Waste Services ("IWS"). We are excited about the business and we look forward to an opportunity to meet with you in person once we are able to travel to Adelaide.

Organisation

By way of background, we work for First Sentier Investors ("FSI"), which was previously known as Colonial First State Global Asset Management. FSI is one of Australia's largest investment management firms with assets under management of A$241 billion on behalf of institutional investors, including superannuation funds, insurance companies and other investors from Australia and across the globe. Within FSI, we, together with 50 other investment professionals, work within the direct infrastructure team.

Our team has been in existence in Australia for over 25 years and we manage in excess of A$17 billion of investments on behalf of intuitional investors. The Fund that is seeking to acquire IWS – the Global Diversified Infrastructure Fund ("GDIF") – is one of our global infrastructure offerings with assets in excess of A$5 billion and includes such local investments as Adelaide Airport, Quantem (bulk liquid storage at Pelican Point) and Water Utilities Australia (supplies recycled water to McLaren Vale and Lightsview).

Our investment philosophy is to invest in predominantly operating infrastructure assets in developed markets across the globe to deliver sustainable returns to our investors. We are long-term 'invest-and-hold' investors with a focus on sustainability and the consideration of environmental, social, and governance ("ESG") issues. As an example, we have been an investor in Adelaide Airport since 1998 and have invested significant amount of capital for new terminals, hangars, taxiways, retail offering, car parks, as well as ESG initiatives such as solar energy, waste reduction and water conservation, transforming it into one of the best and most sustainable airports in the world. Through the application of both capital and expertise, we seek to ensure that our investee businesses can continue to innovate, grow and deliver the desired outcomes for stakeholders. Through our active management on the Boards of multiple investments, we have overseen billions of dollars of successful investment across sectors.

While IWS is our first investment in the waste sector in Australia, we have made a number of investments in this sector globally:

- In 2020, we acquired a 49% interest in Rialto Bioenergy Facility ("RBF"); the largest food waste diversion and energy recovery facility in the North America. RBF has the capacity to convert 250,000 tons per year of organic waste and over 100,000 tons per year biosolids into renewable natural gas;

- In late 2020, we acquired a 45.8% interest in MVV Energie AG ("MVV"); a leading German integrated utility, which owns and operates a portfolio of energy from waste, biomass, and bio methane plants in Europe. MVV processes approximately 2 million tonnes per year of waste and produces electricity and steam for district heating;
- In 2021, we acquired a 100% interest in enfinium (formerly, Wheelabrator UK / Multifuel Energy); the largest pure-play energy-from-waste portfolio in the UK, with a total waste processing capacity of 2.3 million tonnes per year and a total power generation capacity of 265MW.

As an asset management team, we will be sharing the lessons and insights learned from this collective experience with a view to contribute to the performance of each of the waste businesses; importantly IWS as we look to grow our local presence.

As a customer and stakeholder of IWS, we believe you will benefit from the retention of the IWS management team. We have also offered employment to all existing IWS staff and expect all staff to accept this offer. Our aim is to ensure a smooth transition to the new ownership structure whilst preserving the current relationships and without disruption to the best practice waste management solutions provided by IWS to Council.

Innovation, investment and growth

A key driver for our investment in IWS is to support the Management teams' strategy and vision for the business, which includes the following initiatives:

- Greater receipt and utilisation of source separated organics – the Management team has developed an opportunity to partner with our nation's First People to develop a unique agricultural product from the nutrient rich compost of the FOGO waste stream. We are highly supportive of this strategy as it provides benefits to the local community and environment and further diversifies the waste stream for the business away from landfill.
- Manufacture and supply of refuse derived fuel ("RDF") to local industry – similar to the organics initiative, we are highly supportive of this opportunity. We see this as an important initiative to improve resource recovery for the business and help reduce fossil fuel emissions for local industry. As a large infrastructure fund, we also have the financial means to support the large investment into RDF on the basis that we can reach mutually agreeable terms with local industry for the supply of the product.
- Process improvement – the Management team has identified a number of process improvement initiatives which we believe will deliver superior outcomes for the business and its customers including new processing equipment at IWS Dublin in order to recover organics from regional MSW. As the incoming owner we have agreed to fund this project. Similar to the above opportunities, we are supportive of this and many other initiatives which improve resource recovery, safety outcomes for our employees and customer service.

Contract novation

As part of the change in ownership, we are requesting that customer's novate their contracts to a new trust under our management (i.e. Pelican Asset Trust). As part of this novation, we will honour the current terms of your contract with IWS; importantly a discount to gate fees in the event of successful delivery of the abovementioned RDF project. The receipt and utilisation of green organics within the contract is also important to us in delivering our partnership initiatives with Australia's First People; an initiative we intend to support following acquisition of the business.

We note that many of the growth initiatives featured prominently in your recent discussions with Mr Joe Borrelli and the recent contract therein. I believe we are aligned in the pursuit of these objectives and this alignment extends to the current management team in vision, philosophy and incentive regime.

I hope this letter addresses your queries on FSI as an organisation and our commitment to the growth of the business.

Please do not hesitate to contact me if you have any further queries.

Yours faithfully,



Marc Benscher

Director
Pelican Asset Co Pty Ltd
First Sentier Investors

First Sentier Investors

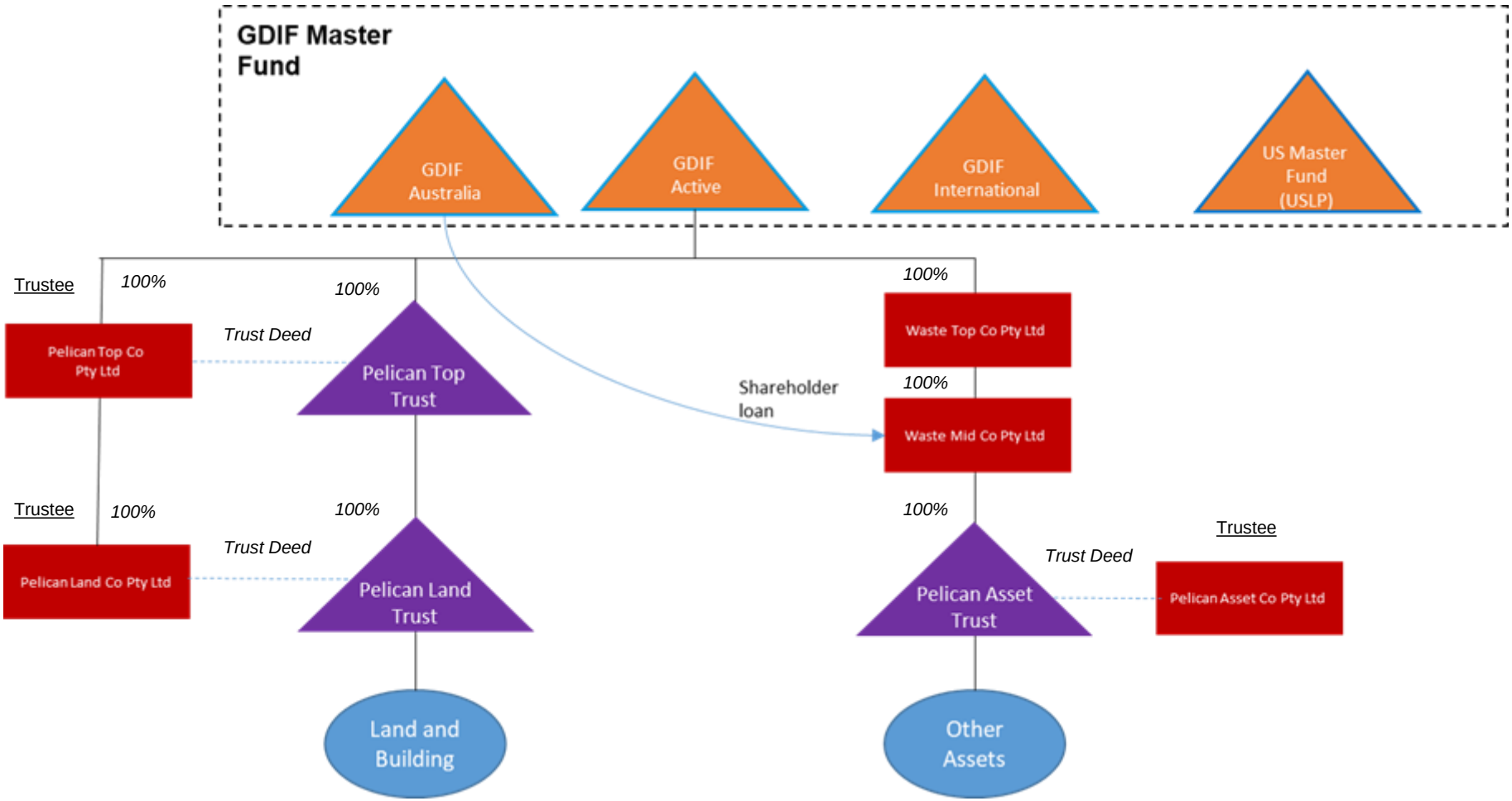
Pelican

Structure charts

August 2021

Pelican
Ownership structure

First Sentier Investors

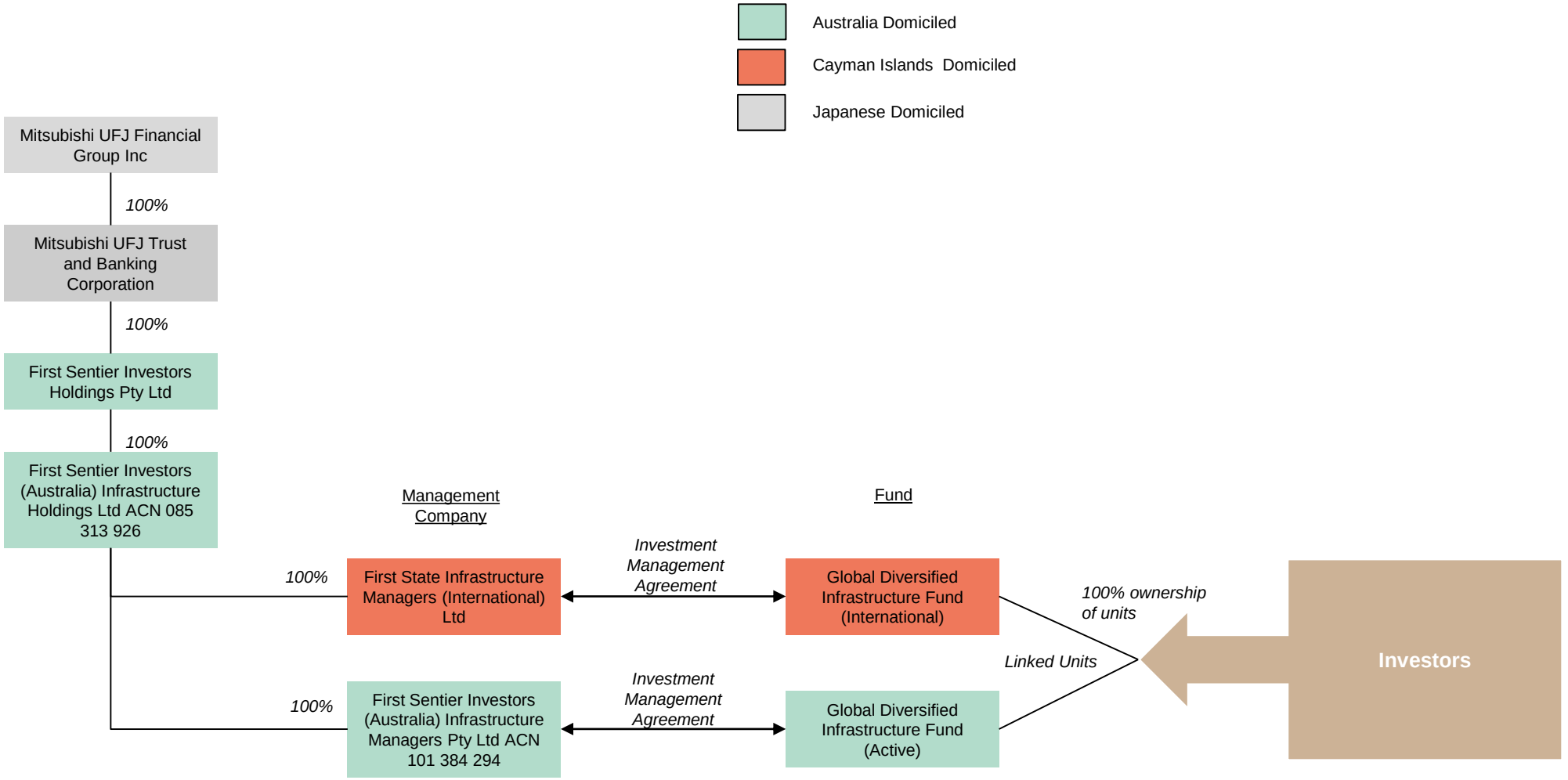


Australia domiciled companies

Australian domiciled trusts

Global Diversified Infrastructure Fund (GDIF)

Ownership structure



Disclaimer

First Sentier Investors

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Attachment 5

Deed of Novation – Contract for Receipt and Disposal of General Waste, Green Waste and Construction and Demolition Waste

Amendment History:
IWS draft 02.08.2021
NW: 27 Oct 2021
FSI: 29/10/2021
NW: 1/11/2021

Acquista Investments Pty Ltd
ACN 008 048 922

in its personal capacity and as trustee for the Borrelli Family Trust
ABN 82 423 163 002

and

Veolia Environmental Services (Australia) Pty Ltd

ACN 051 316 584

t/as Integrated Waste Services

ABN 23 043 564 833

Pelican Asset Co Pty Ltd
ACN 651 535 401

atf the Pelican Asset Trust

Corporation of the City of Campbelltown
ABN 37 379 133 969

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Parties

Party 1

Acquista Investments Pty Ltd ACN 008 048 922 in its personal capacity and as trustee for the **Borrelli Family Trust** ABN 82 423 163 002 and **Veolia Environmental Services (Australia) Pty Ltd** ACN 051 316 584 t/as **Integrated Waste Services** ABN 23 043 564 833 of Lot 254, Hines & Wingfield Roads, Wingfield, in the State of South Australia 5013 (**Outgoing Party**)

Party 2

Pelican Asset Co Pty Ltd ACN 651 535 401 as trustee for the Pelican Asset Trust of Level 5, Tower 3, International Towers, 300 Barangaroo Avenue, Sydney in the State of New South Wales 2000 (**Incoming Party**)

Party 3

Corporation of the City of Campbelltown ABN 37 379 133 969 of PO Box 1, Campbelltown in the State of South Australia 5074 (**Continuing Party**)

Introduction

A. The Outgoing Party and the Continuing Party are parties to the Original Contract.

B. The parties have agreed to novate the Original Contract on the terms of this deed, such that, at the Effective Time:

(i) the Original Contract will be terminated and discharged; and

(ii) the Incoming Party and the Continuing Party will enter into a new contract (on the same terms as the Original Contract) to replace the Original Contract.

Operative clauses

1. **Definitions**

Unless otherwise specified, in this deed:

Authority means any:

(a) government department;

(b) local government council; or

(c) government or statutory authority,

which has a right to impose a requirement or whose consent is required with respect to the obligations under this deed;

Business Day means any day except a Saturday, a Sunday or any other public holiday in South Australia;

Business Sale Deed means the business sale deed in relation to the sale of the “Integrated Waste Services” business between, among others, the Outgoing Party and the Incoming Party dated on or about 28 July 2021;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, allegation, suit, cause of action, judgment, damage, loss, debt, tax, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this deed;

Completion means completion of the transactions provided for in the Business Sale Deed;

Corporations Act means the *Corporations Act 2001* (Cth);

Confidential Information means:

(a) any term of this deed and the existence of this deed;

(b) any term of the Original Contract or the New Contract and the existence of each of the Original Contract and New Contract;

(c) trade secrets, know-how, financial data, accounting information, statistics, research, scientific, technical, product, market or pricing information of a party or relating to a party's systems, business, employees or contractors;

(d) any other information belonging to a party that is marked "confidential"; and

(e) any other information belonging to a party which is of a confidential nature;

Effective Time means the date and time that Completion occurs;

Loss means any action, Claim, liability, cost, expense, loss or damage;

New Contract has the meaning set out in clause 4 of this deed;

Original Contract means the contract titled "A Contract for the Receipt, Processing & Disposal of General Waste, Green Waste and Construction and Demolition Waste, Contract Number T2014/0210" executed on 15 December 2014 as extended and varied on 11 May 2018 and with the effective date of 1 July 2021, a copy of which appears in Annexure A;

Personnel includes directors, officers and employees;

Related Body Corporate has the meaning set out in the Corporations Act, except that for the purposes of this deed the parties agree that:

(a) a trust may be a "Related Body Corporate" for the purposes of which a unit or other beneficial interest may be regarded as a "share"; and

(b) "Subsidiary" has the meaning set out in this deed; and

Subsidiary has the meaning set out in the Corporations Act, provided that:

(a) a trust may be a Subsidiary of an entity where that entity holds more than 50% of the units or other beneficial interest in the trust or has the ability to control the appointment or removal of the trustee; and

(b) a corporation or a trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

Term has the meaning given to that word in the Original Contract.

2. **Interpretation**

In this deed, unless the context otherwise requires:

2.1 the Introduction is correct;

2.2 headings do not affect interpretation;

2.3 singular includes plural and plural includes singular;

2.4 words of one gender include any gender;

2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

2.6 a reference to a person includes a corporation, joint venture, partnership, association, government body, firm and any other entity;

2.7 a reference to a party includes that party's personal representatives, successors and permitted assigns;

2.8 if a party comprises two or more people:

(a) a promise by that party binds each of them individually and all of them jointly;

(b) a right given to that party is given to each of them individually;

(c) a representation, warranty or undertaking by that party is made by each of them individually;

2.9 a reference to a document includes all amendments or supplements to that document, or replacements or variations of it;

2.10 a provision must not be construed against a party only because that party prepared it;

2.11 a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;

2.12 the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by the word "including") or precede them or are included elsewhere in this deed;

2.13 if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day; and

2.14 another grammatical form of a defined expression has a corresponding meaning.

3. **Counterparty consent**

The parties consent to:

3.1 the novation of the Original Contract in accordance with this deed; and

3.2 the Incoming Party granting a security interest to the Incoming Party's financiers over its rights under this deed and the New Contract.

4. **Novation**

4.1 The parties agree that, conditional on Completion occurring and with effect on and from the Effective Time:

(a) subject to clauses 8.1(c) and 8.1(d), the Original Contract is terminated and discharged; and

(b) a new contract is created between the Incoming Party and the Continuing Party on the same terms and conditions as, and in substitution for, the Original Contract (**New Contract**), subject to the following:

(i) the Incoming Party will be the party in place of the Outgoing Party and the Outgoing Party will not be a party to the New Contract;

(ii) all references to the Outgoing Party are to be read as references to the Incoming Party;

(iii) other than as provided under this deed, all consents, waivers, approvals, notices and payments given in connection with the Original Contract prior to the Effective Time will be taken to have been given in connection with the New Contract such that the Incoming Party and Continuing Party will be taken at the Effective Time to be in the same position as if they had been parties to the Original Contract;

(iv) the New Contract will be read as if clause 10 of this deed were set out in full in the New Contract but substituting the words 'Incoming Party' with the appropriate term used to describe the Incoming Party in the New Contract;

(v) the New Contract will be read as if clause 24 of the Original Contract is deleted and replaced with clause 12 of this deed set out in full in the New Contract but substituting the words 'Incoming Party' with the appropriate term used to describe the Incoming Party in the New Contract;

(vi) the New Contract will be read as if clause 34.4.1 of the Original Contract were deleted and replaced with the words:

"to any person to which disclosure of Confidential Information is permitted under clause 24.1 of this Contract;"

(vii) the New Contract will be read as if clause 4.1(c) of the Original Contract becomes clause 4.1(d) of the New Contract and the following is inserted as a new clause 4.1(c) of the New Contract:

"correspondence regarding the change of ownership of the Contractor, including:

i. the letter dated 23 September 2021 from letter Mr Marc Benscher of First Sentier Investors to Mr Paul Di Iulio (Chief Executive Officer) attached to this Contract as Attachment 4; and

ii. the email dated 27 August 2021 from Mr Joe Borrelli to Mr Paul Di Iulio (Chief Executive Officer), responding to questions posed by Mr Paul Di Iulio in an email dated 26 August 2021 attached to this Contract as Attachment 5";

(viii) the New Contract will be read as if the reference to clause 4.1(c) in clause 4.2 were deleted and replaced with a reference to clause 4.1(d);

(ix) the New Contract will be read as if clause 11 of this deed were set out in full in the New Contract as a new clause 4.3 but substituting the words:

i. 'Incoming Party' with the appropriate term used to describe the Incoming Party in the New Contract;

ii. 'Continuing Party' with the appropriate term used to describe the Continuing Party in the New Contract;

iii. 'this deed' with 'this Contract';

iv. 'Annexure B' with the words 'Attachment 4'; and

v. 'Annexure C' with the words 'Attachment 5';

(x) the New Contract will be read as if clause 34.8.1 of the Original Contract were deleted;

(xi) the New Contract will be read as if the terms 'Confidential Information' and 'Related Bodies Corporate' have the same meaning as given to those terms in this deed;

(xii) Annexure B to this deed will be taken to be inserted as Attachment 4 of the New Contract; and

(xiii) Annexure C to this deed will be taken to be inserted as Attachment 5 of the New Contract.

4.2 The Incoming Party must notify the Continuing Party promptly:

(a) after Completion confirming the Effective Time; or

(b) if the Business Sale Deed is terminated prior to Completion (in which case this deed shall immediately terminate).

5. **Incoming Party bound by New Contract**

On and from the Effective Time, the Incoming Party:

5.1 is bound by, and must observe, the terms of the New Contract;

5.2 must perform the obligations of the Incoming Party arising under the New Contract; and

5.3 enjoys under the New Contract all the rights and benefits conferred on the Outgoing Party under the Original Contract as if the Incoming Party had originally been named in the Original Contract as the Outgoing Party.

6. **Continuing Party bound by New Contract**

On and from the Effective Time, the Continuing Party:

6.1 is bound by, and must observe, the terms of the New Contract;

6.2 must perform the obligations of the Continuing Party arising under the New Contract; and

6.3 enjoys under the New Contract all the rights and benefits conferred on the Continuing Party under the Original Contract.

7. **Acknowledgement**

The parties acknowledge and agree that:

7.1 notwithstanding the terms of the Original Contract and whether or not it was duly executed by the parties thereto, the Original Contract is and has always been an agreement between the Outgoing Party and the Continuing Party and is binding on those parties up to the Effective Time; and

7.2 nothing in this deed or any of the transactions effected or contemplated by this deed constitutes:

(a) a breach of any term of the Original Contract or the New Contract;

(b) an event of default (howsoever defined) under the Original Contract or the New Contract; or

(c) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, a breach of, or the termination or enforcement of, the Original Contract or the New Contract.

8. **Releases and indemnities**

8.1 On and from the Effective Time:

(a) the Continuing Party releases and forever discharges the Outgoing Party and its Personnel from all obligations to be performed by the Outgoing Party under the Original Contract after the Effective Time; and

(b) the Outgoing Party releases and forever discharges the Continuing Party and its Personnel from all obligations to be performed by the Continuing Party under the Original Contract after the Effective Time,

provided that:

(c) the Outgoing Party remains liable to the Continuing Party for any default, act or omission of the Outgoing Party under the Original Contract prior to the Effective Time; and

(d) the Continuing Party remains liable for any default, act or omission of the Continuing Party under the Original Contract prior to the Effective Time.

8.2 On and from the Effective Time:

(a) the Outgoing Party indemnifies and must keep indemnified the Incoming Party from and against any Loss suffered or incurred by the Incoming Party to the extent it relates to any default, act or omission of the Outgoing Party under the Original Contract prior to the Effective Time; and

(b) the Incoming Party indemnifies and must keep indemnified the Outgoing Party from and against any Loss incurred by the Outgoing Party to the extent it relates to any default, act or omission of the Incoming Party under the New Contract on or after the Effective Time.

8.3 The novation under clause 4 and releases under clause 8.1 do not prejudice any accrued rights, obligations or Loss arising under the Original Contract in connection with the performance of the Original Contract before the Effective Time which the Outgoing Party and the Continuing Party may have against each other.

8.4 A party to this deed may use and refer to this deed in any court or other proceedings brought by, through or on behalf of any other party to this deed, including as an absolute bar to any Claim which is contrary to, or inconsistent with, the terms of this deed.

9. **Mutual representations and warranties**

Each party represents and warrants for the benefit of each other party that:

9.1 it has the full power and authority to enter into and to perform its obligations under:

(a) this deed; and

(b) in the case of the Incoming Party and the Continuing Party, the New Contract;

9.2 the performance by it of this deed does not and will not violate in any respect any provision of:

(a) any law; or

(b) its constituent documents,

and does not and will not result in a breach or default in any material respect under any agreement binding it;

9.3 its obligations under this deed are valid and binding and are enforceable against it in accordance with their terms;

9.4 any authorisations required in connection with the execution, delivery and performance by it and the validity and enforceability against it of this deed have been obtained or effected and are in full force, and there has been no material default by it in the performance of any of the terms and conditions of any of those authorisations; and

9.5 to the extent a party to this deed is the trustee of any trust:

(a) that party is the sole trustee of the trust, has been validly appointed as the sole trustee of the trust and no action has been taken or proposed to remove it as trustee of the trust;

(b) that party has power under the terms of the trust to execute this deed and to perform its obligations under this deed;

(c) that party has a right of indemnity from the trust assets which is unrestricted (subject to law and to the trust deed) and there are no facts, matters or circumstances which that would disentitle that party from being so indemnified;

(d) has not exercised any power under the terms of the trust to release, abandon or restrict any power conferred on it as trustee of the trust;

(e) that party executes this deed as part of the proper administration of the trust fund and for the benefit of the beneficiaries;

(f) that party is not in breach of trust;

(g) the trust has been established, is duly constituted and no action has been taken or proposed to terminate the trust;

(h) no vesting date of the trust has been or will be determined prior to the Effective Time;

(i) no notice has been or will be given under any legislation inviting Claims against the trust fund before distribution; and

(j) that party will not, prior to the Effective Time:

(i) amend the trust deed in any manner that in any way directly or indirectly adversely affects, or may adversely affect, any of the warranties set out in this clause 9.5;

(ii) retire as trustee of the trust; or

(iii) appoint a new trustee of the trust.

10. **Incoming Party limitation of liability**

10.1 Pelican Asset Co Pty Ltd enters into this deed only in its capacity as trustee (**Trustee**) of the Pelican Asset Trust (the "**Trust**") and in no other capacity. A party may enforce its rights under this deed against the Trustee only to the extent of the Trustee's right of indemnity out of the assets of the Trust.

10.2 The parties agree that the liability of the Trustee arising under or in connection with this deed is limited to the amount that the Trustee actually receives in the exercise of its right of indemnity against the assets of the Trust and no party or person may seek to recover any shortfall by bringing proceedings against the Trustee in its personal capacity.

10.3 The parties other than the Trustee may not sue the Trustee in any capacity other than as responsible entity or trustee (as applicable) of the Trust, including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

10.4 The provisions of this limitation of liability clause shall, subject to clause 10.5, not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the constitution or trust deed (as applicable) establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's failure to properly perform its duties as responsible entity or trustee (as applicable). For these purposes, it is agreed that the Trustee cannot be regarded as having failed to properly perform its duties as responsible entity or trustee (as applicable) to the extent to which any failure by the Trustee to satisfy its obligations or breach of representation or warranty under this deed has been caused or contributed to by a failure by any other party to fulfil its obligations under this deed or by any act or omission of any person other than the Trustee.

10.5 Nothing in clause 10.4 shall make the Trustee liable for any Claim for an amount greater than the amount which the Trustee would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by the Trustee's failure to properly perform its duties.

10.6 No attorney, agent, receiver or receiver and manager appointed by any person in accordance with this deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered to constitute a failure of the Trustee to properly perform any of its duties in relation to the Trust or attempt to properly do so for the purposes of this limitation of liability clause.

10.7 The Trustee is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 10.1 to 10.6 (inclusive) of this limitation of liability clause.

10.8 The limitation of the Trustee's liability in this limitation of liability clause applies despite any other provision of this deed or any law (to the extent permitted) and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed. This limitation of liability clause prevails to the extent of inconsistency with any other clause of this deed and survives termination of this deed.

11. **Continuing Party reliance on Incoming Party representations and undertakings**

The Continuing Party enters into this deed in reliance on the Incoming Party's representations and undertaking contained in the correspondences set out in Annexure B and Annexure C (**Incoming Party's Warranties and Undertakings**) and that those Incoming Party's Warranties and Undertakings constitute obligations of the Incoming Party under this deed that continue in full force and effect during the Term.

12. **Confidentiality**

12.1 Subject to clause 12.4, each party agrees not to disclose Confidential Information provided by another party in connection with this deed that is not publicly available except:

(a) to its employees, Related Bodies Corporate, legal advisers, auditors or other consultants (each of whom undertakes to keep the disclosed Confidential Information confidential and only on a need to know basis and only to the extent that such person has a need to know);

(b) with the consent of the party who disclosed the Confidential Information;

(c) in the case of the Incoming Party, its direct and upstream investors and any trustee, custodian, manager or responsible person appointed from time to time, in each case who undertakes to keep the disclosed Confidential Information confidential;

(d) in the case of the Incoming Party, its (or its Related Bodies Corporate or upstream investors) financiers or potential financiers or such financier's or potential financier's Related Bodies Corporate, in each case who undertakes to keep the disclosed Confidential Information confidential;

(e) in the case of the Incoming Party, potential or actual direct or upstream investors or purchasers of the Incoming Party, the Incoming Party's Related Bodies Corporate, direct and upstream investors, in each case who undertakes to keep the disclosed Confidential Information confidential;

(f) if, and to the extent, necessarily required by law or a competent Authority or in connection with legal proceedings relating to this deed; or

(g) if, and to the extent, the Confidential Information is or becomes part of the public domain otherwise than through a breach of confidence.

12.2 If a party discloses Confidential Information under clause 12.1, it must ensure that the recipients of the Confidential Information do not disclose that Confidential Information except in the circumstances permitted by clause 12.1.

12.3 The *Freedom of Information Act 1991* (SA) (**FOI Act**) gives members of the public rights to access Continuing Party documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Continuing Party subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Continuing Party and other public authorities.

12.4 The Outgoing Party and Incoming Party consents to any disclosures made as a result of the Continuing Party complying with its obligations under the FOI Act, subject to any legally required consultation.

12.5 For the purposes of the FOI Act, the following clauses, annexures, schedules and appendices of this deed are confidential:

(a) Attachment 1 and Attachment 3 of the Original Contract (as set out below in Annexure A); and

(b) so much of Annexure B and Annexure C that discloses any commercial term of the Original Contract or relates to:

(i) potential or proposed commercial terms of the New Contract; or

(ii) the current or expected future net asset position of the Pelican Asset Trust.

12.6 The obligations of each party under this clause 12 will survive the expiry or termination of this deed.

13. **Severance**

If any part of this deed is invalid, unenforceable, illegal, void or voidable for any reason, this deed will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this deed or read down to the extent necessary to overcome the difficulty.

14. **Amendment**

This deed may only be amended in writing signed by the parties.

15. **No waiver**

15.1 A party may only waive a breach of this deed in writing signed by that party or its authorised representative.

15.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).

16. **Further action**

16.1 Each party must do all things necessary to carry out this deed, including:

(a) executing documents; and

(b) ensuring its employees and agents perform their obligations.

16.2 A party must not do anything that will prevent this deed from being carried out.

17. **Entire agreement**

17.1 This deed records the entire agreement between the parties about its subject matter.

17.2 The parties exclude all terms implied by law, where possible.

17.3 Neither party has given any warranty or made any representation to the other party about the subject matter of this deed, other than those warranties and representations appearing in this deed.

18. **Counterparts**

18.1 This deed may be executed in any number of counterparts. A counterpart may be a facsimile (including by any means of electronic production).

18.2 Together all counterparts make up one document.

18.3 If this deed is executed in counterparts, it takes effect when each party has received the counterpart executed by each other party.

19. **Costs**

19.1 Each party must pay its own legal costs and expenses in respect of the negotiation, preparation, execution and delivery of this deed.

19.2 The Incoming Party must pay any stamp duty, registration fees and similar fees and charges imposed in connection with this deed or the transactions effected by it.

20. **Survival**

The provisions of this deed, other than clauses 4, 5, 6, 7 and 8 shall survive termination or expiration of this deed.

21. **Notices**

21.1 Notices and other communications in connection with this deed must be in writing and in English, and may be given by an authorised representative of the sender. They must be sent to the address specified in this deed.

21.2 In the case of a notice or communication sent by email, the notice or other communication must be sent to:

(a) in the case of the Continuing Party, mail@campbelltown.sa.gov.au;

(b) in the case of the Incoming Party, infraoperations@firstsentier.com and Marc.Benscher@firstsentier.com; and

(c) in the case of the Outgoing Party, iws@iwsgroup.com.au.

21.3 If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

22. **Governing law and jurisdiction**

22.1 This deed is governed by the law in force in South Australia.

22.2 Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

Executed as a deed on

Executed by **Acquista Investments Pty Ltd** in its personal capacity and as trustee for the **Borrelli Family Trust** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

Director	Director/Company Secretary
Name (please print)	Name (please print)

Executed by **Veolia Environmental Services (Australia) Pty Ltd** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

Director	Director/Company Secretary
Name (please print)	Name (please print)

Executed by **Pelican Asset Co Pty Ltd** as trustee for the **Pelican Asset Trust** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:

Director	Director/Company Secretary
Name (please print)	Name (please print)

Executed by **Corporation of City of Campbelltown** by its authorised delegate in the presence of:

Signature of witness	Signature of authorised delegate
Name of witness (please print)	Name of authorised delegate (please print)
	Position of authorised delegate

Annexure A – Original Contract

Annexure B - Letter from First Sentier Investments to the Corporation of the City of Campbelltown dated 23 September 2021

First Sentier Investors

Level 5, Tower 3 International Towers
300 Barangaroo Avenue
Barangaroo NSW 2000

+61 2 9010 5200
firstsentierinvestors.com.au

23 September 2021

Paul Di Iulio
Chief Executive Officer
Campbelltown City Council
172 Montacute Road,
Rostrevor, SA 5073

Dear Paul,

Re Acquisition of Integrated Waste Services

Thank you for reaching out to us on the acquisition of Integrated Waste Services ("IWS"). We are excited about the business and we look forward to an opportunity to meet with you in person once we are able to travel to Adelaide.

Organisation

By way of background, we work for First Sentier Investors ("FSI"), which was previously known as Colonial First State Global Asset Management. FSI is one of Australia's largest investment management firms with assets under management of A$241 billion on behalf of institutional investors, including superannuation funds, insurance companies and other investors from Australia and across the globe. Within FSI, we, together with 50 other investment professionals, work within the direct infrastructure team.

Our team has been in existence in Australia for over 25 years and we manage in excess of A$17 billion of investments on behalf of intuitional investors. The Fund that is seeking to acquire IWS – the Global Diversified Infrastructure Fund ("GDIF") – is one of our global infrastructure offerings with assets in excess of A$5 billion and includes such local investments as Adelaide Airport, Quantem (bulk liquid storage at Pelican Point) and Water Utilities Australia (supplies recycled water to McLaren Vale and Lightsview).

Our investment philosophy is to invest in predominantly operating infrastructure assets in developed markets across the globe to deliver sustainable returns to our investors. We are long-term 'invest-and-hold' investors with a focus on sustainability and the consideration of environmental, social, and governance ("ESG") issues. As an example, we have been an investor in Adelaide Airport since 1998 and have invested significant amount of capital for new terminals, hangars, taxiways, retail offering, car parks, as well as ESG initiatives such as solar energy, waste reduction and water conservation, transforming it into one of the best and most sustainable airports in the world. Through the application of both capital and expertise, we seek to ensure that our investee businesses can continue to innovate, grow and deliver the desired outcomes for stakeholders. Through our active management on the Boards of multiple investments, we have overseen billions of dollars of successful investment across sectors.

While IWS is our first investment in the waste sector in Australia, we have made a number of investments in this sector globally:

- In 2020, we acquired a 49% interest in Rialto Bioenergy Facility ("RBF"); the largest food waste diversion and energy recovery facility in the North America. RBF has the capacity to convert 250,000 tons per year of organic waste and over 100,000 tons per year biosolids into renewable natural gas;

- In late 2020, we acquired a 45.8% interest in MVV Energie AG ("MVV"); a leading German integrated utility, which owns and operates a portfolio of energy from waste, biomass, and bio methane plants in Europe. MVV processes approximately 2 million tonnes per year of waste and produces electricity and steam for district heating;
- In 2021, we acquired a 100% interest in enfinium (formerly, Wheelabrator UK / Multifuel Energy); the largest pure-play energy-from-waste portfolio in the UK, with a total waste processing capacity of 2.3 million tonnes per year and a total power generation capacity of 265MW.

As an asset management team, we will be sharing the lessons and insights learned from this collective experience with a view to contribute to the performance of each of the waste businesses; importantly IWS as we look to grow our local presence.

As a customer and stakeholder of IWS, we believe you will benefit from the retention of the IWS management team. We have also offered employment to all existing IWS staff and expect all staff to accept this offer. Our aim is to ensure a smooth transition to the new ownership structure whilst preserving the current relationships and without disruption to the best practice waste management solutions provided by IWS to Council.

Innovation, investment and growth

A key driver for our investment in IWS is to support the Management teams' strategy and vision for the business, which includes the following initiatives:

- Greater receipt and utilisation of source separated organics – the Management team has developed an opportunity to partner with our nation's First People to develop a unique agricultural product from the nutrient rich compost of the FOGO waste stream. We are highly supportive of this strategy as it provides benefits to the local community and environment and further diversifies the waste stream for the business away from landfill.
- Manufacture and supply of refuse derived fuel ("RDF") to local industry – similar to the organics initiative, we are highly supportive of this opportunity. We see this as an important initiative to improve resource recovery for the business and help reduce fossil fuel emissions for local industry. As a large infrastructure fund, we also have the financial means to support the large investment into RDF on the basis that we can reach mutually agreeable terms with local industry for the supply of the product.
- Process improvement – the Management team has identified a number of process improvement initiatives which we believe will deliver superior outcomes for the business and its customers including new processing equipment at IWS Dublin in order to recover organics from regional MSW. As the incoming owner we have agreed to fund this project. Similar to the above opportunities, we are supportive of this and many other initiatives which improve resource recovery, safety outcomes for our employees and customer service.

Contract novation

As part of the change in ownership, we are requesting that customer's novate their contracts to a new trust under our management (i.e. Pelican Asset Trust). As part of this novation, we will honour the current terms of your contract with IWS; importantly a discount to gate fees in the event of successful delivery of the abovementioned RDF project. The receipt and utilisation of green organics within the contract is also important to us in delivering our partnership initiatives with Australia's First People; an initiative we intend to support following acquisition of the business.

We note that many of the growth initiatives featured prominently in your recent discussions with Mr Joe Borrelli and the recent contract therein. I believe we are aligned in the pursuit of these objectives and this alignment extends to the current management team in vision, philosophy and incentive regime.

52145853_9

I hope this letter addresses your queries on FSI as an organisation and our commitment to the growth of the business.

Please do not hesitate to contact me if you have any further queries.

Yours faithfully,



Marc Benscher

Director
Pelican Asset Co Pty Ltd
First Sentier Investors

52145853_9

Annexure C – Email from Mr Joe Borrelli to Mr Paul Di Iulio (Chief Executive Officer) dated 27 August 2021

From: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Sent: Friday, 27 August 2021 1:53 PM
To: Paul Di Iulio <PDiIulio@campbelltown.sa.gov.au>
Subject: Fwd: IWS & FSI Announcement

Hi Paul,

Please see some of your questions answered in green below. I have a call with them this afternoon and I will fill them in on question 5.

Let me know if you need anything else.

Thanks Joe

Begin forwarded message:



Joe Borrelli
Chief Executive Officer, IWS Group

t: +61 8 8348 5111 | m: 0416 000 770 | f:+61 8 8243 1299
e: Joe.Borrelli@iwsgroup.com.au | w: www.iwsgroup.com.au
a: Lot 254 Hines & Wingfield Roads, Wingfield, 5013

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or error. Any views expressed in this message are those of the individual sender, except where the sender specifically states them to be the views of the com

From: Marc Benscher <marc.benscher@firstsentier.com>
Date: 27 August 2021 at 11:58:11 ACST
To: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>, Matthew Cameron <matt.cameron@iwsgroup.com.au>
Cc: Alan Wu <Alan.Wu@firstsentier.com>
Subject: FW: IWS & FSI Announcement

Hi Joe,

Please find below draft responses in green.

Can we discuss the request in relation to pt. 5 – i.e. "the Council seeks a commercial understanding with FSI as a pre-condition to the novation."

In the meantime, let me search for an org structure which links GDIF to MUFG (i.e. for pt 2).

Thanks, Marc.

1

From: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Sent: Thursday, 26 August 2021 1:09 PM
To: Marc Benscher <Marc.Benscher@firstsentier.com>; Alan Wu <Alan.Wu@firstsentier.com>; Matthew Cameron <matt.cameron@iwsgroup.com.au>
Subject: FW: IWS & FSI Announcement

Please see email concerns below, let me know what you think .?

Happy to discuss if you wish,

Thanks Joe

<image029.png>

Joe Borrelli
Chief Executive Officer, IWS Group

t: +61 8 8348 5111 | m: 0416 000 770 | f:+61 8 8243 1299
e: Joe.Borrelli@iwsgroup.com.au | w: www.iwsgroup.com.au
a: Lot 254 Hines & Wingfield Roads, Wingfield, 5013

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From: Paul Di Iulio <PDiIulio@campbelltown.sa.gov.au>
Date: Thursday, 26 August 2021 at 12:33
To: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Subject: FW: IWS & FSI Announcement

Hi Joe

Further to our initial discussions, we have undertaken some high level due diligence in respect of First Sentier Investors (**FSI**).

With the you and your Family, the Council had a reasonable understanding of the controlling owners of the IWS business, their connections and other financial interests in South Australia and therefore their underlying drivers. However, FSI is a different proposition for the Council.

While it may be reasonable to expect (although not assume) that things will continue on a business-as-usual basis in the near term, the IWS Contract has 10 years to run. The fact that it was the extension of an existing arrangements with an existing partner was significant in the Council's decision to enter a 10-year term.

Therefore, in these circumstances it is appropriate to look forward and consider if FSI will be able to perform under the contract in the same way that the Council expected IWS to. As a starting point we would like to seek to clarify the following:

1. How will the contract with the Council be managed in the short term (while IWS remains in a management capacity) and then subsequently. Will there be a transfer of senior managers and other staff between IWS and FSI? [**FSI**] IWS will continue to be managed by the current IWS management team post completion of the

2

transaction. Mr Joe Borrelli will continue in his role as CEO. The role of FSI in the business will be as shareholders and board members of the new legal entity (as distinct to the management team). In our role as shareholders and board members, we will ensure that the business is appropriately managed and resourced to deliver the same high quality of service to customers and suppliers, and meet our obligations to the EPA and the community as a whole.

2. What corporate policies/philosophies does FSI and/or its controlling and controlled parties bring to the waste industry and in particular the landfill business it is acquiring from IWS? Can FSI please provide an ownership chart showing the ultimate ownership of FSI and the interposed/related entities through to Pelican Asset Co Pty Ltd?

[FSI] Our investment philosophy is to invest in predominantly operating infrastructure assets in developed markets across the globe to deliver sustainable returns to our investors. We are long-term 'invest-and-hold' investors with a focus on sustainability and the consideration of environmental, social, and governance (ESG) issues. Through the application of both capital and expertise, we seek to ensure that our investee businesses can grow and deliver the desired outcomes for stakeholders. Through our active management on the Boards of multiple investments, we have overseen billions of dollars of successful investment across sectors.

As part of our due diligence, we have been impressed with the current operation and growth initiatives identified by the current IWS management team. In our role as shareholders and board members, we are focused on ensuring that the business continues to meet its service standards, regulatory obligations and community responsibilities. We are also very supportive of growing the business including opportunities to recover and re-use greater volumes of waste including the provision of refuse derived fuel (RDF).

While IWS is our first investment in the waste sector in Australia, we have made a number of investments in this sector globally:

- In 2020, we acquired a 49% interest in Rialto Bioenergy Facility (RBF); the largest food waste diversion and energy recovery facility in the North America. RBF has the capacity to convert 250,000 tons per year of organic waste and over 100,000 tons per year biosolids into renewable natural gas;
- In late 2020, we acquired a 45.8% interest in MVV Energie AG (MVV); a leading German integrated utility, which owns and operates a portfolio of energy from waste, biomass, and bio methane plants in Europe. MVV processes approximately 2 million tonnes per year of waste and produces electricity and steam for district heating;
- In 2021, we acquired a 100% interest in enfinium (formerly, Wheelabrator UK / Multifuel Energy); the largest pure-play energy-from-waste portfolio in the UK, with a total waste processing capacity of 2.3 million tonnes per year and a total power generation capacity of 265MW.

As an asset management team, we will be sharing the lessons and insights learned from this collective experience with a view to contribute to the performance of each of the waste businesses.

In terms of ownership, this investment will be wholly owned by the Global Diversified Infrastructure Fund (GDIF) on behalf of investors (as opposed to our shareholder), many of whom are Australian

superannuation funds and insurance companies including from South Australia. The management company for GDIF (and its related party which employs the investment team) is ultimately owned by Mitsubishi UFJ Financial Group, Inc (MUFG). MUFG is a Japanese bank holding and financial services company headquartered in Chiyoda, Tokyo, Japan. It is also important to note that the governing bodies for GDIF have a fiduciary responsibility to manage the fund in the best interest of investors.

Further information on who we are as an asset manager can be found here: https://www.firstsentierinvestors.com.au/au/en/institutional/our-funds/infrastructure-real-estate/unlisted-infrastructure.html

3. Under the current contract there are two key clauses around innovation - one regarding an initiative that IWS has been developing and another to require IWS to match third party initiatives in certain circumstances. The Council requires clarification around FSI's understanding of these two clauses and its intentions around investment into the IWS business. [**FSI**] As part of the novation of the contract, FSI will honor the terms previously agreed with Mr Joe Borrelli; importantly the two clauses identified in your query. It is also important to note that a key driver for our investment in the IWS business is to pursue a number of growth initiatives identified by the IWS management team, including the opportunity to provide RDF which we believe will benefit the business, customers and stakeholders as a whole.

4. FSI has other waste and infrastructure assets in Australia and South Australia. Are there any current or potential conflicts of interest that FSI can advise the Council of? [**FSI**] We do not believe there are any conflicts of interest with our existing investments. IWS is our only investment in the waste sector in Australia (noting a number of other interests globally). Further, our interests in South Australia are in markedly different sectors – e.g. Adelaide Airport and Water Utilities Australia – with limited interrelationship and cross over in service.

5. The Council is currently involved in a dispute around its ability to take its green waste to IWS. The Council seeks a commercial understanding with FSI as a pre-condition to the novation. This would be an important sign of good faith consistent with how the contract has been managed with IWS in the past. [FSI] To discuss with Joe.

6. What is the security interest that FSI proposes to grant to its financiers over the contract? What rights does it provide the financers and in what circumstances? What further documentation will FSI seek the Council to enter into to support this arrangement? [**FSI**] The FSI entity that will own the IWS waste processing business will be entering into a loan arrangement with their financiers and as such will be granting a security interest over all of its assets in favour of its financiers to secure its loan obligation. This includes security over its interest in the contracts it holds and the contracts to be novated from the previous owners.

   In circumstances where there is an event of default by FSI under its loan documentation, the financiers will have the right to enforce the security the financiers have against FSI (ie appoint a receiver to the FSI entity). Any such enforcement rights will only be as against FSI and do not change the contract between FSI and the Council (for example, FSI and any receiver appointed by the financiers will only be

able to assign the contract to a third party in accordance with the terms of the contract).

As such, the interaction between the Council and the financiers will be limited to the Council's consent to FSI's grant of security to the financiers by executing the deed of novation. Importantly, FSI is not seeking any additional documentation from the Council to support FSI's arrangements with its financiers.

7. What will be the net asset position of the Pelican Asset Trust with whom Council will be contracting to provide an essential service? [**FSI**] The net asset position of the Trust will be in excess of A$140 million.

8. In terms of the confidentiality terms proposed, they are challenging for the Council given the Council's broader disclosure obligations. There will need to be some carve outs to the confidentiality provisions proposed by FS. [**FSI**| Would you please identify the carve outs requested for consideration.

These are some preliminary questions to support the Council's consideration of the request for novation of the contract. Once we have answers around the above, then I think we should have a further discussion to consider Council's position and how to move forward in the best interests of all parties

Regards

Paul Di Iulio
Chief Executive Officer

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+61 418856085
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From: Matthew Cameron <matt.cameron@iwsgroup.com.au>
Sent: Monday, 2 August 2021 4:27 PM
To: Paul Di Iulio <PDilulio@campbelltown.sa.gov.au>
Cc: Joe Borrelli <Joe.Borrelli@iwsgroup.com.au>
Subject: IWS & FSI Announcement

Hi Paul,

Trust you're well.

As requested, please find attached a copy of the IWS & FSI announcement letter and draft Deed of Novation.

Please let me know if you require any further information.

Regards,
Matt

<image042.png>

Matthew Cameron
Chief Financial Officer, IWS Group

t: +61 8 8348 5115 | m: 0450 105 002 | f:+61 8 8243 1299
e: matt.cameron@iwsgroup.com.au | w: www.iwsgroup.com.au
a: Lot 254 Hines & Wingfield Roads, Wingfield, 5013

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Confidential Item

11.13 Waste Residual Contract

General Manager Infrastructure Services, Andrian Wiguna's Report

Purpose of Report

To confirm the extension and variation of Council's existing Agreement for the Receipt and Processing of Residual Waste with Integrated Waste Services (**Waste Residual Contract**) subject to Council's Green Organics collection also being disposed of at Integrated Waste Services (**IWS**)

Strategic Plan Link

Strategy 3.2.6 Effective waste collection services and programs including hard rubbish collection, e-waste, recycling, food waste, with education programs aiming to reduce littering, illegal dumping and waste to landfill

Background

In early 2014 the seven Constituent Councils of Waste Care South Australia undertook a joint tender for the disposal of their residual waste.

As a result of that tender evaluation, Council awarded its Waste Residual Contract to IWS for a period of 10 years (ie 5-year initial term with a 5-year right of renewal at Council's discretion).

As per the attached report, prior to the completion of the first 5-year term under that contract, Staff commenced discussions with IWS on how Council could further minimise its waste disposal costs. As a result of those discussions, Council was able to benefit from a reduced rate if it enacted its renewal clause and agreed to the potential of an additional 5 year renewal clause. As the savings to Council at that time were approximately $95,000 per year, Council agreed to the new arrangement in May 2018. It should be noted that this offer was also offered to the other ERA (Eastern Region Alliance) Councils and all but one agreed to this new arrangement.

As residual waste disposal is a significant, ongoing cost to Council, it is an area that Staff continually look to review in an effort to minimise the ongoing costs to Council. Therefore, considering the financial challenges of the past two years, Staff have held discussions with IWS about the possibility of restructuring the existing contract which expires on 31 December 2024 subject to a further right of extension of 5 years.

Furthermore, although the Chief Executive Officer initiated the discussions, due to a perceived conflict of interest with IWS being a sponsor of the Norwood Football Club, the subsequent substantive and ongoing discussions were undertaken by the General Manager Infrastructure Services.

Discussion

As detailed in the attached correspondence, IWS have invested significantly into their waste management business and have been able to increase their resource recovery. As a result of this investment and the partnerships they are forging with third parties (eg Red Centre Enterprises), they are now in a position to offer a very substantial, immediate and ongoing saving to Council in return for a renewed and varied contractual commitment by the Council.

As from 1 July 2021, under the Council's current contract terms (the **Current IWS Contract**), the cost to Council to dispose of its residual waste will be $43.71/tonne (excluding Solid Waste Levy). Due to the aforementioned improvements in their business model, under a renewed and varied contract (the **Revised IWS Contract**), IWS are prepared to offer a residual waste disposal rate of $35/tonne (excluding Solid Waste Levy) to the Council. Like the Current IWS Contract, the residual waste disposal rate under the Revised IWS Contract is adjusted each year by 3% or CPI (whichever is higher). This new offer is subject to the following two main conditions:

1. The current contract term which ends on 31 December 2024 with a 5-year extension to 31 December 2029, becomes a 10-year term commencing 1 July 2021 and expiring 30 June 2031; and

2. That Council also dispose of their Green Organics material at IWS for the same, revised contract term.

In addition to these conditions Council would have an option to extend the contract term under the Revised IWS Contract in 2031 for a further 10 years if it wished at its discretion

The proposal represented by the Revised IWS Contract provides a significant saving to Council, especially when considering that prior to 2014, through Waste Care, Council was paying $52/tonne (excluding Solid Waste Levy) for residual waste disposal. If Council agrees to the Revised IWS Contract proposal, it will be paying $35/tonne (excluding Solid Waste Levy and subject to indexation) for residual waste disposal. Furthermore, IWS are offering a further, additional saving to Council of between $15-$20/tonne, if and once their new initiative of manufacturing High Grade Fuel (which uses material recovered from Council's waste stream to replace the use of Natural Gas), is implemented. IWS have indicated that this initiative, which is estimated will cost them $20 million in investment, should be completed and be able to be implemented in early 2023 (the **New Initiative**). However, being conservative, Staff have only modelled this additional saving from 1 July 2024 and also modelled scenarios where the additional saving is not realised. The attached modelling confirms that the savings to Council on residual waste disposal over a 10-year period (excluding Solid Waste Levy), compared to the existing Current IWS Contract rate is:

1. Approximately $1 million (without the New Initiative)
2. Approximately $2.15 million (with the New Initiative and a $15 reduction)
3. Approximately $2.53 million (with the New Initiative and a $20 reduction).

In addition to modelling these projected savings, Staff have also modelled the additional cost to Council from the Council's new Green Organics disposal rates under the Revised IWS Contract. Over the 10-year period, assuming Jeffries does not increase their cost

beyond a 2% adjustment each year, the disposal of Green Organics at IWS will be approximately $57,000 more expensive over the 10-year period.

Therefore, taking that additional cost into account, the savings to Council over the next 10 years (excluding Solid Waste Levy) to proceed with the IWS offer would be:

1. Approximately $940,000 (without the New Initiative)
2. Approximately $2.1 million (with the New Initiative and a $15 reduction)
3. Approximately $2.47 million (with the New Initiative and a $20 reduction).

As you would appreciate, these are significant savings to Council which will have a significant impact on the Long Term Financial Plan over the next 10 years.

In addition to the financial benefits to the Council from the Revised IWS Contract, the delivery of Councils Green Organics to IWS will enable them to revegetate their Dublin dump site, which in turn will support Red Centre Enterprises harvest the native plants and produce products such as bush tucker and soaps.

Furthermore, as part of the Revised IWS Contract, IWS are also offering Council mulch free of charge that can be utilised on its Parks and Reserves. Staff have already been using this mulch on a trial basis for certain applications and therefore believe that this will represent a further, ongoing cost saving to Council.

As Council would be committing for a 10 year contract period, Staff believe that it would be prudent to insert a clause in the Revised IWS Contract that protects the Council's financial exposure over the 10 year period. Future technology or practices may significantly reduce waste disposal costs, so Council should negotiate with IWS to ensure that it will not be disadvantaged over the contract term should these new practices emerge and IWS does not adopt these new practices and further reduce residual waste disposal and green waste recycling costs.

Staff recommend that Council negotiate to insert a clause in the Revised IWS Contract that considers the aggregate cost to Council over the 10 year term and requires that IWS adjust its pricing to ensure that the Council is not financially disadvantaged through having entered into the 10 year contract. The onus will be on the Council to prove to IWS that it could have secured a better financial outcome by disposing of its residual waste and/or green organics with other parties during the Revised IWS Contract term but at least there is this 'protection mechanism' for the Council should things evolve and change drastically over the next 10 years.

Furthermore, as previously this offer was more broadly offered to ERA Councils, Staff believe that considering all the ERA Councils (except Norwood, Payneham & St Peters) are currently benefitting from the conditions Campbelltown negotiated in 2017/2018, that it also be offered to the other ERA Councils.

In summary, the advantages to Council in agreeing to this contract variation is that Council:

- Receives an immediate cost saving of approximately $94,000 in the 2021/2022 budget
- Locks in its maximum residual waste disposal rates (excluding Solid Waste Levy) for the next 10 years
- Has the opportunity on expiry of the Revised IWS Contract to renew the contract for another 10 years at its sole discretion
- Enables IWS to foster their partnerships with Red Centre Enterprises to support Aboriginal and Torres Strait Islander Communities and continue to invest in the New Initiative which could potentially further reduce the Council's residual waste disposal costs over the contract term and any further term
- Receives free mulch to use on its Parks and Reserves.

Social Implications

There are no social implications in relation to this report.

Environmental / Climate Change Implications

If Council endorse this proposal, its Green Organics would be used to revegetate a dump facility at Dublin, facilitate the planting of native plants and enable Council to receive free mulch for its Parks and Reserves

Furthermore, with the new initiative that IWS are heavily investing in, there could be an additional diversion of waste from landfill.

Asset Management Implications

There are no asset management implications in relation to this report.

Governance / Risk Management

While this is an amendment to an existing contract to realise significant savings for Council, the Council is extending the overall contract term by 18 months and the minimum contract term by 6 and a half years.

The Council is not approaching the broader market because it is dealing with an existing supplier, it has improved the contract value for Council against the existing contract and it will require a clause in Revised IWS Contract that ensures the Council will not be disadvantaged by taking up the offer over the contract term.

The residual waste disposal market is a very limited market and by being a first-mover the Council is securing a better deal than the current market rates on offer - with further potential for further upside against current market rates - but building in flexibility and protections should market rates change radically over the contract term.

Having regard therefore to the limited market for residual waste disposal, the fact that that the Council is dealing with an existing, long term supplier and extending and varying an existing contract, that the market for the procurement is well known and that the risks

associated with the procurement will be mitigated by the new contract terms, it is recommended that the Council deals directly with IWS in terms of this procurement.

There is not requirement for a Section 48 prudential report as a result of Council entering into this contract as the relevant thresholds and criteria are not met by the Council entering into the Revised IWS Contract.

Staff has had legal input to the issues discussed in this report and will use legal advisers to support the documentation of the Revised IWS Contract consistent with the matters resolved by Council.

Community Engagement

There is no Community engagement required to be undertaken as a result of this report.

Regional Implications

Staff believe it would be appropriate and beneficial for this offer to also be made to all ERA Councils, as the savings achieved previously by Council were maximised by their involvement.

Economic Development Implications

The commitment of Council to this proposal will assist IWS strengthen their partnership with Red Centre Enterprises which in turn will support Aboriginal and Torres Strait Islanders. Furthermore, the guaranteed supply of Council's waste material for the next 10 years will assist in IWS continue to invest in technology to recover non-organic two dimensional material from the waste stream to manufacture high grade fuel.

Financial Implications

The offer that has been proposed will provide immediate savings of approximately $94,000 in the 2021/2022 budget and aggregate savings of between $1 million and $2.47 million dollars over the next 10 years, conditional on the Green Organics material also being disposed of at IWS

Recommendation

That Council agrees to exercise its right of renewal to extend the existing contract for the receipt and disposal of Council's kerbside collected residual waste with IWS (Integrated Waste Services), subject to and in accordance with the following contract variations:

1. the contract term is an initial term 10 years commencing 1 July 2021 with a 10 year right of renewal at the Council's absolute discretion after the expiry of the initial term and the waste disposal rate (Gate Fee) being $35/tonne (excluding

Solid Waste Levy) commencing 1 July 2021 subject to an annual 3% or CPI (whichever is the greater) increase

2. **the contract being expanded to include the disposal of Council's Green Organics at a rate of $33/tonne commencing 1 July 2021 subject to an annual 3% or CPI (whichever is the greater) increase**

3. **a clause being inserted in the contract so that if future technology/innovations significantly reduce the costs of waste disposal, Council will not be disadvantaged by entering into this contract and that IWS is required to adjust its pricing to ensure that the Council is not financially disadvantaged through having entered into the 10 year contract**

That the Council CEO is delegated authority to negotiate and document such variations and to execute the varied contract on behalf of Council and if possible secure the following further undertakings on the part of IWS:

1. **Council receiving a reduction in the waste disposal rate (Gate Fee) of between $15 and $20 (excluding Solid Waste Levy)/tonne from no later than 1 July 2024 if IWS implements the New Initiative described in this report; and**

2. **IWS providing a similar offer to all Eastern Region Alliance Councils.**