

## 2.0 Statutory Framework

### 2.1 Introduction

This section describes the current approvals process and statutory framework for the proposed SAWT-BIOWISE facility. Due to recent amendments to the EP&A Act this application has shifted from being subject to Part 4 of the Act to the new Part 3A approvals process. A discussion of the background to this application is provided in **Section 1.0** of this report.

### 2.2 Commonwealth Legislation

#### Environment Protection and Biodiversity Conservation Act 1999

Under the Commonwealth *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act) assessment and approval is required for actions that are likely to have a significant impact on a matter of national environmental significance. Where an action is proposed that may need approval under the EPBC Act, the proposal must be referred to the Commonwealth Environment Minister.

An 'action' under the EPBC Act includes a project in accordance with Part 3A of the EP&A Act.

Matters of national environmental significance include:

- World Heritage properties;
- National heritage properties;
- Ramsar wetlands;
- Threatened species and ecological communities;
- Migratory species;
- Commonwealth marine areas; and
- Nuclear actions, including uranium mining.

As part of the assessment of the SAWT-BIOWISE proposal, a search of the Schedules to the EPBC Act was conducted. The search showed that matters listed as being of national environmental significance have been recorded around the broad locality of the proposed SAWT-BIOWISE Site, and these are detailed in **Section 5.4**.

A flora and fauna specialist was engaged to conduct a site visit to evaluate whether species protected by Commonwealth legislation were present on the SAWT-BIOWISE Site (**Section 5.4**). Although species of national significance have been recorded in the general area, none have been recorded on the SAWT-BIOWISE Site specifically. The assessment concluded that no species listed under the Commonwealth's EPBC Act would be adversely impacted by the SAWT-BIOWISE proposal. However, a referral will be sent to DEH for application to remove Cumberland Plain Woodland if and when required.

## 2.3 NSW Approvals Process

### Environmental Planning and Assessment Act 1979

Approval for the proposed SAWT-BIOWISE is required under Part 3A of the EP&A Act and the EP&A Regulation, as amended. This EA has been prepared by the proponent, SITA in accordance with the EP&A Act, State legislation and the requirements of the Director-General of the DoP (**Appendix A**).

Part 3A of the EP&A Act commenced on 1 August 2005. The aim of this amendment is to:

*‘facilitate major project and infrastructure delivery and encourage economic development, while strengthening environmental safeguards and community participation’.*

Part 3A consolidates the assessment and approval regime for ‘major’ projects that were previously addressed under Part 4 or Part 5. Part 3A applies to major State government infrastructure projects, development previously classified as State significant and other plans, projects or works declared by the Minister as being of state or regional significance.

The provisions under Part 3A also ensure that appropriate community consultation and environmental assessment is undertaken, based on the level or risk or community concern.

### State Environment Planning Policy (Major Projects) 2005

State Environment Planning Policy (Major Projects)<sup>1</sup> 2005 (‘SEPP Major Projects’) describes which projects require Ministerial approval under Part 3A of the EP&A Act.

The proposed SAWT-BIOWISE facility falls within the meaning of a ‘major project’ as defined by Clause 27(3) of Schedule 1 of SEPP Major Projects, which states:

*“Development for the purpose of resource recovery or recycling facilities that handle more than 75,000 tonnes per year of waste or have a capital investment value of more than \$30 million.”*

As discussed, the proposed SAWT-BIOWISE facility is a Major Project and therefore will be subject to Part 3A of the EP&A Act. The Minister for Planning has confirmed this, in his Clause 6 Notice of 6 December 2005. Accordingly, the Minister for Planning is the Determining Authority for the proposed SAWT-BIOWISE Facility.

A Project Application and Preliminary Assessment have been submitted to DoP, and DGRs issued (refer to **Section 1.5** of this report for discussion regarding the status of these documents). This Environmental Assessment has been prepared in accordance with the requirements of the EP&A Act, the EP&A Regulations, SEPP Major Projects, and the DGRs.

### Protection of the Environment Operations Act 1997

Activities required to be licensed under the POEO Act are identified in Schedule 1 of that Act, which includes:

*“waste facilities that store or transfer, or recover by way of separating or processing, more than 30,000 tonnes of waste per year.”*

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<sup>1</sup> Previously known as *State Environment Planning Policy (State Significant Development) 2005*

The SAWT-BIOWISE facility will require an Environment Protection Licence (Licence) under the *Protection of the Environment Operations Act 1997* (POEO Act). SITA has commenced consultation with the DECC to involve the regulatory authority in the scope of the SAWT-BIOWISE proposal so that in due course, SITA can apply for the Licence. Consultation is summarised in **Section 1.7**.

### **Proposed 3Fs Regulation**

The new definition of waste as per Schedule 1 of the POEO Act includes substances processed, recycled, re-used or recovered, produced wholly or partly from waste, that are applied to land. The proposed Fill, Fertilisers and Fuel (3Fs) Regulation will be the framework for the control of application of fill material, fertilisers and fuel. Therefore, the compost produced from the SAWT-BIOWISE facility would require an exemption to be applied to land in accordance with the proposed 3Fs Regulation once it is in place.

### **Future Land Uses**

The following is a set of points which identify future land uses for land adjoining the Kemps Creek site:

- The Metropolitan Strategy released by the State Government in 2006 (City of Cities Plan) identified land on the northern side of Elizabeth Drive as “future employment”;
- PCC in adopting its Employment Planning Discussion Paper and draft Employment Planning Strategy (December 2006) resolved, amongst other things, “seek advice from the Department of Planning regarding timelines and the process for examining the future potential of employment lands at Badgerys Creek”. This resolution relates to land adjoining the SITA Kemps Creek site;
- The DoP advised PCC in writing (25 October 2006) of its response to the exhibition of PCC’s draft Employment Strategy;
- Included in that response was reference to the future of land at Badgerys Creek which was being investigated in The Metropolitan Strategy as potential employment land i.e. the land adjoining the SITA Kemps Creek site; and
- Council is examining Badgerys Creek and the SITA Kemps Creek area concluded as follows:
  - *“The former CSIRO/Sydney University lands (700 hectares) are identified as ‘potential employment land for investigation’ under the Metropolitan Strategy. Whilst it is not clear whether the lands in the vicinity of the SITA Waste Facility are specifically included in the Metropolitan Strategy maps, the comment attached to Action A1.7.2 ‘Identify areas that could accommodate employment lands growth’ indicates that “potential areas to be considered include Badgerys Creek and environs....”.*

*Council officers have now written to the Department of Planning on several occasions, seeking advice on its position in considering longer term proposals such as the ones outlined above. It was understood from Departmental briefings that, within the Metropolitan Strategy context, consideration of the Badgerys Creek land would occur at a later time as the planning and development of the Western Sydney Employment Hub and the South West Growth centres is of a higher priority. In relation to the Badgerys Creek lands, the Department has now formally advised Council as follows:*

*“Badgerys Creek is identified in the Metropolitan Strategy as employment land for investigation, as such there is significant potential in this area for the location of employment lands accessible from the Growth Centres. The Metropolitan Strategy concluded that there is a shortage of employment lands in metropolitan Sydney. Subsequently the NSW Government has established an Employment Lands Task Force, which has investigated potential locations for the release of eofabrics employment areas.”*

*The Department’s letter did not comment on timeframes for the ‘future investigations’. Mindful of earlier experiences with the timelines for the planning and servicing of Erskine*

*Park Employment Area, however, we will continue to seek the Department's consideration of the Badgery's Creek land within a metropolitan and subregional context, and its commitment to ensuring there is a sufficient supply of zoned land available to meet the region's employment needs.*

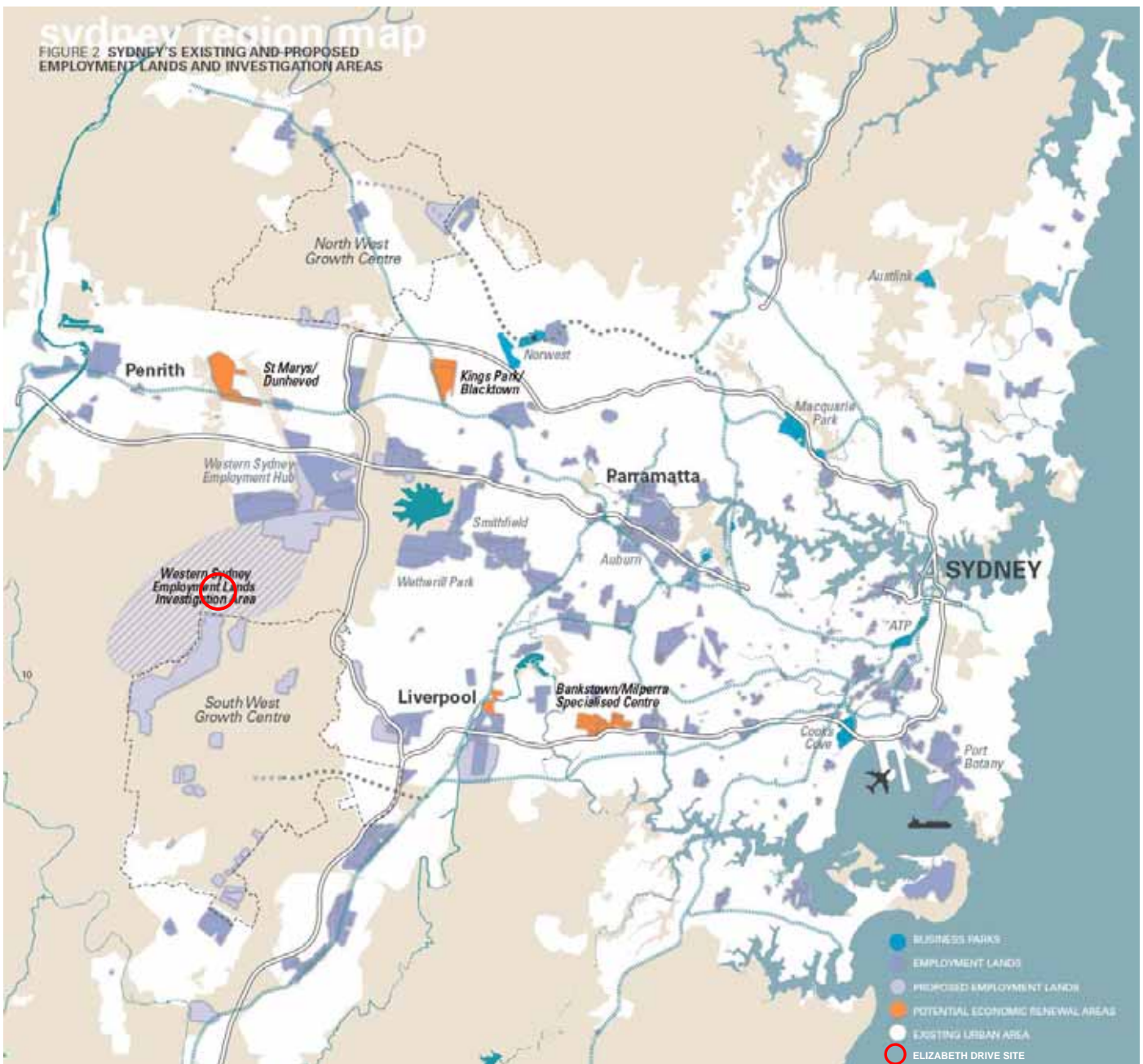
The Minister for Planning released the Blueprint to boost Sydney's Employment Lands, 6 March 2007. The Blueprint is an Action Plan for Sydney's Employment Lands and includes the following key findings or targets.

*"As part of the Employment Lands Development Program (ELDP) the Department of Planning will also consider the designation of a Western Sydney Employment Lands Investigation Area in the area between the Western Sydney Employment Hub and Badgerys Creek to the north of Elizabeth Drive. The aim is to investigate medium – long term needs and integrate this into the development of both the Western Sydney Employment Hub and the South West growth centres"*

In light of the foregoing it is clearly established that the land adjoining the SITA Kemps Creek site will ultimately be developed for employment purposes and hence, issues of odour and its impact on potential future urban land will not eventuate.

**Figure 2.1** identifies the SAWT facility on the DoP's map of proposed Employment Lands and Investigation Areas.

Figure 2.1: Sydney's Existing and Proposed Employment Lands and Investigation Areas



Source: NSW Department of Planning

Map shown not to scale

## 2.4 State Environmental Planning Instruments

### State Environmental Planning Policy 11 – Traffic Generating Developments

The intent of State Environmental Planning Policy 11 – Traffic Generating Developments (SEPP 11) is to ensure that the RTA is made aware of, and given an opportunity to make representations in respect of development listed in Schedule 1 or 2 to the SEPP.

SEPP 11, Schedule 1, Part (k) lists waste activities as ‘junkyards or depots or regional depots’, within the meaning of the *Waste Disposal Act 1970*. However, since this Waste Disposal Act has been repealed and replaced by the POEO Act, SEPP 11 is taken to be referring to ‘Waste Activities’ as listed in the POEO Act.

SEPP 11 is applicable to the proposal and in accordance with its provisions, SITA provided an early briefing to the RTA as a way of both formally notifying it of the proposal and to describe the scope. SITA consulted further with the RTA at the Planning Focus Meeting held on 27 April 2004 by PCC (as specified in Clause 7, Sub-Clause (3) of SEPP 11).

DoP is required to forward a copy of the EA to the RTA. SEPP 11 obligates DoP to not determine the application until the RTA’s representation on the application has been received or the RTA informs DoP that it does not wish to make any representation.

### State Environmental Planning Policy 33 – Hazardous and Offensive Development

State Environmental Planning Policy – Hazardous and Offensive Development (SEPP 33) – is the planning instrument that provides definitions of ‘hazardous’ and ‘offensive’ industries to consider applications for approvals based on the merit of individual proposals. The DGRs for the proposed SAWT-BIOWISE facility state that SEPP 33 must be considered as part of the EA (discussed in **Section 7.0**).

### State Environmental Planning Policy 48 – Major Putrescible Landfill Sites

State Environmental Planning Policy 48 – Major Putrescible Landfill Sites (SEPP 48) makes the Minister for Planning the consent authority for major putrescible landfills in NSW. The intent is to ensure that the assessment and determination of proposals for major putrescible landfill sites are consistent and acknowledge the significance of an application in terms of the interests of the entire State.

The proposed SAWT-BIOWISE facility is for a composting or related organics processing facility, not a putrescible landfill, and therefore SEPP 48 is not applicable. Furthermore, under Part 3A of the EP&A Act, the Minister is the Determining Authority for the proposed SAWT-BIOWISE facility.

### State Environmental Planning Policy 55 – Remediation of Land

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55) deals with the remediation of contaminated land. This statutory policy directs that land must not be developed if any contaminated material present, could affect the eventual land use that is being proposed.

The SAWT-BIOWISE Site for the proposed facility has been selected because:

- It is on a section of the landfill site which is essentially undeveloped and has not been landfilled previously;
- Proposed built structures will be located on areas that have experienced only minor or no disturbance and are highly unlikely to be contaminated;

- Ancillary development such as haulage roads and the weighbridge will be located and constructed so as to minimise disturbance to areas that have been landfilled or could be potentially contaminated from past practices; and
- The proposed haulage road will be adjacent to the southern and western perimeters of the Elizabeth Drive Site and will follow an existing on-site track that avoids areas previously used for landfill operations.

The Elizabeth Drive Site is currently operating as a commercial landfill and the majority of the Elizabeth Drive Site has been subjected to substantial earthworks and earthmoving for over a decade. Any stockpiles of excavated materials on-site consist of Virgin Excavated Natural Material (VENM), uncontaminated by any development.

SITA have implemented procedures that cover all aspects of the operation of the landfill. The procedures ensure that only waste for which the landfill is licensed is accepted for disposal, and that all waste accepted into the Elizabeth Drive Site has been buried within the lined landfill cells in a controlled manner, with locations of waste burial recorded. A comprehensive regime of groundwater and surface water monitoring is carried out on the landfill to ensure that there has been no migration of contaminants from the waste into the unused sections of the Elizabeth Drive Site. As a result of these controls, the risk of contamination within the proposed project area is low.

Should contaminated material be discovered during construction, the extent of any contamination would need to be assessed and any remediation would be carried out in accordance with the relevant guidelines under the *Contaminated Land Management Act 1997*.

Therefore, while SEPP 55 applies to all projects, there is no known contamination contained within the SAWT-BIOWISE Site and therefore no remediation is required to be undertaken at this stage.

## 2.5 Regional Environmental Planning Instruments

### **Sydney Regional Environmental Plan 20 – Hawkesbury-Nepean River (No 2 – 1997)**

Sydney Regional Environmental Plan 20 – Hawkesbury-Nepean River No 2 – 1997 (SREP 20) is intended to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

SREP 20 lists specific planning policies and recommended strategies, including:

- Total catchment management, and how this should be integrated with environmental planning for the catchment;
- Environmentally sensitive areas (including flora and fauna habitats and corridors, rivers and riparian land), and how their quality must be protected;
- Cultural heritage and its protection (e.g. the known adjacent aboriginal site); and
- The metropolitan waste strategy, specifically the impacts of metropolitan waste disposal on water quality and the need for waste avoidance, waste reduction, reuse and recycling to be considered.

SREP 20 is supported by The Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, which includes actions necessary to improve existing conditions.

The proposed SAWT-BIOWISE project is located near Badgerys Creek. A wetland area occurs north of the SAWT-BIOWISE Site where Badgerys Creek joins South Creek. The wetland drains into South Creek and eventually the Hawkesbury River. Accordingly, the implications for the proposed SAWT-BIOWISE project include:

- Referral for comment to Local Government Authorities adjacent to and downstream of the SAWT-BIOWISE Site;
- Consideration of impact in terms of the entire water catchment;
- Requirement for rehabilitation if sand, gravel or soil are taken from the riverine corridor;
- Consideration of any impact on the water table and acid sulfate soils;
- The need to quantify and assess likely impacts of any predicted increase in pollutant loads on receiving waters;
- On-site disposal of sewage effluent, if it could have an effect on water quality or ground water;
- An Erosion and Sediment Control Plan in place at commencement of construction;
- That the facility is sited to ensure bank stability;
- Stormwater run-off is not significantly increased as a result of the project;
- Aboriginal sites and places of significance are protected;
- Structures located where the clearing and disturbance of land can be avoided;
- Ability of the SAWT-BIOWISE Site to sustain the proposed SAWT-BIOWISE project over a long period of time; and
- The proposal should be complementary to the 'vision, goal, key principles and action plan of the metropolitan strategy'.

These requirements have been considered by the proponent. The proposed SAWT-BIOWISE project has been designed having regard to SREP 20 for the Hawkesbury-Nepean River. An example of the work already being performed on the Elizabeth Drive Site to comply with SREP 20 is SITA working with Landcare to plant 2000 Cumberland Plain Woodland species around the Landfill Site.

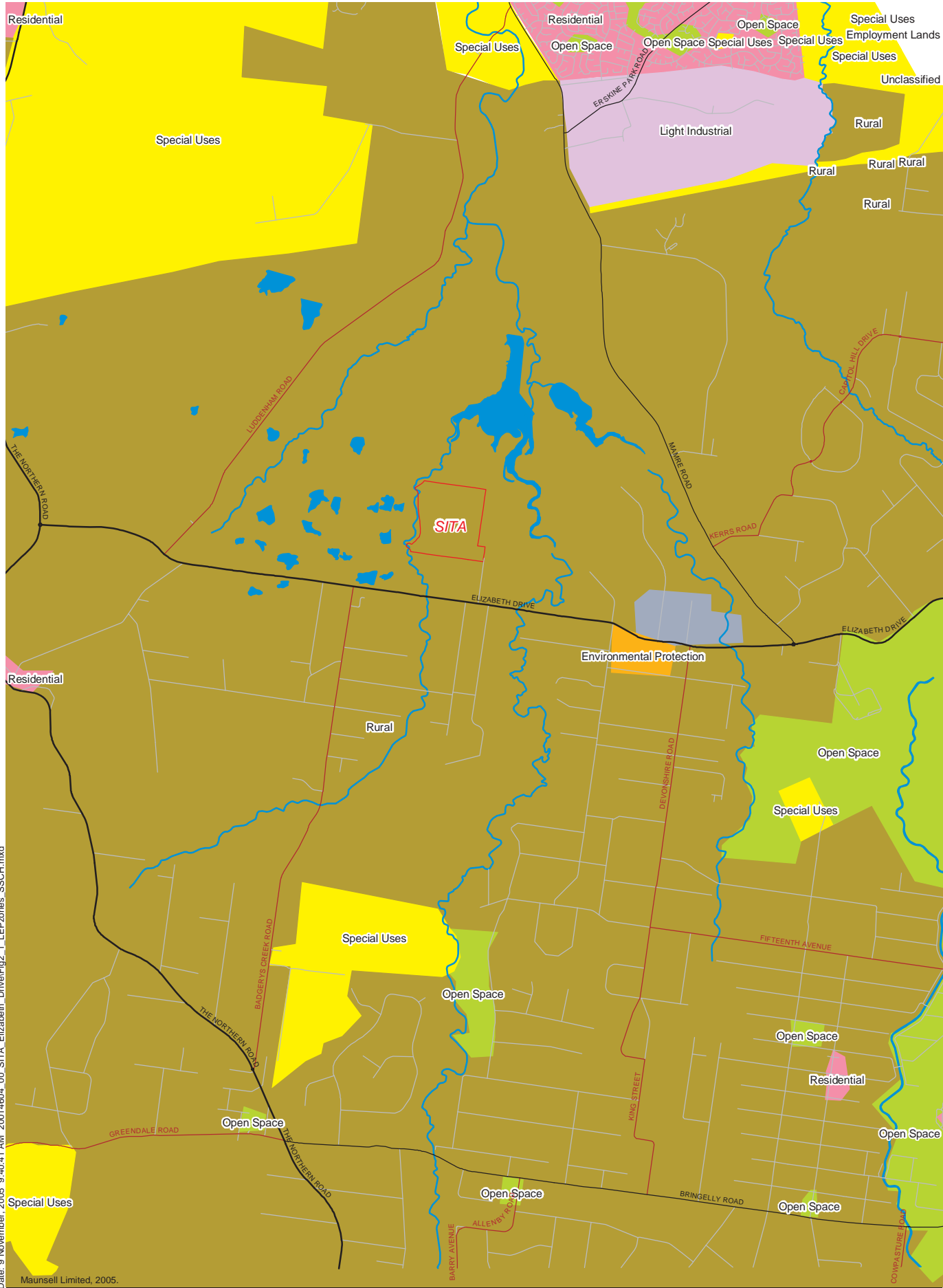
## 2.6 Local Environmental Planning Instruments

### Penrith Local Environmental Plan 201 – Rural Lands

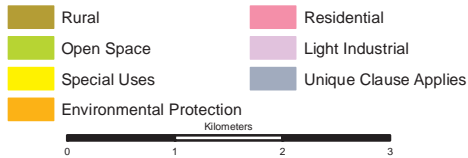
Penrith Local Environmental Plan 201 (LEP 201) has the general aim of encouraging “proper management, development and conservation of valuable natural and man-made resources” of rural areas in Penrith. Under LEP 201, the SAWT-BIOWISE Site is zoned as industrial. The objectives of this zone include:

- Ensuring that development is compatible with the environmental capabilities of the land and to encourage the conservation and enhancement of natural resources by means of appropriate land management techniques;
- Ensuring that traffic generating developments are suitably located so as not to adversely affect the safety and efficiency of roads; and
- Ensuring the form, siting and colours of buildings, building materials and landscaping complement the natural scenic quality of these localities.

PCC land use zones for the Site and surrounding land are shown in **Figure 2.2**.



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 Maunsell Limited, 2005.



Advanced Waste Treatment Facility  
 Elizabeth Drive

FIGURE 2.2: Council Zone Boundaries (LEP)

## 2.7 Site Approval History

This history of relevant development applications dates from 1990, at which time PCC approved a development application for “the Continued Operation and Backfilling of Badgerys Creek Quarry.” The Badgerys Creek Quarry (Quarry) had operated for a reasonably long period of time and it appeared to the then owner and operator of the Quarry that the most effective method of rehabilitation was the backfilling of the subsequent void with non-putrescible waste materials.

The Quarry was approved subject to 79 compliance conditions and continued to operate in accordance with the consent and its conditions, the most important of which were as follows:

- a) “This consent relates to extraction of clay, shale, sandstone and laminite, crushing of sandstone and laminite and progressive site rehabilitation by backfilling quarried areas with solid, non-putrescible waste to a vegetated landscape, capable of supporting grazing and achieving a final landform compatible in its appearance and physical character with the surrounding landscape”;
- b) “It is the applicant’s responsibility to advise Council’s Environmental Planning Department prior to the commencement of operations. The Site will be inspected to ensure that all essential preliminary development works have been completed”; and
- c) “It is the applicant’s responsibility to arrange inspections with, and obtain the necessary approvals from Council’s Health and Building Department as required”.

The (then) NSW State Pollution Control Commission stated in Condition 12 that “Prior to the commencement of any works forming part of, or preparatory to, the development, the applicant shall obtain and furnish copies of all statutory approvals required under the Clean Waters Act, 1970, Noise Control Act, 1975 and State Pollution Control Act, 1970 to Council”. The effect of Condition 12 was to require the operator to secure approvals and licences from agencies such as the (then) State Pollution Control Commission, which is now NSW DECC.

In November 2001, PCC approved a modification to the 1990 Consent in order to allow the operator (SITA) to comply with its current Licence from the EPA. That Licence required compliance with the Landfill Environmental Management Plan (LEMP), which had been approved by the EPA.

The conditions that were varied are as follows:

### **Amended Condition No 1**

“This consent relates to the extraction of clay, shale, sandstone and laminite, crushing of sandstone and laminite and progressive site rehabilitation by backfilling quarried areas with solid, non-putrescible waste to a vegetated landscape, capable of supporting grazing and achieving a final landform compatible in its appearance and physical character with the surrounding landscape. It is approved subject to conditions 1 to 79 detailed below except where varied by the requirements of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent. Subsequent Landfill Environmental Management Plans are not approved by this consent.”

### **Amended Condition No 6**

“Development is to take place as specified within the Environmental Impact Statement prepared on behalf of the applicant by R W Corkery and Planners North Pty Ltd and submitted to PCC as part of the development application on Council’s file D25050/13602 DA2 except where amended or altered by these conditions or the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent or as directed otherwise by Council from time to time.”

### **Amended Condition No 14**

“The applicant shall comply with the requirements of the Waste Management Authority of New South Wales as detailed in conditions 11, 14, 15, 33, 35, 36, 39-41, 51-58, 60-69 and 72-74 in this consent and the requirements of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent. Any breach of the conditions of approval as specified by the Waste Management Authority shall give cause to the revocation of this approval.”

### **Amended Condition No 21**

“On the western boundary of the excavation, extraction will only occur up to the western boundary of cells B1, B7, B8, B9 and B10 shown on Plan No. 2.1 contained in the Environmental Impact Statement, except where varied by the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent. The applicant is to establish vegetative screening of the operation around all boundaries except the common boundary of Lots 1 and 74 immediately extraction recommences.”

### **Amended Condition No 31**

“Extraction and waste disposal shall be undertaken in accordance with the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in DPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent.”

“The LEMP shall address the following matters:

- Specifications for all proposed erosion and sediment control and water quality maintenance works, including batters, flumes and contour banks, sediment traps leachate controls;
- Specific details on the progressive rehabilitation programme and final levels of fill and land forming, which are outlined briefly in the Environmental Impact Statement; and
- Any other landscape architectural details.

This plan is to be submitted to Council and the Department of Land and Water Conservation. This part of the Landfill Environmental Management Plan is to be considered and approved by Council. Approval will be established by written confirmation being provided to the applicant. The Landfill Environmental Management Plan will require annual review in the form of a report that will be submitted to the NSW Environmental Protection Authority and Council. The report shall include a plan from a registered surveyor showing the volumes of voids, the quantity of waste placed in those voids, and progressive earthworks/rehabilitation works to date.”

### **Amended Condition No 39**

“Prior to recommencement of extraction, structures to divert clean water (including stormwater and seepage) around the site are to be in place. Such structures shall be designed and placed in accordance with the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent. This part of the Landfill Environmental Management Plan is to be considered and approved by Council. Approval will be established in written confirmation being provided to the applicant.”

### **Amended Condition No 50**

“Final landforming over backfilled areas is to provide a landform that is compatible in appearance with the surrounding landform, and in accordance with the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent. This part of Landfill Environmental Management Plan is to be considered and approved by Council. Approval will be established by written confirmation being provided to the applicant.”

### **Amended Condition No 52**

“The finished landform shall have a minimum slope of 5% in accordance with the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent.”

### **Amended Condition No 61**

“The capping layer shall be designed and implemented in accordance with the provisions of the Landfill Environmental Management Plan dated 1 January 1998 defined in EPA Licence No. 004585 dated 11 October 2000 as approved by Council in the modification of this consent.”

These conditions will continue to apply to the Site.

### **Rezoning**

Rezoning approval has been granted by PCC for the site to permit a Waste Treatment Facility as a permissible use on the site. As a result of the public exhibition period for the rezoning of the Site (displayed in June 2005), government authority comments were received from Blue Mountains City Council, Hawkesbury City Council, and Rural Fire Services. These comments were taken into account by PCC during their decision making process for the rezoning.

The rezoning was approved by the Minister for Planning and gazetted on 16 February 2007.