
Voluntary Planning Agreement - Lucas Heights Resource Recovery Park

WSN Environmental Solutions Pty Limited

SITA Australia Pty Limited

SembSita Australia Pty Limited

Sutherland Shire Council

Minister for Planning

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Title **Voluntary Planning Agreement - Lucas Heights Resource Recovery Park**

Date 2014

Parties **WSN Environmental Solutions Pty Limited** (ACN 147 652 677 ABN 93 524 709 106) of Level 3, 3 Rider Boulevard, Rhodes NSW 2138 (**WSN**)

SITA Australia Pty Limited (ACN 002 902 650) of Level 3, 3 Rider Boulevard, Rhodes NSW 2138 (**SITA**)

SembSita Australia Pty Limited (ACN 002 658 255) of Level 3, 3 Rider Boulevard, Rhodes NSW 2138 (**Guarantor**)

Sutherland Shire Council (ABN 52 018 204 808) of 4-20 Eton Street, Sutherland NSW 2232 (**Council**)

Minister for Planning of 1 Farrer Place, Sydney NSW 2000 (**Minister**)

Recitals

Preliminary

- A Council is a body politic pursuant to section 220 of the *Local Government Act* 1993.
- B WSN is a proprietary company.
- C SITA is a proprietary company.
- D SITA and WSN are related entities and their shares are wholly owned by the Guarantor.
- E WSN is:
 - (a) the registered proprietor of the WSN Land; and
 - (b) the tenant of the ANSTO Land.
- F SITA currently operates the Lucas Heights Resource and Recovery Park (**LHRRP**) on the LHRRP Land, which involves landfilling, composting and recycling activities and which is carried out under the Original Development Consent. As operator and occupier of the LHRRP, SITA warrants that it holds the relevant licences under the *Protection of the Environment Operations Act* 1997 for the activities that are carried on at the LHRRP.

Waste Processing and Recycling Corporation

- G Before 31 January 2011, WSN operated as Waste Recycling and Processing Corporation (**WRPC**) which was a State owned corporation constituted by section 4 of the *Waste Recycling and Processing Act* 2001.

- H On 28 January 2011, **WRPC** applied for registration pursuant to Chapter 5B of the *Corporations Act 2001* as a proprietary company limited by shares.
- I On 30 January 2011, **WRPC** was registered under the *Corporations Act 2001* as WSN Environmental Solutions Pty Ltd.
- J By force of:
- (a) section 601BM of the *Corporations Act 2001* WSN is the same legal entity as Waste Recycling and Processing Corporation; and
 - (b) section 601BQ of the *Corporations Act 2001* any reference in any contract to Waste Recycling and Processing Corporation is a reference to WSN.
- K On 31 January 2011 all of the issued share capital of WSN was acquired by SembSITA Australia Pty Limited from the Treasurer for and on behalf of the Crown in right of the State of New South Wales.

Original Development

- L Under the terms of the Original Development Consent:
- (a) no more than 630,000 tonnes of waste per annum may be delivered to the LHRRP;
 - (b) of that 630,000 tonnes, no more than 575,000 tonnes per annum shall be landfilled at LHRRP and no more than 55,000 tonnes per annum shall be treated at the recycling and resource recovery facilities at LHRRP;
 - (c) an additional 8.225 million tonnes may be landfilled at the LHRRP (additional to the 8 million tonnes authorised to be landfilled under a previous development consent);
 - (d) no landfilling shall occur after 31 December 2024: and
 - (e) there are landform, landscaping, and post closure care and responsibilities.
- M In June 2010, development approval was also granted for the construction of the AWT Facility on ANSTO Land, but the AWT Facility has not been constructed.

New Development

- N SITA wishes to change the way in which the LHRRP Land is developed. In particular, SITA wishes to pursue the 2014 Development.
- O The Minister is the consent authority for the 2014 Development Application.
- P The zoning of the LHRRP is currently such that the development proposed under the 2014 Development Application would not be permissible with development consent (even as State significant development) under the requirements of the EPA Act. As a result, SITA and WSN propose to seek an amendment to the environmental planning instrument that applies to the LHRRP such that the Project Area may be developed with development consent for the purposes of public open space, waste processing and disposal activities and post closure activities. SITA does not propose to seek to amend the environmental planning instrument that applies to the LHRRP in a way that would mean that public open space activities are no longer permissible on any part of the LHRRP, nor that waste processing or disposal activities are permissible on the SICTA Non-Project Area.

- Q WSN and SITA have offered to enter into this planning agreement in connection with the 2014 Development Application.
- R The Monetary Contribution to be made under this agreement is significant and is able to be made by WSN and SITA as a direct result of the increase in the volume of material that would be landfilled under the 2014 Landfill Development Consent.
- S The 2014 Development Application will seek approval for the following development:
- (a) Adjusting the landfill profile to achieve significant environmental improvements and increase the site landfill capacity by 8,300,000 cubic metres;
 - (b) Construction of an ARRT Facility on the western side of the Project Area with an annual processing capacity of 200,000 tonnes per annum;
 - (c) Relocating the Garden Organics Facility from the eastern part of the LHWMC Land to the south-western part of the Project Area, and expanding the capacity of the facility to receive and process Garden Organics from 55,000 tonnes per annum to 80,000 tonnes per annum;
 - (d) The volume of waste that may be delivered to the LHWMC is increased to 1.140 million tonnes per annum;
 - (e) Of the 1.140 million tonnes, no more than 850,000 tonnes per annum shall be landfilled, no more than 200,000 tonnes per annum shall be processed at the proposed AART Facility, no more than 80,000 tonnes per annum shall be processed at the proposed Garden Organics Facility and no more than 10,000 tonnes per annum shall be received at the Resource Recovery Centre (RRC) (drop off area);
 - (f) The receipt, processing and disposal of waste at LHWMC may occur until 31 December 2037; and
 - (g) New landform, landscaping and post closure care and responsibilities.
- T It is intended by the parties to this agreement that the new landform and landscaping will be developed into a new parkland to be handed to the community in 2039, and that the WSN Land, which will be dedicated to Council by SITA under this agreement at no cost to Council, will form part of that parkland.
- U The landfill at LHWMC is currently permitted to receive 16,225,000 tonnes of waste. As noted above, the proposed expansion by 8,300,000 cubic metres would, on current practice, be approximately equal to 8,300,000 tonnes. On that basis, the 2014 Development will increase the total capacity of the landfill to around 24,525,000 tonnes.
- V WSN and SITA will implement agreed post closure responsibilities during the LHRRP Post Closure Period.
- W Under the Deed of Agreement, Council will be a joint applicant to the 2014 Development Application. Council must approve the 2014 Development Application under clause 18.2 of the Deed of Agreement before it can be lodged.
- X If certain conditions precedent are met, WSN and SITA will dedicate the WSN Land to Council (or other Public Authority), free of cost, which Council intends to use as public open space, pay monetary contributions, and enter into various undertakings

regarding environmental management of the site under this planning agreement. The Guarantor will also be a guarantor under this planning agreement.

Operative provisions

1. Definitions and interpretation

Definitions

In this agreement, unless the context requires another meaning:

2014 Development means the development of the LHRRP Land so that:

- (a) the landfill profile is adjusted to achieve environmental improvements and increase the site landfill capacity;
- (b) the AWT Facility is not constructed, but the ARRT Facility is proposed to be constructed on the western side of the Project Area;
- (c) the Garden Organics Facility is relocated from the eastern part of the Project Area to the south-western part of the Project Area and expanding the capacity of the facility to receive and process Garden Organics from 55,000 tonnes per annum to 80,000 tonnes per annum;
- (d) the volume of waste that may be delivered to the LHRRP is increased to 1.140 million tonnes per annum;
- (e) of that 1.140 million tonnes, no more than 850,000 tonnes per annum shall be landfilled, no more than 200,000 tonnes per annum shall be processed at the proposed AART Facility, no more than 80,000 tonnes per annum shall be processed at the proposed Garden Organics Facility and no more than 10,000 tonnes per annum shall be received at the Resource Recovery Centre (RRC) (drop off area);
- (f) the landfill capacity is expanded by 8,300,000 cubic meters;
- (g) the receipt, processing and disposal of waste at LHRRP may continue until 31 December 2037; and
- (h) there are landform, landscaping and post closure care and responsibilities.

2014 Development Application means the development application under the EPA Act for development consent to carry out the 2014 Development.

2014 Development Consent means any development consent to the 2014 Development Application.

2014 Instrument Change means the making of an environmental planning instrument under Part 3 of the EPA Act that has the effect that the 2014 Development and development for the purposes of the post closure and public open space purposes are permissible with development consent on the Project Area. .

2014 Landfill Development Consent means any development consent that provides consent for all of the following components of the 2014 Development:

- (a) the landfill profile is adjusted to achieve environmental improvements and increase the site landfill capacity;
- (b) the landfill capacity is expanded; and
- (c) the receipt and disposal of waste at LHRRP may continue beyond 31 December 2024.

ACICA means the Australian Centre for International Commercial Arbitration.

Additional Capacity means the tonnage equivalent of the increase in landfill capacity at under the 2014 Landfill Development Consent, assuming that 1 cubic metre is equal to 1 tonne. For example, if the 2014 Landfill Development Consent involves approval for an increase in landfill capacity at LHRRP in the amount of 8 million cubic metres, then the Additional Capacity will be equal to 8 million tonnes.

Annual Landfill Waste has the meaning given in clause 1.6 of **Schedule 1C**.

Area of Concern means a potential environmental impact that may result from the 2014 Development and that is identified and proposed to be managed under an EMP including but not limited to any or all of the following:

- (a) odour;
- (b) noise;
- (c) dust; and
- (d) litter.

ARRT Facility means the Advanced Resource Recovery Facility proposed to be constructed on the Western side of the Project Area, as further described in the EIS.

ARRT Facility Limit has the meaning given in clause 1 of **Schedule 1B**.

ANSTO means the Australian Nuclear Science and Technology Organisation, a body corporate pursuant to section 4 of the *Australian Nuclear Science and Technology Organisation Act 1987*.

ANSTO Land means that part of the LHRRP Land of which ANSTO is the registered proprietor, being:

- (a) Lots 101 in DP 1009354 and Lot 2 in DP 605077, leased by Waste Service from ANSTO under registered lease AA773886K, which has expiry date of 31 December 2025;
- (b) Lot 1 of DP 233333 and Lot 111 of DP 1050235, leased by Waste Service from ANSTO under registered lease AA773888F, which has expiry date of 31 December 2025; and
- (c) Lot 102 of DP 1009354, leased by Waste Service from ANSTO under registered lease AA773887H, which has expiry date of 31 December 2025,

and labelled 'ANSTO Land' on the plan attached as Exhibit 5.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other agency or body with relevant power.

AWT Facility means the alternative waste treatment facility that was proposed to be constructed on the ANSTO Land and for which development approval was granted in June 2010 and which is not being constructed.

Business Day means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Sydney.

Compaction Bonus Tonne has the meaning given in clause 1.4 of **Schedule 1C**.

Compaction Bonus Tonne Rate has the meaning given in clause 1.9 of **Schedule 1C**.

Complaint means any complaint originating from a residence or business located within the Sutherland Shire Council local government area in relation to an Area of Concern in the operation of the LHRRP.

Deed of Agreement means the deed of agreement between WSN (formerly Waste Recycling and Processing Service of New South Wales) and Council dated 5 September 2000, as amended from time to time.

Development Contribution means:

- (a) Monetary Contributions referred to in **Schedule 1A, 1B and 1C**;
- (b) the environmental undertakings referred to in **Schedule 1D**;
- (c) the landscaping of the Project Area as referred to in **Schedule 1E**;
- (d) the post-closure responsibilities as referred to in **Schedule 1F**;
- (e) the dedication of the WSN Land free of cost for public open space as referred to in **Schedule 1G**; or
- (f) the provision of a material public benefit provided for elsewhere in this agreement including but not limited to preferential treatment referred to in **Schedule 1H**.

EIS means the Environmental Impact Statement lodged with the 2014 Development Application.

EMP means each of the environmental management plans prepared as part of the Environmental Impact Statement lodged with the Department of Planning in relation to the 2014 Development, to provide a basis for management of LHRRP, as may be amended from time to time.

Environment has the same meaning as in the *Protection of the Environment Operations Act 1997*.

Equivalent Environmental Performance means a different method of achieving the objectives of an EMP to that stated in that EMP but which produces an equally satisfactory outcome for the Environment.

EPA Act means the *Environmental Planning and Assessment Act 1979* (NSW).

External Auditor means an independent external auditor who is appointed by SITA under the Agreed Methodology.

Garden Organics means green and garden waste (including manure), but excludes waste types such as food and animal waste, biosolids and grease trap waste.

Garden Organics Facility means the facility proposed to be constructed on the South Western part of the Project Area that will process Garden Organics.

GST means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any like tax.

Guaranteed Obligations has the meaning given in clause 7.1.

Initial EMP means each of the environmental management plans for LHWMC, as set out in Exhibit E10 including the EMP for the LHRRP, the EMP for the ARRT Facility, the EMP for the Garden Organics Facility and the EMP for Post Closure Management.

Initial Monetary Contribution means the Monetary Contribution so identified in **Schedule 1A**.

Landfill Waste means any waste which is deposited into the landfill at LHRRP, but excludes:

- (a) any materials which are received at LHRRP, but subsequently transported to another site for further processing;
- (b) Garden Organics processed at the Garden Organics Facility;
- (c) daily and intermediate cover; and
- (d) materials which are received and deposited at the landfill for the purpose of construction, maintenance, capping or rehabilitation of the landfill structure;

Landscaping Plan means the document titled "Lucas Heights Landscaping Plan", , attached as Exhibit 4.

Lowest Equivalent Price has the meaning given to the phrase in **Schedule 1G**.

Lucas Heights Resource Recovery Park or **LHRRP** means the waste recovery, recycling and management facility on the LHRRP Land which was previously known as the Lucas Heights Waste Management Centre or LHWMC.

LHRRP Closure Date means 31 December 2037 or earlier date where LHWMC permanently ceases to receive, process and dispose of waste.

LHRRP Land means the ANSTO Land and the WSN Land.

LHRRP Post Closure End Date means the later of:

- (a) 30 years after the LHRRP Post Closure Start Date; or
- (b) the date at which the NSW EPA allows WSN or SITA to relinquish its LHRRP Post-Closure Licence.

LHWMC Post Closure Start Date means 1 January 2040.

LHRRP Post-Closure Licence means the post-closure licence issued by the EPA in respect of the LHRRP under the *Protection of the Environment Operations Act 1997* (NSW)

LHRRP Post Closure Period means the period commencing on the LHRRP Post Closure Start Date and ending on the LHRRP Post Closure End Date.

Monetary Contributions means:

- (a) the payments of money as specified in **Schedule 1A** (Quarterly Instalments of Payment of \$100,000,000);
- (b) the payments of money as specified in **Schedule 1B** (ARRT Excess Tonnage payments); and
- (c) the payments of money as specified in **Schedule 1C** (Bonus Compaction Tonnes Payment).

Obligor means:

- (a) In respect of SITA's obligations under this agreement, SITA; and
- (b) In respect of WSN's obligations under this agreement, WSN.

Original Capacity means 16,225,000 tonnes.

Original Development Consent means the development consent granted on 12 November 1999 by the Minister for Urban Affairs and Planning and then modified by:

- (a) modification dated 29 May 2001;
- (b) MOD-135-12-2004-i dated 2005;
- (c) MOD-123-8-2005-i dated 2005;
- (d) 11-01-99-MOD 4, dated 2007;
- (e) modification dated 15 January 2010;
- (f) 11-01-99-MOD 6, dated June 2010;
- (g) 11-01-88-MOD 7, dated September 2010;
- (h) 11-01-88-MOD 8, dated 18 January 2012;
- (i) MOD 9 Garden Organics; and
- (j) MOD 10 BMX Facility at Lucas Heights 1.

Parties, Either Party, Each Party and Other Party each have the meanings given in clause 2.

Project Area means:

- (a) the ANSTO Land;
- (b) the WSN Project Area; and

(c) the SICTA Project Area.

Public Authority means a public authority as defined in the *Local Government Act 1993*.

Register means the Torrens title register held by the NSW South Wales office of Land and Property Information.

Remaining Capacity has the meaning given in clause 1.7 of **Schedule 1C**.

SICTA Land means part Lot 3 in Deposited Plan 1032102 being that part of the WSN Land identified as the 'SICTA Land' on the plan forming Exhibit 5, which is subject to a licence between WSN and SICTA expiring March 2025.

SICTA Project Area means that part of the SICTA Land on which the ARRT Facility may be constructed, which is identified as the "SICTA Project Area" on the plan forming Exhibit 5.

SICTA Non-Project Area means that part of the SICTA Land which excludes the SICTA Project Area, which is identified as the "SICTA Non-Project Area" on the plan forming Exhibit 5.

Total Capacity has the meaning given in clause 1.3 of **Schedule 1C**.

WSN means WSN Environmental Solutions Pty Ltd (ACN 147 652 677) and previously known as Waste Service NSW.

WSN Land means the whole of Lot 3 in DP 1032102, which includes the SICTA Land.

WSN Project Area means that part of the WSN Land which is identified as the "WSN Project Area" on the plan forming Exhibit E5.

WSN Rehabilitation Area means:

- (d) the WSN Project Area; and
- (e) if the ARRT Facility is constructed, the SICTA Project Area.

Interpretation

1.2 In this agreement:

- (a) unless the context otherwise requires, a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a document (including this agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (iv) an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this agreement;
 - (v) a person (including a party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or

Authority and the person's successors, permitted assigns, substitutes, executors and administrators;

- (vi) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation and any code, policy or consent made, granted or enforced under any legislation, by-law or subordinate legislation;
 - (vii) proceedings includes litigation and arbitration;
 - (viii) time is to Sydney time;
 - (ix) day is to a day in Sydney;
 - (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) headings are for convenience only and do not affect interpretation of this agreement; and
- (c) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

2. Application of agreement

Agreement is a planning agreement

- 2.1 This agreement is a planning agreement within the meaning of section 93F of the EPA Act.
- 2.2 For the avoidance of any doubt, if it is considered that the Council is not a 'planning authority' for the purposes of section 93F(1) of the EPA Act, the Minister approves, for the purposes of section 93(7) of the EPA Act, the Council being a party to this agreement and receiving benefits under this agreement on behalf of the State.

Application of agreement

- 2.3 This agreement applies to the LHRRP Land and to the 2014 Development.

Operation of agreement – Conditions precedent

- 2.4 Clauses 2.8, 2.9 and 3 to 8 of this agreement only operate if:
- (a) WSN or SITA provide Council with written notice that they intend to act on the 2014 Landfill Development Consent, such notice to be provided within 14 days of the issue of the 2014 Landfill Development Consent.
- 2.5 If neither WSN nor SITA provide Council with written notice under clause 2.4(a), or within such other period as agreed in writing by the Parties, then WSN and SITA must not act on the 2014 Landfill Development Consent.
- 2.6 All other provisions of this agreement operate with full force and effect from the date this agreement is executed by all parties.
- 2.7 Clauses 2.8, 2.9 and 3 to 8 of this agreement do not apply:

- (a) if the 2014 Instrument Change, the 2014 Landfill Development Consent or this agreement, is declared to be invalid or void by a decision of a Court (and all available appeal rights have been exhausted or not exercised within the time allowed for the relevant appeal); or
- (b) if the 2014 Landfill Development Consent is surrendered in accordance with the requirements of clause 97 of the *Environmental Planning and Assessment Regulation 2000* or lapses. For the avoidance of any doubt any application to surrender the 2014 Landfill Development Consent must be with Council's concurrence.

Pro rata adjustment

2.8 In the event that the 2014 Development Consent is subject to a requirement that means that the total volume of waste permitted to be landfilled in total at the LHRRP is a volume that is less than 8.3 million cubic metres, then the Monetary Contributions referred to in rows 1 to 16 of **Schedule 1A** will each be reduced to amounts determined under the following formula:

$$A = B/C \times D$$

Where:

- A** = the new Monetary Contribution for a particular row in **Schedule 1A**
- B** = the additional volume of waste permitted to be landfilled the LHRRP over the life of the landfill under the 2014 Development Consent
- C** = 8,300,000
- D** = the Monetary Contribution referred to in that row of **Schedule 1A**.

A worked example of the above formula is set out in **Schedule 2**.

2.9 Based on current practice, one cubic metre of waste weighs approximately one tonne (referred to as 1:1 compaction ratio) and 8.3 million cubic metres of waste would weigh approximately 8.3 million tonnes. In the event that SITA or WSN were to achieve a greater efficiency compaction ratio than 1:1 the parties accept that, under clause 4.1 and the provisions of **Schedule 1C** that SITA and Council will share the benefit thereby derived.

Term of the agreement

2.10 This agreement is to continue for a term commencing on the date of this agreement, unless otherwise terminated in accordance with this agreement, ending on LHRRP Post Closure End Date..

WSN and SITA

2.11 The parties acknowledge and agree that:

- (a) an obligation of WSN or SITA under this agreement is an obligation of both WSN and SITA (on a joint and several basis); and
- (b) a right of WSN under this agreement may be exercised by SITA on behalf of WSN.

- 2.12 The parties acknowledge and agree that a reference in this agreement to:
- (a) a party is taken to be a reference to a party to this agreement;
 - (b) the parties is taken to be a reference to all of the parties to this agreement; and
 - (c) a "Party" is taken to be reference to Council, WSN and / or SITA.
- 2.13 The parties acknowledge and agree that a reference to "Either Party" or "Neither Party" in this agreement is taken to be reference to either or neither (as the case may be):
- (a) Council; and
 - (b) WSN and SITA.
- 2.14 The parties acknowledge and agree that a reference to "Each Party" in this Agreement is taken to be reference to each of:
- (a) Council; and
 - (b) WSN and SITA.
- 2.15 The parties acknowledge and agree that a reference to the "Other Party" in this Agreement is taken to be reference:
- (a) where the first mentioned Party is Council, to WSN and SITA; and
 - (b) where the first mentioned Party is WSN or SITA, to Council.

3. Application of sections 94, 94A and 94EF

- 3.1 This agreement excludes the application of sections 94, 94A and 94EF to the 2014 Development.

4. Development contributions to be made under this Agreement

- 4.1 WSN or SITA will provide, or procure the provision of, the Development Contributions in accordance with **Schedules 1A to 1H** and subject to clause 2.8.
- 4.2 The parties acknowledge that the contributions set out in **Schedule 1D to 1H** are for community and recreational purposes and without limiting this clause are for a public purpose within the meaning of section 93F(2) of the EPA Act.

5. Registration of agreement and equitable interest

- 5.1 WSN and SITA agree to procure that this agreement is registered on the relevant folios of the Register pertaining to the WSN Land within 60 days of satisfaction of the last of the conditions precedent set out in clause 2.4 of this agreement.
- 5.2 WSN acknowledges that, when this agreement is executed, Council has an equitable interest in the WSN Land for the purpose of s74F of the *Real Property Act* 1900 and that this agreement otherwise creates a charge over the WSN Land being a

caveatable interest and that Council may lodge a caveat to protect its interest in the WSN Land with Land and Property Information NSW.

- 5.3 If requested by Council, WSN must execute a form of consent to the lodgement of such a caveat. WSN agrees not to object to the lodgement of such caveat.
- 5.4 Once the caveat referred to in clause 5.2 is registered, within 10 Business Days of receiving a request from WSN in writing, Council agrees to provide such documentation reasonably necessary to provide caveator's consent to the registration with the NSW Land and Property Information of:
- (a) a lease the term of which ends before 31 December 2037 (including any options to renew the lease); or
 - (b) a plan of subdivision which is implemented to facilitate a lease of the kind referred to in paragraph (a).

Council will act reasonably whenever considering any other request in writing from WSN to provide cavator's consent to the registration of any other document with NSW Land and Property Information in relation to the WSN Land.

6. Assignment

- 6.1 Subject to clauses 6.2 and 6.3, Neither Party may assign or transfer any of that Party's rights or obligations under this agreement without the prior written consent of the Other Party.
- 6.2 WSN and SITA may assign or transfer its rights and obligations under this agreement without Council's consent to any assignee or transferee if the proposed assignee or transferee from SITA reasonably demonstrates in writing to Council that it has the financial standing, reputation, business experience and capability to perform the duties and obligations of WSN and SITA under this agreement.
- 6.3 Clause 6.2 does not apply where:
- (a) SITA and WSN have exercised their independent rights to assign income from the LHRRP to a person; and
 - (b) that person is different from the entity who is to be the beneficiary of the proposed assignment under clause 6.2.
- 6.4 A request by a Party for consent to assign or transfer rights and obligations must be made by notice served on the Other Party.
- 6.5 The Party making that request must pay the Other Party's reasonable legal costs and other costs of considering that request, whether or not consent is given, including any costs which that Party incurs in making enquiries as to the financial standing, reputation and business experience and capability of any proposed assignee or transferee and the costs of giving consent.
- 6.6 Nothing in this clause 6 prevents a Party from employing or engaging advisers, consultants, contractors and experts for the purpose of exercising that Party's rights or discharging that Party's obligations under this agreement.

7. Guarantee

Guarantee

- 7.1 The Guarantor unconditionally and irrevocably guarantees to Council the performance by the Obligor of all of the Obligor's obligations in accordance with the terms of this agreement (**Guaranteed Obligations**). If the Obligor defaults in the punctual performance of the Guaranteed Obligations, then the Guarantor must perform those obligations immediately on demand by the Council.

Principal debtor

- 7.2 If the Guaranteed Obligations (or obligations that would be Guaranteed Obligations if not unenforceable, invalid or illegal) are not fully enforceable against or not fully recoverable from the Obligor as debtor or from the Guarantor as surety for any reason, including:

- (a) any legal limitation, disability, or lack of capacity, power or authority affecting the Obligor or the Guarantor or an improper exercise of power or authority by any person; or
- (b) any winding-up, bankruptcy, reorganisation, amalgamation or similar event or circumstance affecting Obligor or the Guarantor;

the Guaranteed Obligations:

- (c) are recoverable from, and enforceable against, the Guarantor as though they had been incurred and owing by the Guarantor and the Guarantor was the sole and principal debtor in respect of the Guaranteed Obligations; and
- (d) must be paid or performed by the Guarantor on demand by Council.

Obligations of Guarantor unaffected

- 7.3 The Guarantor's obligations under this agreement are not released or discharged by:
- (a) the granting of any time, waiver, indulgence or other concession to the Obligor, the Guarantor or any other person;
 - (b) a release, forbearance to sue, discharge, relinquishment, compounding or compromising of the obligations of the Obligor, the Guarantor or any other person under this agreement or in respect of the Guaranteed Obligations;
 - (c) an amendment of, supplement to or replacement of the obligations of the Obligor, the Guarantor or any other person under this agreement or in respect of the Guaranteed Obligations including any amendment, supplement or replacement under which the Obligor's obligations are increased, the Obligor incurs additional obligations or the time and method of payment by the Obligor is varied;
 - (d) any part of the Guaranteed Obligations being or becoming irrecoverable or never having been recoverable; or
 - (e) any winding-up, bankruptcy, reorganisation, amalgamation or similar event or circumstance of or affecting the Guarantor or any other person, or the receipt

by Council of a dividend or distribution out of or relating to any of those events or circumstances.

8. Acknowledgement of Monetary Contribution

- 8.1 The parties agree that the Monetary Contributions from **Schedule 1A**:
- (a) may be applied by Council, as it sees fit on capital projects or community assets across the Sutherland Shire local government area. These funds may be applied for new projects or facilities, as well as for the upgrade or renewal of assets. In considering the allocation of these funds Council will ensure that an appropriate amount is available for projects in the Menai, Illawong, Alford's Point, Barden Ridge, Lucas Heights and any relevant adjacent area;
 - (b) may not be allocated to roads, drainage, footpaths or stormwater management unless such works are associated with a qualifying project or facility as described in clause 8.1(a) above;
 - (c) may not be allocated to maintenance works of any kind; and
 - (d) will be acknowledged in respect of the identified projects or facilities, in Council's annual budgets, operating plans, delivery programs and financial plans as a source of funds for the project or facility.
- 8.2 Council will acknowledge the Monetary Contributions and other support it receives from SITA. Unless otherwise agreed by SITA, Council is required to undertake the following actions:
- (a) before the commencement of construction, Council will erect and maintain a sign acknowledging SITA's support on the site of a project or facility where Monetary Contributions are applied;
 - (b) Council will display other signage acknowledging SITA's support at the site of the project or facility, including on signage or plaques marking the official opening or related events;
 - (c) Council will display signage acknowledging SITA's support in public view on the project construction site and it will ensure that the signage remains visible to the public until the project or facility is completed. Where a sign cannot be erected as required in this clause 8.2(c), an alternate site must be agreed by Council and SITA.
- 8.3 If Council intends to erect such signs on ANSTO Land, Council will seek ANSTO's consent prior to erecting the signs.
- 8.4 Council will meet all the costs associated with preparing, erecting and maintaining the signs acknowledging SITA's support.
- 8.5 Both Council and SITA logos will be displayed on the sign acknowledging SITA's support, and wording will refer to the Monetary Contributions made by SITA.
- 8.6 All publicity, announcements and media releases relating to the project or facility will refer to the Monetary Contribution made by SITA.
- 8.7 The wording to be used on the signs and on other material acknowledging SITA's support will be agreed between SITA and Council.

- 8.8 Dates for official opening of projects or facilities where Monetary Contributions were applied, shall be agreed between Council and SITA, and a SITA representative will be offered an opportunity to speak at such an official occasion.
- 8.9 Council agrees that SITA may refer in its own marketing and communications materials or activities to the projects or facilities where Monetary Contributions were applied and/or where other support was given by SITA. The wording of such materials will be agreed between SITA and Council.
- 8.10 Any other Monetary Contribution will be applied by Council to a public purpose within the meaning of section 93F(2) of the EPA Act.
-

9. Dispute Resolution

No proceedings

- 9.1 A party must not start court proceedings about a dispute arising out of this Agreement unless it first complies with this clause, except:
- (a) where a party seeks urgent injunctive relief;
 - (b) where a party is enforcing payment of monies due and payable pursuant to this agreement (and the validity or accuracy of that claim for payment has not been challenged or disputed by another party); or
 - (c) where the dispute relates to compliance with this clause.

Notice

- 9.2 A party claiming that a dispute has arisen must notify the party with which they have the dispute giving details of the dispute. The notice must:
- (a) set out the scope of the dispute and outline any relief sought;
 - (b) outline any relevant facts or other pertinent information that relates to the dispute and/or that the Party raising the dispute seeks to rely upon; and
 - (c) nominate such date(s) and venue(s) within the next 5 days that the Party raising the dispute is available to meet with the Other Party to discuss and attempt to resolve the dispute on a without prejudice basis.

Efforts to resolve

- 9.3 Each party to the dispute must endeavour to resolve the dispute within 5 days of receiving notice of the dispute.
- 9.4 If the dispute has not been resolved by negotiation within 5 days of receipt of the notice under clause 9.2, then either party to the dispute may refer the dispute to the Chief Executive Officer or General Manager of the parties to the dispute. The Chief Executive Officer and General Manager must meet and seek to resolve the dispute. If the Chief Executive Officer and General Manager are unable to resolve the dispute within 7 days of it being referred to them, either to the dispute may, by notice in writing to the other party to the dispute, require the dispute to be referred to mediation in accordance with clause 9.5 .

Mediation

- 9.5 If a dispute cannot be resolved under clause 9.4, either party to the dispute may refer the matter to mediation in accordance with the ACICA Mediation Rules.
- 9.6 The mediation process will be commenced by service by a party on the other party to the dispute of a written notice that the dispute is to be referred to mediation. The parties will then participate in good faith in the mediation.
- 9.7 The mediation will be held in Sydney.
- 9.8 In the event that the parties to the dispute cannot agree on a mediator within 7 days of the receipt of the notice under clause 9.6, the mediator shall be nominated by the President of the Law Society of New South Wales or its successor body.
- 9.9 The parties to the dispute will use reasonable endeavours to conduct the mediation within 14 days of the referral to mediation.
- 9.10 If the dispute is not resolved by mediation within 14 days of receipt of the notice under clause 9.6 or if the mediation is not held within 14 days for any reason whatsoever, then either party to the dispute may refer the dispute to a court of proper jurisdiction.
- 9.11 If one of the parties to the dispute requests the mediator to terminate the mediation, the mediator must do so.
- 9.12 Subject to clause 9.11, the mediator may terminate the mediation at any time unless the mediator is satisfied that a resolution of the dispute is imminent.
- 9.13 If the mediator terminates the mediation of a dispute, the mediator must issue a certificate stating:
- (a) the names of the parties to the dispute;
 - (b) the nature of the dispute;
 - (c) that the mediation has finished; and
 - (d) that the dispute has not been resolved.
- 9.14 The mediator must give a copy of the certificate issued pursuant to clause 9.13 to:
- (a) ACICA; and
 - (b) the Parties.
- 9.15 The parties agree that the costs of mediation will be paid in equal shares by the parties to the dispute.

Performance of obligations

- 9.16 Despite the existence of a dispute, all parties must continue to perform their obligations under this agreement.

10. Enforcement and Default

Financial Default

- 10.1 If SITA does not pay any amount payable by it under this agreement within seven days of its due date, it must pay interest on that amount on demand by Council, from

the due date for payment until it is paid. The interest rate to be applied to late payments is set at 1% above the Base Rate at the time the amount payable became due. Interest under this clause is calculated on daily balances.

- 10.2 In clause 10.1, "**Base Rate**" means, in relation to an amount that remains unpaid for any period:
- (a) the 90 day Commonwealth Bank Published Overdraft Index (or any published rate that replaces that rate) published in the *Australian Financial Review* on the due date (for the avoidance of doubt, if there is a rate published for two or more dates for that maturity, the rate of the most recent date), or, if that date is not a Business Day, on the first Business Day after that date on which that rate is published; or
 - (b) if that rate ceases to be available, the rate determined by Council to be the rate per annum representing the cost of the Council of funding the relevant amount for the relevant period from such sources and on such basis as the Council reasonably selects.
- 10.3 Without limiting any other remedies available to the parties, this agreement may be enforced by a party in any court of competent jurisdiction.
- 10.4 For the avoidance of doubt, nothing in this agreement prevents:
- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any other matter to which this agreement relates; or
 - (b) the Council from exercising any function under the EPA Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

Environmental Default

- 10.5 In the event that SITA and WSN do not comply with the Environmental Undertakings as set out in this agreement or as required by the 2014 Development Consent, Council reserves its rights to seek remedies available to it to enforce this agreement or the 2014 Development Consent in a court of competent jurisdiction.

11. Force Majeure

- 11.1 For the purposes of this agreement, "**force majeure event**" means any event or series of events, the cause of which is beyond the reasonable control of a party and which could not have been prevented or avoided by that party taking all reasonable steps, and includes acts of God, the public enemy or terrorism, acts of the Australian government or any state or territory government in its sovereign capacity, fires, floods and unusually severe weather conditions.
- 11.2 This clause 11 does not apply to any obligation to pay, provide or procure the provision of any Monetary Contribution under this agreement. For the avoidance of any doubt the intention of this clause is to ensure that, if a force majeure event arises, SITA is not held to be in breach of its other obligations (to the extent that they are actually impacted).

- 11.3 A party is not liable for not performing an obligation in whole or in part, or for not performing it on time, because of a Force Majeure Event.
- 11.4 If a Force Majeure Event occurs, the non-performing party must:
- (a) promptly give the Other Parties notice of the event and an estimate of the non-performance and delay;
 - (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of disputes or claims on unreasonable terms); and
 - (c) resume compliance as soon as practicable after the event no longer affects Either Party.
-

12. Goods and services tax

Recovery of GST on supplies and adjustments under this agreement

- 12.1 All consideration provided under this agreement is exclusive of GST, unless it is expressed to be GST-inclusive.
- 12.2 Where a party (Supplier) makes a taxable supply to another party (Recipient) under or in connection with this agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:
- (a) The date when any consideration for the taxable supply is first paid or provided.
 - (b) Within 2 Business Days following the date that the Supplier issues provides a valid tax invoice to the Recipient. For the avoidance of doubt, the issue of a valid tax invoice (or a document that the Commissioner will treat as a tax invoice) by the Supplier to the Recipient in respect of the supply under this Agreement is a precondition to payment of the GST amount by the Recipient under this clause..
- 12.3 If, under or in connection with this agreement, the Supplier has an adjustment for a supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

Other GST matters

- 12.4 If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 12.2. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.
- 12.5 This clause will not merge on completion and will survive the termination of this agreement by any party.

12.6 Terms used in this clause that are not otherwise defined in this agreement have the meanings given to them in the GST Act.

13. Notices

Requirements

13.1 All notices must be:

- (a) in legible writing and in English;
- (b) addressed to the recipient at the address or facsimile number set out below or to such other address or facsimile number as that party may notify in writing to the other parties:

to WSN, SITA or Guarantor:

Address: Level 3, 3 Rider Boulevard, Rhodes NSW 2138

Attention: Sydney Landfills Manager

Facsimile no: (02) 9708 7899

Email: phil.carbins@sita.com.au

to Council:

Address: Street Address: 4-20 Eton Street,
Sutherland NSW 2232 or

Postal Address: Locked Bag 17 Sutherland
1499

Attention: General Manager

Facsimile no: (02) 9710 0265

Email: ssc@ssc.nsw.gov.au

to the Minister for Planning:

Address:

Attention:

Facsimile no:

Email:

- (c) signed by the party, or where the sender is a company by an authorised officer of that company or under the common seal of that company;
- (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile; and
- (e) if sent by email, in a form which identifies the sender and clearly indicates the subject matter of the notice in the subject heading of the email.

Receipt

13.2 Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to be duly received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by pre-paid post, three days (if posted within Australia to an address in Australia) or seven days (if posted from one country to another) after the date of posting;
- (c) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the whole facsimile was sent to the recipient's facsimile number; or
- (d) if sent by email, when the sender receives an automated message confirming delivery or four hours after the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered, whichever occurs first,

but if a notice is served by hand, or is received by the recipient's facsimile or via email on a day which is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice is deemed to be duly received by the recipient at 9:00 am (recipient's local time) on the first Business Day after that day.

14. Costs

- 14.1 Each party are to pay their own costs in relation to the preparation, negotiation and execution of this agreement and any document related to this agreement, provided that any documents required to effect any Development Contribution to be at the cost of WSN and SITA and at no cost to Council
- 14.2 WSN and SITA are responsible for the payment of any duty and all registration fees payable in relation to this agreement.

15. Further acts

- 15.1 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

16. Governing law and jurisdiction

- 1.2 This agreement is governed by the laws of New South Wales.

- 1.3 Each party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
 - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.
-

17. No fetter

- 17.1 Nothing in this agreement will be construed as requiring Council or the Minister to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
-

18. Severability

- 18.1 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the later way.
- 18.2 If any clause or any part of a clause is illegal, unenforceable or invalid, that part is to be treated as removed from this agreement, but the rest of this agreement is not affected.
-

19. Waiver

- 19.1 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party.
- 19.2 A waiver by a party is only effective if it is in writing.
- 19.3 A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
-

20. Deed of Variation

- 20.1 Council, WSN, SITA and the Guarantor will enter into a deed of variation to the Deed of Agreement setting out, inter alia, the private contractual enforcement provisions for compliance by WSN, SITA and that Guarantor with their obligations under this VPA (**Deed of Variation**).
- 20.2 The parties to this agreement confirm that the private contractual enforcement provisions agreed to by Council, WSN, SITA and the Guarantor in the Deed of Variation to the Deed of Agreement are in addition to the provisions under the EPA Act for the enforcement of the parties rights and obligations under this agreement.
- 20.3 This agreement sets out the entire agreement as between the parties to this agreement. This agreement together with the Deed of Agreement as amended by the

Deed of Variation sets out the entire agreement as between Council, WSN, SITA and the Guarantor. No earlier representation or other earlier agreement, whether oral or in writing in relation to any other matter the subject of this agreement has any effect on this agreement from the date this agreement is executed by all parties.

Schedule 1A

Quarterly Instalments of Payment of \$100,000,000

\$100,000,000 (excluding GST) to be paid to Sutherland Shire Council in accordance with the fixed following payment schedule on the basis of 8,300,000m3:

Payment period	Column 1 - monetary contribution (excl GST)	Column 2 - date due and payable
1.	\$10,000,000 (Initial Monetary Contribution)	Payment will be made within 14 days after the satisfaction of the conditions precedent in clause 2.4 or 31 March 2016, whichever is the later.
2.	\$1,209,748.00	31 March 2017
	\$1,209,748	30 June 2017
	\$1,209,748	30 September 2017
	\$1,209,748	31 December 2017
3.	\$1,246,040.50	31 March 2018
	\$1,246,041	30 June 2018
	\$1,246,041	30 September 2018
	\$1,246,041	31 December 2018
4.	\$1,283,421.75	31 March 2019
	\$1,283,422	30 June 2019
	\$1,283,422	30 September 2019
	\$1,283,422	31 December 2019
5.	\$1,321,924.25	31 March 2020
	\$1,321,924	30 June 2020
	\$1,321,924	30 September 2020
	\$1,321,924	31 December 2020
6.	\$1,361,582.00	31 March 2021
	\$1,361,582	30 June 2021
	\$1,361,582	30 September 2021
	\$1,361,582	31 December 2021
7.	\$1,402,429.50	31 March 2022
	\$1,402,430	30 June 2022
	\$1,402,430	30 September 2022
	\$1,402,430	31 December 2022
8.	\$1,444,502.50	31 March 2023
	\$1,444,502	30 June 2023
	\$1,444,502	30 September 2023
	\$1,444,502	31 December 2023
9.	\$1,487,837.50	31 March 2024
	\$1,487,838	30 June 2024
	\$1,487,838	30 September 2024
	\$1,487,838	31 December 2024
10.	\$1,532,472.75	31 March 2025
	\$1,532,473	30 June 2025
	\$1,532,473	30 September 2025
	\$1,532,473	31 December 2025

11.	\$1,578,446.75	31 March 2026
	\$1,578,447	30 June 2026
	\$1,578,447	30 September 2026
	\$1,578,447	31 December 2026
12.	\$1,625,800.25	31 March 2027
	\$1,625,800	30 June 2027
	\$1,625,800	30 September 2027
	\$1,625,800	31 December 2027
13.	\$1,674,574.25	31 March 2028
	\$1,674,574	30 June 2028
	\$1,674,574	30 September 2028
	\$1,674,574	31 December 2028
14.	\$1,724,811.50	31 March 2029
	\$1,724,811	30 June 2029
	\$1,724,811	30 September 2029
	\$1,724,811	31 December 2029
15.	\$1,776,555.75	31 March 2030
	\$1,776,556	30 June 2030
	\$1,776,556	30 September 2030
	\$1,776,556	31 December 2030
16.	\$1,829,852.75	31 March 2031
	\$1,829,852	30 June 2031
	\$1,829,852	30 September 2031
	\$1,829,852	31 December 2031
TOTAL	\$100,000,000 (excl GST)	

Schedule 1B

ARRT Excess Tonnage Payments

1. If the ARRT Facility processes more than 200,000 tonnes of waste in any given year (**ARRT Facility Limit**), then WSN or SITA must pay a fee of \$1.58 (excluding GST) (indexed in accordance with clause 2 of this schedule) per tonne per year to Council for each tonne per year of such waste in excess of the ARRT Facility Limit.

2. Payment of the fee in clause 1 is to be calculated according to the following formula:

$$F = (T - 200,000) \times (CPI_2 / CPI_1)$$

where:

F is the fee expressed in dollars paid to Council by SITA or WSN for each calendar year;

T is the total amount expressed in tonnes of waste processed at the ARRT Facility during the relevant calendar year;

CPI means the All Groups Consumer Price Index for Sydney published by the Australian Bureau of Statistics Publication No. 6401, or if the Australian Bureau of Statistics:

- a) discontinues publication of that price index; or
- b) materially alters the manner in which that price is computed,

such other index or criterion which the parties agree is substantially equivalent to that price index based on the explanatory notes published with that price index;

CPI₁ is the CPI published immediately before 1 March 2014; and

CPI₂ is the CPI published immediately before the date the payment is to be made.

For the avoidance of doubt, WSN or SITA is only required to pay a fee to Council where T is greater than 200,000.

3. The fee must be paid to Council within 60 days of 31 December of the year in which it is payable.

4. The payment of the fee in this Schedule does not permit WSN or SITA to increase the capacity of the ARRT Facility or the ARRT Facility Limit.

5. In the event the ARRT Facility processes more than 400,000 tonnes of waste in any given year the parties agree to renegotiate in good faith the payment to Council.

6. Worked example, excluding GST, of the above formula follows:

$$F = (T - 200,000) \times (PI_2 / PI_1)$$

For the year ending 31 December 2025

the indexed rate was \$2.15 (P1/P2)

T = 255,000

F would equal (255,000-200,000) x \$2.15 = \$118,225

Payable 3 March 2026.

Schedule 1C

Bonus Compaction Tonnes Payment

1. Payment for bonus compaction tonnes

- 1.1 SITA will make the payments to Council, at the times and in the amounts set out in this clause 11.11 of this schedule.
- 1.2 The parties acknowledge and agree that as at 30 June 2014:
- (a) a total of 11,874,846.45 tonnes of Landfill Waste has been deposited at the landfill at LHRRP; and
 - (b) of the Original Capacity, a total of 4,350,153.55 tonnes of Landfill Waste has not yet been used.
- 1.3 As soon as reasonably practicable after the satisfaction of the conditions precedent in clause 2.4 of this agreement, the Parties will meet to confirm the calculation of the Total Capacity, being equal to:
- Total Capacity** = Original Capacity + Additional Capacity
- 1.4 The parties note that it is an obligation on SITA under **Schedule 1D** and **Exhibit 1** to report annually to Council the volume of Landfill Waste deposited into the landfill each financial year and the Remaining Capacity of the landfill.
- 1.5 Within 30 days of receipt of SITA's report as to the volume of Landfill Waste deposited into the landfill in a particular financial year, the Council must notify SITA as to whether it agrees with SITA's figure as to the volume of Landfill Waste deposited into the landfill in that financial year. If:
- (a) Council does not so notify SITA then Council is taken, for the purposes of this agreement, to agree with SITA's report; and
 - (b) Council notifies SITA that it does not agree, then the Parties have 60 days to attempt to resolve the matter and if the matter is not resolved in that time then the Parties will be considered to be in dispute for the purposes of clause 9 of this agreement.
- 1.6 Once an agreement is reached or is deemed to have been reached under clause 1.5(a) of this schedule as to the volume of Landfill Waste that has been deposited into the landfill in any financial year then that annual figure will be the '**Annual Landfill Waste**' under this agreement and will be used for the purposes of determining the Remaining Capacity under this agreement for the remainder of the term of this agreement and cannot be revisited by the Parties in the absence of evidence of fraud or gross misconduct by one of the Parties.
- 1.7 The **Remaining Capacity** of the landfill will be determined as follows:
- Remaining Capacity** = Total Capacity - (sum of the Annual Landfill Waste volumes for each year after the year in which Total Capacity is determined under clause 1.3 of this Schedule)
- 1.8 If the total quantity of Landfill Waste deposited at LHRRP reaches the Total Capacity, then SITA will pay the amount referred to in clause 1.9 of this Schedule, indexed in

accordance with clause 1.10 of this Schedule for each tonne of Landfill Waste landfilled at the LHRRP in excess of the Total Capacity (each, a **Compaction Bonus Tonne**).

- 1.9 If the obligation to make a payment referred to in clause 1.4 of this Schedule arises, SITA will pay the Council \$8.00 (excluding GST) for each Compaction Bonus Tonne (**Compaction Bonus Tonne Rate**).
- 1.10 The Compaction Bonus Tonne Rate for the calendar year 2014 will be \$8.00 per Compaction Bonus Tonne, and will be subject to indexation at 3% per annum on 1 January during the term of this agreement.
- 1.11 SITA will make the payment referred to in this clause in respect of the Compaction Bonus Tonnes:
- (a) on a quarterly basis (that is, in respect of the periods 1 January – 31 March, 1 April – 30 June, 1 July – 30 September and 1 October – 31 December); and
 - (b) such payment to be received by the following date:
 - (i) for the 1 January – 31 March quarter – on or before 30 May;
 - (ii) for the 1 April – 30 June quarter – on or before 29 August;
 - (iii) for the 1 July – 30 September quarter – on or before 29 November;
 - (iv) for the 1 October – 31 December quarter – on or before 1 March of the following year.

2. **Worked example:**

- 2.1 Assume the 2014 Landfill Development Consent approves an expansion to the capacity of the landfill at LHRRP in the amount of 7.5 million cubic metres. On that basis:

Original Capacity = 16,225,000 tonnes
Additional Capacity = 7,500,000 tonnes
Total Capacity = 23,725,000 tonnes

- 2.2 Assume that by 30 November 2030, the total number of tonnes of Landfill Waste landfilled at LHRRP in the period after 1 July 2014 reaches 23,725,000 tonnes. That is, the Total Capacity has been used.
- 2.3 Assume that further Landfill Waste is received as follows:

Month	Tonnes of Landfill Waste landfilled at LHRRP	Rate per tonne \$(excl GST)	Payment \$(excl GST)
December 2030	56,000	12.84	721,787
January 2031	75,000	13.23	992,250
February 2031	83,000	13.23	1,098,090
March 2031	80,000	13.23	1,058,400

The amount for December 2030 (\$721,787) will be paid on or before 28 February 2031.

The amount for January 2031, February 2031 and March 2031 (\$3,148,740) will be paid on or before 31 May 2031.

Schedule 1D

Environmental Undertakings and Reporting

SITA and WSN are committed to best practice, prevention, mitigation and rectification of the operation and management of the LHRRP and post closure management obligations.

A Environmental and other Reporting

SITA will provide Council with monthly, quarterly and yearly reports regarding environmental and other aspects of LHRRP.

The reports to be provided by SITA are set out in Exhibit 1.

B. Environmental Management Plans

1. SITA will manage each of the Landfill, ARRT Facility, Garden Organics Facility in accordance with the EMPs.
2. The initial EMPs for the Landfill, ARRT Facility, Garden Organics Facility and Post Closure Management are attached as Exhibit 2 (each, an **Initial EMP**).
3. Following grant of the 2014 Development Consent, SITA proposes to amend the Initial EMPs so as to take into account the conditions imposed by the 2014 Development Consent. SITA will follow the process set out in clauses 4-8 below in preparing the amendments to the Initial EMPs.
4. SITA may propose to Council or Council may propose to SITA to vary an EMP by providing the Other Party with a notice specifying how the variation will result in an Equivalent Environmental Performance of the EMP without imposing additional obligations on the Other Party.
5. If SITA and the Council agree that a proposed EMP variation has an Equivalent Environmental Performance, the Party proposing the variation may carry out the variation without the consent of the Other Party.
6. If SITA and the Council cannot agree that a proposed EMP variation has an Equivalent Environmental Performance that failure is to be treated as a dispute in accordance with clause 9.
7. For the avoidance of doubt, the parties confirm that:
 - (a) in the event that the 2014 Development Consent is subject to conditions that impose more onerous environmental obligations on SITA than are proposed in an Initial EMP in relation to matters that are the subject of the Initial EMP, SITA will comply with the conditions of the 2014 Development Consent;
 - (b) in the event that the 2014 Development Consent is subject to conditions that impose less onerous environmental obligations on SITA than are proposed in an Initial EMP in relation to matters that are the subject of the Initial EMP, SITA will comply with the Initial EMP; and

- (c) in the event that the 2014 Development Consent is subject to conditions that impose less onerous environmental obligations on SITA than in an amended EMP in relation to matters that are the subject of the amended EMP, SITA will comply with the conditions of the amended EMP
- 8. Any amendment to an EMP must specify the respective responsibilities of the parties for activities to be undertaken under the variation and comply with the conditions of the 2014 Development Consent.

Schedule 1E

New landscaped landform for proposed parkland

1. Rehabilitation

- 1.1 WSN and SITA agree to undertake, or procure the undertaking of, the rehabilitation of the Project Area:
- (a) as allocated under the EMP and in the Landscaping Plan;
 - (b) in accordance with the EIS; and
 - (c) to the standard set out in the EIS.

Schedule 1F

Post-closure responsibilities

1. SITA's post-closure responsibilities for landscaping

1.1 Where:

- (a) SITA rehabilitates vegetation on the WSN Rehabilitation Area as part of the transfer of the WSN Land under this **Schedule 1F**; and
- (b) such vegetation is damaged or dies in the first 2 years of the LHRRP Post Closure Period for reasons not related to Council's activities, a third party's activities, public use or recreational activity; and
- (c) the registered proprietor of the WSN Land provides written notice to WSN that vegetation has been damaged or died (including details) before the end of the period referred to in clause 1.1(b),

then SITA undertakes that it will repair or replace the damaged or dead vegetation at its exclusive cost.

- 1.2 For the avoidance of doubt, the obligations of WSN in clause 1.1 do not extend to any matters relating to the general maintenance of parks and landscape.

2. SITA's post-closure responsibilities for stormwater

2.1 Where:

- (a) SITA constructs stormwater management structures on the WSN Rehabilitation Area as part of the transfer of the WSN Land under this **Schedule 1F**;
- (b) such structures fail to perform in accordance with the requirements of the EIS during the first 5 years of the LHRRP Post Closure Period, and such failure is not due to reasons related to Council's activities, a third party's activities, public use or recreational activity;
- (c) the registered proprietor of the WSN Land provides written notice of such failure to WSN (including details) before the end of the period referred to in clause 2.1(b),

then SITA undertakes that it will repair or replace the structures at its exclusive cost.

3. SITA's responsibilities for facilities

3.1 Where:

- (a) WSN constructs facilities on the WSN Rehabilitation Area as part of the transfer of WSN Land under this **Schedule 1F**;
- (b) such facilities are damaged during the first 15 years of the LHRRP Post Closure Period due to excessive settlement of the landfill mass;

- (c) the registered proprietor of the WSN Land provides written notice to WSN that facilities have been damaged before the end of the period referred to in clause 3.1(b),

then WSN undertakes that it will repair or replace the damaged facilities at its exclusive cost.

4. SITA's responsibilities for roads and cycle paths

4.1 Where:

- (a) SITA constructs roads or cycle paths on the WSN Rehabilitation Area as part of the transfer of WSN Land under this **Schedule 1F**;
- (b) such roads or cycle paths are not fit for their purpose within the first 5 years of the LHRRP Post Closure Period due to excessive settlement of the landfill mass;
- (c) the registered proprietor of the WSN Land provides written notice to SITA that road or cycle path has been damaged before the end of the period referred to in clause 4.1(b)

then SITA undertakes that it will repair or replace the damaged roads or cycle paths at its exclusive cost.

5. SITA's responsibilities for the landfill cap

5.1 Where:

- (a) SITA completes landfill capping on the WSN Rehabilitation Area as part of the transfer of the WSN Land under this **Schedule 1F**.
- (b) there is a failure in the landfill cap in the WSN Rehabilitation Area during the LHRRP Post Closure Period for reasons not related to Council's activities, a third party's activities, public use or recreational activity;
- (c) the registered proprietor of the WSN Land provides written notice to SITA of such failure (including details) before the end of the period referred to in clause 5.1(b);

then SITA undertakes that it will repair or replace:

- (d) the landfill cap; and
- (e) any landscaping which is damaged as a result of the failure in the landfill cap, but only to the extent that WSN must re-perform its obligations as originally contemplated by the Landscaping Plan;

at its exclusive cost.

6. ANSTO Land

- 6.1 If Council enters into a licence agreement with ANSTO under which Council has the right to use the ANSTO Land as a public parkland, then Council must provide written notice of that to WSN (and include a copy of such licence).

- 6.2 On receipt of the notice referred to in clause 6.1, the parties agree that clauses 1 to 5 of this **Schedule 1F** (inclusive) will apply to the ANSTO Land as well, but only until the earlier of:
- (a) the end of the LHRRP Post Closure Period; or
 - (b) the termination or expiry of the licence agreement between ANSTO and Council.
- 6.3 Council must notify WSN of any termination or expiry of the licence agreement between ANSTO and Council.
- 6.4 SITA will also offer to ANSTO, as part of its lease negotiations required to enable it to proceed with the 2014 Development, to amend its lease agreements with ANSTO to provide ANSTO with the same benefits as provided to Council under clauses 1 to 5 of this schedule but in relation to the ANSTO Land.

7. General post-closure responsibilities

- 7.1 For the LHRRP Post Closure Period, SITA agrees that it will be responsible for:
- (a) monitoring of the LHRRP as per the LHRRP Post Closure Licence;
 - (b) maintenance of monitoring points to meet the requirements of the LHRRP Post Closure Licence;
 - (c) management of the landfill gas on the LHRRP;
 - (d) management of the leachate generated on the LHRRP; and
 - (e) demolition and removal of infrastructure in order to meet the requirements of the Landscaping Plan.

SITA will indemnify Council for any responsibility, liability or obligations arising from the landfill mass, in respect of the LHRRP (except to the extent caused or contributed to by Council without the written consent of SITA) arising under any NSW State or Commonwealth legislation.

Schedule 1G

Dedication of WSN Land to Council for proposed public recreation facility

1. Definitions

1.1 In this Schedule, unless the context requires, the following words have the following meanings:

Completion of Works means the completion of relevant works as determined under paragraph 2. **Contract for Sale** means the contract for the sale of WSN's freehold interest in the WSN Land substantially in the form of the contract for sale at Exhibit 3 to this Agreement which is to be completed by the solicitors for WSN in the following respects:

- (a) annexing any documents (or updates of them) which are required to be annexed to a contract for sale pursuant to section 52A of the Conveyancing Act 1919 (NSW);
- (b) inserting relevant title details and title plans once a plan of subdivision creating a separate title for the WSN Land is registered at the Land Titles Office; and
- (c) completing any other necessary details or making any amendments agreed to by the parties to the Contract for Sale.

Project Documents means the following documents (in order of precedence):

- (d) the 2014 Development Consent;
- (e) the EIS;
- (f) the Landscaping Plan; and
- (g) the relevant EMP.

WSN Works means the:

- (a) undertaking, or procuring the undertaking of, filling and re-contouring of the Project Area in accordance with the EIS and EMP;
- (b) undertake the management activities allocated to WSN under the EMP;
- (c) carry out the works described in the Landscaping Plan for which WSN is expressed to be responsible;
- (d) undertake, or procure the undertaking of, the rehabilitation of the Project Area:
 - (i) as allocated to WSN under the EMP and in the Landscaping Plan;
 - (ii) in accordance with the EIS; and
 - (iii) to the standard set out in the EIS.
- (e) Maintain:
 - (i) vegetation, and replace any vegetation, which is damaged or dies on the Project Area once rehabilitated in accordance with the Project

Documents in instances where that vegetation is damaged or dies by causes not related to Council's activities, public use or recreational activity until such time as WSN's interest is transferred to another person;

- (ii) those areas of Project Area which have been rehabilitated in accordance with the Project Documents, except in respect of any area:
 - (A) which has been transferred to Council or a Public Authority; or
 - (B) which is occupied by a third party under a lease, licence or other agreement but only during the period of that lease, licence or other agreement
 - (C) which is owned by a third party.
- (h) comply with those conditions of the 2014 Development Consent that relate to the operational period and the rehabilitation works.

2. Notice of Completion

- 2.1 Each Party may, if and when it believes WSN has completed the WSN Works for the WSN Rehabilitation Area, notify the Other Party.
- 2.2 Within 14 days after receiving the notice under paragraph 2.1, the Other Party must give notice to the notifying Party stating either:
 - (a) that it accepts that the WSN Works in relation to the WSN Rehabilitation Area have been completed; or
 - (b) that the WSN Works in relation to the WSN Rehabilitation Area have not been completed and specifying reasons why those works have not been so completed.
- 2.3 If a Party does not give a notice under this paragraph within the relevant 14 day period, the relevant works are deemed to have been completed on the date of the notice referred to in paragraph 2.2.
- 2.4 If the Parties fail to agree whether the relevant works have been completed, Either Party may refer the matter for dispute resolution under this agreement.
- 2.5 WSN may liaise with the EPA at any time regarding the termination of its environmental management obligations.

3. Transfer of WSN Land

- 3.1 No later than 31 December 2035 the Parties must commence discussions regarding the Landscaping Plan as it applies to LHRRP, and whether either document requires any amendment.
- 3.2 Any amendment to the Landscaping Plan must be agreed in writing before 30 June 2036.
- 3.3 If the Parties are unable to agree amendments to the Landscaping Plan by 30 June 2036, then the Landscaping Plan will remain unchanged.

- 3.4 Subject to any amendments to the Landscaping Plan agreed by the Parties under paragraphs 3.1, 3.2 and 3.3 above, WSN must achieve Completion of Works on the WSN Rehabilitation Area no later than 31 December 2039.
- 3.5 As soon as practicable, and no later than 3 months after the date of Completion of Works on the WSN Rehabilitation Area, but subject to paragraph 3.6, Council must, by notice to WSN, require WSN to transfer all of its freehold interest in the WSN Land to:
- (a) Council at no cost to Council; or
 - (b) a Public Authority nominated by Council (provided Council has first delivered to WSN evidence of the agreement of that Public Authority to the transfer of that land),
- by entry into the Contract for Sale.
- 3.6 The transfer of WSN's freehold interest in the WSN Land under paragraph 3.5:
- (a) will comprise a single transfer;
 - (b) must be free of any encumbrances over the WSN Land;
 - (c) must be made at the cost of WSN or SITA;
 - (d) must be completed as soon as reasonably practicable by the Parties;
 - (e) is subject to WSN or SITA obtaining such other licences, approvals or permits required to effect, or in connection with, that transfer, including without limitation for the subdivision of that land;
 - (f) is subject to any easements reasonably required to be created by WSN after the date of this Agreement to allow the construction, maintenance and repair of pipes to transport gas and leachate for destruction and/or treatment.
- 3.7 WSN or SITA must apply for the licences, approvals or permits to the transfer of its freehold interest in the WSN Land as soon as reasonably practical following its receipt of a notice under paragraph 3.5. Any costs incurred in seeking or obtaining those consents, approvals or permits must be borne by WSN or SITA.
- 3.8 Until the transfer of WSN's freehold interest in the WSN Land, WSN must continue to manage the WSN Land in accordance with the Project Documents and for the avoidance of any doubt, WSN will not seek any change to the existing environmental planning instrument in a manner that is inconsistent with the Deed of Agreement .
- 3.9 Council must provide to WSN such assistance as WSN may reasonably require in order to effect any transfer of its freehold interest in a WSN Land under paragraph 3.5.

Schedule 1H

Preferential treatment of SSC waste

1. Preferential Treatment by SITA to Council

Landfill - Capacity

- 1.1 SITA will reserve 50,000 tonnes per annum capacity out of the total permitted annual landfill volume for the LHRRP of 850,000 tonnes per annum under the 2014 Development Consent for Council's exclusive use up to and including the year 2036. This clause applies until such time as the LHRRP reaches capacity in accordance with the 2014 Development Consent.
- 1.2 If Council and SITA are party to a contract in relation to the disposal of waste by Council at the LHRRP, then:
 - (a) any tonnes disposed of under that contract will form part of the 50,000 tonnes per annum reserved for Council's exclusive use under clause 1.1 above; and
 - (b) the contract will be subject to the pricing mechanism set out in clause 1.11 below.
- 1.3 This clause does not prevent Council and SITA from entering into a contract under which more than 50,000 tonnes are disposed of by Council at the LHRRP.
- 1.4 Any waste disposed of by Council at the LHRRP under a contract existing as at the date of this agreement will form part of the 50,000 tonnes per annum capacity referred to in clause 1.1 above.

ARRT Facility - Capacity

- 1.5 SITA is unable to reserve capacity at the ARRT Facility for Council.
- 1.6 Prior to the commencement of construction of the ARRT Facility, SITA proposes to enter into long term processing contracts for approximately 200,000 tonnes per annum of waste for processing at the ARRT Facility.
- 1.7 Prior to the commencement of construction of the ARRT Facility, SITA will offer to enter into waste processing contract with Council to process Council's domestic waste at the ARRT Facility, or will submit a tender to Council in response to an invitation to tender for such a contract, subject to the pricing mechanism set out in clause 1.13 below.
- 1.8 In reference to clause 1.7, should Council not be able to execute a contract initially, then SITA will offer Council a first and last right of refusal to Council in regard to its waste or green waste and food volumes prior to finalising long term processing contracts with other third parties for the ARRT facility.
- 1.9 Council acknowledges and agrees that any offer to enter into a contract under clause 1.7 will be strictly conditional on:
 - (a) SITA entering into long-term processing contracts with parties (including Council) for processing of approximately 200,000 tonnes of waste at the AART Facility;

- (b) the contracts referred to in paragraph (a) being binding on the relevant parties on or before the commencement of construction of the ARRT Facility; and
- (c) the contract being on terms reasonably acceptable to SITA.

Garden Organics Facility - Capacity

- 1.10 SITA currently processes Council's Garden Organics under the terms of an existing agreement.
- 1.11 Prior to or around the time of the expiration of that agreement or of any future agreement between SITA and Council for the processing of Council's Garden Organics:
 - (a) SITA will offer to enter into a new contract with Council to process Council's Garden Organics at the Garden Organics Facility, or
 - (b) SITA will submit a tender to Council in response to an invitation to tender for the processing of Council's Garden Organics at the Garden Organics Facility, subject to the pricing mechanism set out in clause 1.14 below.
- 1.12 If Council does not enter into a further agreement with SITA to process Council's Garden Organics but that capacity subsequently becomes available at the Garden Organics Facility, then SITA will notify Council of that capacity and offer Council a first right of refusal in respect of that capacity.
- 1.13 Council acknowledges and agrees that the first right of refusal in clause 1.12 will only be exercisable within three months of the date that SITA provides Council with the notification referred to in clause 1.12.

Pricing

- 1.14 If:
 - (a) SITA and Council enter into a waste disposal contract under clause 1.2; or
 - (b) SITA offers to enter into a contract with Council or submits a tender to Council in response to an invitation to tender for a waste processing contract under clause 1.7; or
 - (c) SITA offers to enter into a Garden Organics processing contract with Council or submits a tender to Council in response to an invitation to tender a Garden Organics processing contract under clause 1.11,then the contract will contain, or the offer or the tender will propose, that the price under the contract will be the Lowest Equivalent Price as at the commencement date.
- 1.15 '**Lowest Equivalent Price**' means the lowest price paid by a Public Authority for the same waste disposal or processing service at LHRRP under a contract on substantially the same terms and conditions (including as to the type, quality and specifications of the waste, the term of the contract and provisions relating to price adjustments, volume rebates and discounts), where that contract was entered into after the date of the 2014 Development Consent.

2. Communication in relation to Future Requirements

- 2.1 Council and SITA will meet annually to discuss volumes requirements and predictions out a minimum of 5 years, for total volumes of each business activity and Council volume requirements.
- 2.2 If Council enters into an arrangement for waste disposal or processing services at LHRRP with a third party then Council will notify SITA in writing with 7 days of Council entering into that arrangement and inform SITA of the relevant commencement and termination dates.

Schedule 2

Quarterly Instalments of Payment of \$100,000,000 (Schedule 1A Monetary Contribution) – Adjustment Example (clause 2.6)

This example assumes that the additional capacity of waste permitted to be landfilled at the LHRRP under the 2014 Development Consent is 8,000,000 cubic metres.

Payment period	Original Monetary Contribution	New Monetary Contribution (Excl GST)	Date due and payable
1.	\$10,000,000	= (8m/8.3m) x \$10,000,000 = \$9,638,554.22	Payment will be made within 14 days after the satisfaction of the condition precedent referred to in clause 2.4 or 31 March 2016, whichever is the later.
2.	\$1,209,748	= (8m/8.3m) x \$1,208,748 = \$1,166,022	31 March 2017
	\$1,209,748	= (8m/8.3m) x \$1,208,748 = \$1,166,022	30 June 2017
	\$1,209,748	= (8m/8.3m) x \$1,208,748 = \$1,166,022	30 September 2017
	\$1,209,748	= (8m/8.3m) x \$1,208,748 = \$1,166,022	31 December 2017
3.	\$1,246,041	= (8m/8.3m) x \$1,246,041 = \$1,201,003.37	31 March 2018
	\$1,246,041	= (8m/8.3m) x \$1,246,041 = \$1,201,003.37	30 June 2018
	\$1,246,041	= (8m/8.3m) x \$1,246,041 = \$1,201,003.37	30 September 2018
	\$1,246,041	= (8m/8.3m) x \$1,246,041 = \$1,201,003.37	31 December 2018
4.	\$1,283,422	= (8m/8.3m) x \$1,283,422 = \$1,237,033.25	31 March 2019
	\$1,283,422	= (8m/8.3m) x \$1,283,422 = \$1,237,033.25	30 June 2019
	\$1,283,422	= (8m/8.3m) x \$1,283,422 = \$1,237,033.25	30 September 2019
	\$1,283,422	= (8m/8.3m) x \$1,283,422 = \$1,237,033.25	31 December 2019
5.	\$1,321,924	= (8m/8.3m) x \$1,321,924 = \$1,274,143.61	31 March 2020
	\$1,321,924	= (8m/8.3m) x \$1,321,924 = \$1,274,143.61	30 June 2020
	\$1,321,924	= (8m/8.3m) x \$1,321,924 = \$1,274,143.61	30 September 2020
	\$1,321,924	= (8m/8.3m) x \$1,321,924 = \$1,274,143.61	31 December 2020

6.	\$1,361,582	= (8m/8.3m) x \$1,361,582 = \$1,312,368.19	31 March 2021
	\$1,361,582	= (8m/8.3m) x \$1,361,582 = \$1,312,368.19	30 June 2021
	\$1,361,582	= (8m/8.3m) x \$1,361,582 = \$1,312,368.19	30 September 2021
	\$1,361,582	= (8m/8.3m) x \$1,361,582 = \$1,312,368.19	31 December 2021
7.	\$1,402,430	= (8m/8.3m) x \$1,402,430 = \$1,351,739.76	31 March 2022
	\$1,402,430	= (8m/8.3m) x \$1,402,430 = \$1,351,739.76	30 June 2022
	\$1,402,430	= (8m/8.3m) x \$1,402,430 = \$1,351,739.76	30 September 2022
	\$1,402,430	= (8m/8.3m) x \$1,402,430 = \$1,351,739.76	31 December 2022
8.	\$1,444,502	= (8m/8.3m) x \$1,444,502 = \$1,392,291.08	31 March 2023
	\$1,444,502	= (8m/8.3m) x \$1,444,502 = \$1,392,291.08	30 June 2023
	\$1,444,502	= (8m/8.3m) x \$1,444,502 = \$1,392,291.08	30 September 2023
	\$1,444,502	= (8m/8.3m) x \$1,444,502 = \$1,392,291.08	31 December 2023
9.	\$1,487,838	= (8m/8.3m) x \$1,487,838 = \$1,434,060.72	31 March 2024
	\$1,487,838	= (8m/8.3m) x \$1,487,838 = \$1,434,060.72	30 June 2024
	\$1,487,838	= (8m/8.3m) x \$1,487,838 = \$1,434,060.72	30 September 2024
	\$1,487,838	= (8m/8.3m) x \$1,487,838 = \$1,434,060.72	31 December 2024
10.	\$1,532,473	= (8m/8.3m) x \$1,532,473 = \$1,477,082.41	31 March 2025
	\$1,532,473	= (8m/8.3m) x \$1,532,473 = \$1,477,082.41	30 June 2025
	\$1,532,473	= (8m/8.3m) x \$1,532,473 = \$1,477,082.41	30 September 2025
	\$1,532,473	= (8m/8.3m) x \$1,532,473 = \$1,477,082.41	31 December 2025
11.	\$1,578,447	= (8m/8.3m) x \$1,578,447 = \$1,521,394.70	31 March 2026
	\$1,578,447	= (8m/8.3m) x \$1,578,447 = \$1,521,394.70	30 June 2026
	\$1,578,447	= (8m/8.3m) x \$1,578,447 = \$1,521,394.70	30 September 2026
	\$1,578,447	= (8m/8.3m) x \$1,578,447 = \$1,521,394.70	31 December 2026
12.	\$1,625,800	= (8m/8.3m) x \$1,625,800 = \$1,567,036.14	31 March 2027
	\$1,625,800	= (8m/8.3m) x \$1,625,800 =	30 June 2027

		\$1,567,036.14	
	\$1,625,800	= (8m/8.3m) x \$1,625,800 = \$1,567,036.14	30 September 2027
	\$1,625,800	= (8m/8.3m) x \$1,625,800 = \$1,567,036.14	31 December 2027
13.	\$1,674,574	= (8m/8.3m) x \$1,674,574 = \$1,614,047.23	31 March 2028
	\$1,674,574	= (8m/8.3m) x \$1,674,574 = \$1,614,047.23	30 June 2028
	\$1,674,574	= (8m/8.3m) x \$1,674,574 = \$1,614,047.23	30 September 2028
	\$1,674,574	= (8m/8.3m) x \$1,674,574 = \$1,614,047.23	31 December 2028
14.	\$1,724,811	= (8m/8.3m) x \$1,724,811 = \$1,662,468.43	31 March 2029
	\$1,724,811	= (8m/8.3m) x \$1,724,811 = \$1,662,468.43	30 June 2029
	\$1,724,811	= (8m/8.3m) x \$1,724,811 = \$1,662,468.43	30 September 2029
	\$1,724,811	= (8m/8.3m) x \$1,724,811 = \$1,662,468.43	31 December 2029
15.	\$1,776,556	= (8m/8.3m) x \$1,776,556 = \$1,712,343.13	31 March 2030
	\$1,776,556	= (8m/8.3m) x \$1,776,556 = \$1,712,343.13	30 June 2030
	\$1,776,556	= (8m/8.3m) x \$1,776,556 = \$1,712,343.13	30 September 2030
	\$1,776,556	= (8m/8.3m) x \$1,776,556 = \$1,712,343.13	31 December 2030
16.	\$1,829,852	= (8m/8.3m) x \$1,829,852 = \$1,763,712.77	31 March 2031
	\$1,829,852	= (8m/8.3m) x \$1,829,852 = \$1,763,712.77	30 June 2031
	\$1,829,852	= (8m/8.3m) x \$1,829,852 = \$1,763,712.77	30 September 2031
	\$1,829,852	= (8m/8.3m) x \$1,829,852 = \$1,763,712.77	31 December 2031
TOTAL	\$	96,385,542.17	

Schedule 3 – Explanatory Note

Explanatory Note

(Clause 25E *Environmental Planning and Assessment Regulation 2000*)

Voluntary Planning Agreement - Lucas Heights Resource Recovery Park

1 Introduction to Explanatory Note

- 1.1 The purposes of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement in relation to the Lucas Heights Resource Recovery Park (the **Planning Agreement**) prepared under Part 4, Division 6, Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (the **Act**).
- 1.2 The Planning Agreement accompanies a development application.
- 1.3 This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

2 Parties to the Planning Agreement

- 2.1 The parties to the Planning Agreement are:
 - (a) WSN Environmental Solutions Pty Limited (ACN 147 652 677) (**WSN**),
 - (b) SITA Australia Pty Limited (ACN 002 902 650) (**SITA**),
 - (c) SembSita Australia Pty Limited (ACN 002 658 255) (**Guarantor**),
 - (d) Sutherland Shire Council (ABN 52 018 204 808) (**Council**) and
 - (e) the Minister for Planning (**Minister**).
- 2.2 WSN, SITA and the Guarantor have made an offer to enter into the Planning Agreement with Council and the Minister in connection with the proposed development of the Lucas Heights Resource Recovery Park (**LHRRP**).
- 2.3 The Minister is the consent authority for the proposed development of the LHRRP.

3 Background to Planning Agreement

Current development - Lucas Heights Resource Recovery Park (LHRRP)

- 3.1 SITA currently operates the LHRRP, and carries out landfilling, composting and recycling activities at the LHRRP.
- 3.2 Part of the LHRRP is owned by WSN and another part is owned by the Australian Nuclear Science and Technology Organisation (**ANSTO**). The part owned by ANSTO is leased to WSN.
- 3.3 The LHRRP is currently operated in accordance with a development consent that was granted by the then Minister for Urban Affairs and Planning on 12 November

1999 and that has been modified with the approval of the Minister on a number of occasions since then (**Original Development Consent**).

- 3.4 In June 2010, project approval was also granted for the construction of an alternative waste treatment facility at the LHRRP (**AWT Facility**), but that alternative waste treatment facility has not been constructed.
- 3.5 The Original Development Consent was granted to the Waste Recycling and Processing Service of NSW and to the Council, who were the joint applicants for that development application.

Waste Recycling and Processing Corporation

- 3.6 Before 31 January 2011, WSN operated as Waste Recycling and Processing Corporation (**WRPC**) which was a State owned corporation constituted by section 4 of the Waste Processing and Recycling Act 2001.
- 3.7 On 28 January 2011, WRPC applied for registration pursuant to Chapter 5B of the Corporations Act 2001 as a proprietary company limited by shares.
- 3.8 On 30 January 2011, WRPC was registered under the Corporations Act 2001 as WSN Environmental Solutions Pty Ltd.
- 3.9 By force of:
- (a) section 601BM of the *Corporations Act* 2001 WSN is the same legal entity as Waste Recycling and Processing Corporation; and
 - (b) section 601BQ of the *Corporations Act* 2001 any reference in any contract to Waste Recycling and Processing Corporation is a reference to WSN.
- 3.10 On 31 January 2011 all of the issued share capital of WSN was acquired by SembSITA Australia Pty Limited from the Treasurer for and on behalf of the Crown in right of the State of New South Wales.

Original Development

- 3.11 Under the terms of the Original Development Consent:
- (a) no more than 630,000 tonnes of waste per annum may be delivered to the LHRRP;
 - (b) of that 630,000 tonnes, no more than 575,000 tonnes per annum shall be landfilled at the LHRRP and no more than 55,000 tonnes per annum shall be treated at the recycling and resource recovery facilities at the LHRRP;
 - (c) an additional 8.225 million tonnes may be landfilled at the the LHRRP (additional to the 8 million tonnes authorised to be landfilled under a previous development consent);
 - (d) no landfilling shall occur after 31 December 2024; and
 - (e) there are landform, landscaping and post closure care and responsibilities.
- 3.12 WSN and Council had also entered into a Deed of Agreement in 2000 (**Deed**) that sets out the respective responsibilities of WSN and Council in relation to activities at the LHRRP, as well as at an old landfill area known as Lucas Heights 1 (now closed) and the area known as the Lucas Heights Conservation Area. Under the terms of the

Deed, if a party wants to make an application for a new development consent that would have the effect of superseding the whole or material part of the Original Development Consent then:

- (a) that party must provide the other party with copies of the draft application and associated documents;
- (b) the other party must notify the party that wants to make the application whether they consent to that application; and
- (c) the parties may submit the development application jointly.

3.13 As was required under the Deed, Council has consented to the making of the development application for the proposed new development of the LHRRP and SITA and Council have together lodged that development application.

Proposed new development of the LHRRP

3.14 SITA wishes to change the way in which waste activities are carried out at the LHRRP. The proposed new development of the LHRRP would include:

Landfill extension and new landform

- (a) Expanding the landfill capacity by 8.3 million cubic metres (equivalent, on current practice, to approximately 8.3 million tonnes of waste assuming 1 tonne of waste utilises 1 cubic metre of waste disposal airspace) and re-profiling of the existing and former landfill disposal areas to provide the additional 8.3 million cubic metres of additional landfill airspace capacity. The re-profiling would increase final slopes of the landfill and assist stormwater to drain from the landfilled slopes. This water may otherwise infiltrate the disposed of waste and increase the volume of leachate potentially generated from the site in the longer term. Re-profiling the site would amongst other things improve the efficiency of collecting the gas generated by natural degradation of the disposed waste thereby reducing potential odour emissions from the site.

ARRT Facility

- (b) Construction and operation of a fully enclosed ARRT facility on the western side of the site which if built, would process up to 200,000 tonnes per year of municipal solid waste and therefore reduce the volume of material requiring landfill disposal.

Garden Organics Facility – relocation and expansion

- (c) Relocation and expansion of the existing garden organics (**GO**) facility to the western side of the site adjacent to Heathcote Road, to enable it to increase its approved capacity from 55,000 to 80,000 tonnes per year. This facility would introduce improved process controls including active aeration and partial enclosure of the composting process to enable more effective control of potential odour sources. The relocation of the GO facility, which is scheduled for 2017, means that it would be further from the current nearest occupied land at ANSTO, the existing residential areas and proposed residences at West Menai. Maximum material stockpiling amounts would be detailed in the EIS.

Final landform, Landscaping and Post-closure

- (d) All waste receipt, landfilling and processing activities would cease by 31 December 2037 with the final landform available to be landscaped in 2038. This would make it available for the intended parkland use in 2039.
- (e) The final landform would result in a 25 ha increase in the size of the parkland area available for passive recreation as per the revised landscape plan developed for LHRRP.
- (f) SITA will assume post-closure responsibilities for site monitoring and management of landfill gas and leachate for a minimum of 30 years or as long as it holds a post-closure licence from the NSW Environment Protection Authority, whichever is the longer.
- (g) SITA also has obligations that apply for more limited periods of time, such as to maintain the landscaping, the stormwater management system, the facilities, roads and cycle paths and the landfill cap. These obligations apply to the land that SITA will transfer to Council and they would also apply to any other part of the LHRRP if Council obtains a lease or a licence over that land.

3.15 As is the case under the Original Development consent, under the proposed new development of the LHRRP, the landfill areas used for waste disposal would be progressively capped as re-profiling operations are completed. Under the terms of the Planning Agreement, the part of the LHRRP that is owned by WSN will be transferred to Council (or another public authority) at no cost to Council and would be landscaped and suitable for passive recreational uses by members of the public by no later than 1 January 2040.

3.16 A current site layout plan is attached as **Annexure A**. A plan of the proposed development is attached as **Annexure B**. The landscape plan is attached as **Annexure C**.

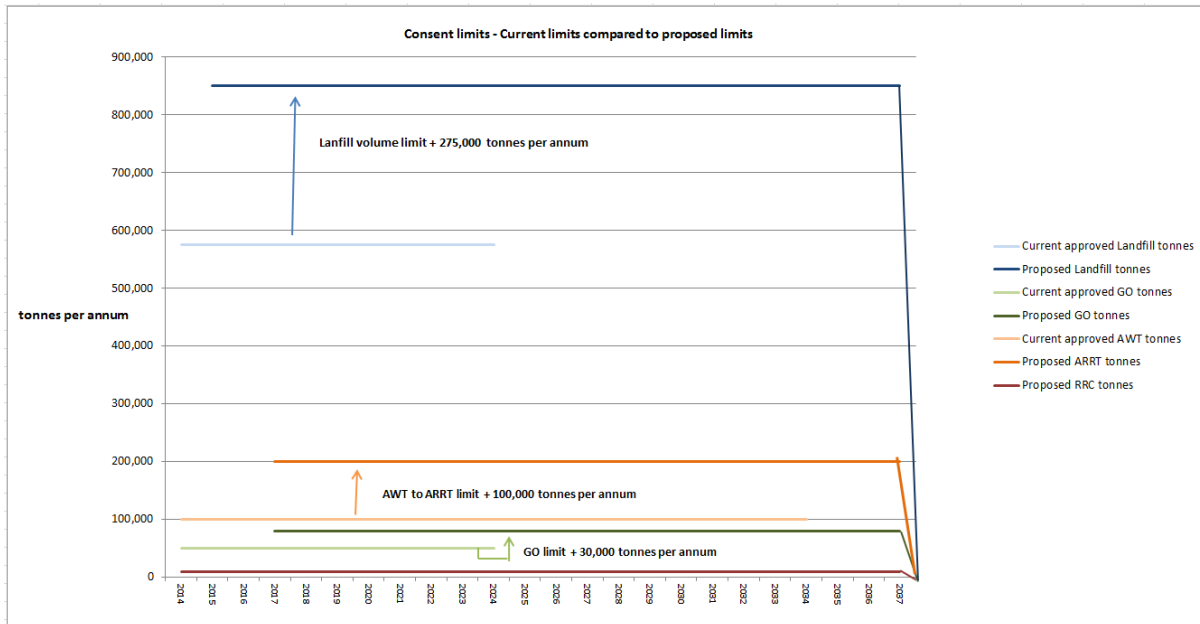
3.17 The following table compares key features of the Original Development Consent and the proposed new development of the LHRRP.

	Original Development Consent	Proposed new development)
Maximum annual waste tonnes delivered to the site - total	630,000 tonnes	1,140,000 tonnes
Maximum annual waste tonnes - landfilled	575,000 tonnes	850,000 tonnes
Maximum annual waste tonnes – for recycling and resource recovery	Garden Organics 55,000 tonnes AWT 100,000 tonnes	Garden Organics 80,000 tonnes AART 200,000 tonnes Note: • 60,000 tonnes of residual from the ARRT go to

		<p>Landfill; and</p> <ul style="list-style-type: none"> • Resource Recovery Centre 10,000 tonnes; • all Resource Recovery Centre waste is: <ul style="list-style-type: none"> ○ recycled at the Garden Organics facility; ○ transferred off site for recycling; or <p>disposed of at the landfill.</p>
Maximum total waste tonnes - landfilled	16,225,000 tonnes	<p>24,525,000 tonnes (approximately)</p> <p>Based on:</p> <ul style="list-style-type: none"> • 16,225,000 tonnes plus 8,300,000 cubic metres, and • On current practice, one cubic metre of municipal solid waste weighs approximately one tonne and 8.3 million cubic metres of municipal solid waste would weigh approximately 8.3 million tonnes.
Closure Date	31 December 2024	31 December 2037.
Completion of landscaping works	31 December 2025	31 December 2039

3.18 Compared to the current facility, the new LHRRP would have improved environmental performance. In particular the new LHRRP would be operated in accordance with stringent environmental controls, including best practice, prevention, mitigation and rectification measures for odour, noise, dust and other potential environmental impacts. Additional strategies would also be adopted for litter, leachate, gas, sediment, erosion and surface water management.

3.19 The following graph shows maximum approved annual volumes for the current LHRRP over time as compared to proposed annual maximum volumes for the proposed new development of the LHRRP over time.



Note – 850,000 tonnes per annum cannot be achieved in every year due to the 8.3 million cubic metre limit. Yearly input rates will be subject to prevailing input rates, however will not be greater than 850ktpa of waste disposed to the landfill.

4 Project overview and benefits

- 4.1 The zoning of the LHRRP is currently such that the proposed development would not be permissible with development consent (even as State significant development) under the requirements of the Act. As a result, SITA will seek an amendments to the environmental planning instrument that applies to the LHRRP such that the land on which the proposed development will be undertaken may be developed with development consent for the purposes of public open space, waste processing and disposal activities and post closure activities.
- 4.2 SITA does not propose to seek the amendment of an environmental planning instrument that applies to the LHRRP in a way that would mean that public open space activities are no longer permissible on any part of the LHRRP, nor that waste processing or disposal activities are permissible on the SICTA land that is not used for the proposed development.

Landfill extension and land re-profiling

- 4.3 It is proposed to re-profile the existing approved final landfill landform, which would provide up to 8.3 million cubic metres of additional landfill capacity (equivalent, on current practice, to approximately 8.3 million tonnes of waste assuming 1 tonne of waste utilises 1 cubic metre of waste disposal airspace).
- 4.4 With the additional waste disposal capacity, SITA is also proposing to extend the operational landfill life to 2037 and increase the maximum annual tonnage input rate to 850,000 tonnes per year. This would accommodate the disposal of additional waste following the closure of Belrose and Eastern Creek landfills (expected to occur in 2014 and 2016/2017 respectively) and provide capacity for disposal of waste generated due to population growth, should resource recovery targets not be achieved.

- 4.5 Extending the life of the landfill would also complement new resource recovery activities planned for the site (the GO facility and an ARRT facility) by providing necessary disposal capacity for the unrecoverable residuals from these activities.
- 4.6 The proposed landfill re-profiling and expansion has a number of environmental benefits:
- (a) Assist in stormwater runoff and decrease the volume of leachate potentially generated from the site in the longer term;
 - (b) Assist with more efficient collection of the gas generated and reduce the possibility of potential odour and greenhouse gas emissions from the site;
 - (c) Allow for slopes that meet the suitable final end use of the site, being passive recreation; and
 - (d) Provide a final landform that is consistent with the existing natural topography.

Garden Organics Facility

- 4.7 The garden organics project involves expansion of the capacity of the current GO facility at the LHRRP to enable up to 80,000 tonnes per year (an additional 25,000 tonnes per year) of material to be received and processed. Additional materials would be imported to site to enable blending of GO outputs to produce saleable products and meeting the requirements of the relevant general or special exemptions made by the NSW Environment Protection Authority for compost products. The proposal also includes relocation of the facility to the western side of the LHRRP.
- 4.8 The proposed garden organics relocation and expansion has a number of benefits. Overall, it would:
- (a) Improve composting technology, including use of concrete bunkers instead of windrows;
 - (b) Provide an efficient layout to allow SITA to segregate different activities in the organics process, thereby increasing operational safety and improving the efficiency of existing organics processing on site;
 - (c) Support resource recovery in the Sydney region and thereby assist reducing the quantity of waste landfilled;
 - (d) Accommodate projected growth and seasonal fluctuations in garden organics quantities and provide a stable long term solution for garden organics;
 - (e) Reduce potential odour impacts at ANSTO and in the community;
 - (f) Reduce the potential volume of leachate generated;
 - (g) Meet the requirements of the NSW EPA by providing compost products suitable for reuse in areas such as agriculture, mine site rehabilitation, sporting ground improvement and local garden suppliers;
 - (h) Allow SITA to continue to provide products that are compliant with the requirements of the relevant general or special exemptions made by the NSW Environment Protection Authority for compost products.
 - (i) Enable the parkland area to be expanded by 25 hectares, once the former GO facility area is landfilled and landscaped.

ARRT Facility

- 4.9 The ARRT facility involves the construction and operation of a new best practice fully enclosed 200,000 tonnes per year AWT facility to process municipal solid waste. This would require approximately 8 ha of land and operate three shifts per day, 7 days per week for up to approximately 20 years.
- 4.10 If constructed, the facility would generate an estimated 50,000 tonnes of compost type products and a further 40,000 tonnes of Processed Engineered Fuel (**PEF**) and other recyclables per year. It is estimated that approximately 60,000 tonnes per year of residuals from the ARRT facility would be deposited at the LHRRP site. The PEF would be exported off-site. The remaining 50,000 tonnes per year would be production losses, evaporation and conversion to carbon dioxide in the composting process.
- 4.11 The ARRT facility would be a mechanical biological treatment facility with two separate processing lines. One would be dedicated to processing mixed waste by separating organic material from the waste stream (for separate composting) and recovering recyclables (mostly ferrous metals and aluminium). The second processing line would remove contaminants from source-separated food and garden organics to prepare it for processing..
- 4.12 The organic material from each line would then be aerobically treated using tunnel composting technology. The facility would incorporate best practice measures for odour control. This includes composting within enclosed tunnels to minimise the potential for odour impacts. The maturation process would also be completed in an enclosed building. Air from both composting and maturation processes would be treated using a biofilter to reduce potential odour impacts. A continuous improvement program would be implemented for odour management..
- 4.13 The proposed ARRT facility has a number of project benefits. Overall it would:
- (a) Assist meeting the NSW Government's targets outlined in the EPA's Waste Avoidance and Resource Recovery Strategy 2013-2021
 - (b) Support resource recovery in the Sydney region and provide a viable alternative for local government waste processing/management
 - (c) Assist in diverting up to 70% of waste away from landfill
 - (d) Produce compost products and PEF.
 - (e) Recover additional resources (metals) from the waste stream that would otherwise have been disposed of to landfill.
 - (f) Provide opportunities for employment of up to 100 personnel during construction and 50 personnel during operation. and endeavour to engage locally based staff
 - (g) Assist to extend the life of the landfill to 2037.
- 4.14 SITA will adopt industry best practice for the operation and management of this facility.

Rehabilitation and landscaping

- 4.15 Following the cessation of operations, SITA will begin the final landscaping works.

- 4.16 After landfilling has been completed, the land would then be landscaped in accordance with the landscaping plan attached as Annexure C. This landscaping plan provides for 149 hectares of rehabilitated parkland for public use. This includes 124 hectares as proposed under the current development and an additional 25 hectares where the current garden organics is located. This parkland is modelled on Sydney's Centennial and Bicentennial Parklands. It will be a regional destination for future generations of the children of the Sutherland Shire Local Government Area and beyond.
- 4.17 The part of the LHRRP that is owned by WSN will be transferred to Council at no cost to Council.
- 4.18 Rehabilitation of the proposed new development of the LHRRP will be undertaken in a similar manner as is required under the Original Development Consent to create a parkland area of grassed spaces with native open woodland tree vegetation to be delivered by 31 December 2039. Native shrub understorey vegetation will be provided on steeper slopes within the site. A major component of the proposal is to re-establish a vegetation character on the completed landform which resembles the surrounding natural landscape and blends with indigenous woodland communities. It is not intended to make the entire site available as parkland for passive recreation until after all waste receipt activities cease in 2037 and landscaping works have been completed. The intended parkland would be established on rehabilitated areas of the landfill (and other areas of the site) and made available from 2039.
- 4.19 A new ridgeline will be created by the re-profiled landform. The ridgeline is consistent with the surrounding landform and will blend with adjacent vegetated hilltops and ridgelines. It is intended that the addition of natural woodland tree vegetation on elevated areas of the site will vastly improve long and middle distance views into the site.
- 4.20 Under the terms of the planning agreement, the land used for the proposed development would be landscaped and suitable for passive recreational uses by members of the public by no later than 1 January 2040.

Return of land

- 4.21 Under the terms of the planning agreement, the part of the LHRRP that is owned by WSN would be available for use by the public as public open space from 31 December 2039, and is intended to be transferred to Council (or another public authority) at no cost to Council (or the other public authority) around 31 December 2039.

5 Summary of objectives, nature and effect of the draft Planning Agreement

- 5.1 The Planning Agreement is a voluntary planning agreement for the purposes of the Act, under which SITA will be required to provide certain development contributions to the Council. The obligations under the Planning Agreement are required to run with the land. For this reason WSN is required to register the Planning Agreement on the title to that part of the site that is owned by WSN.
- 5.2 An objective of the Planning Agreement is to provide financial contributions that may be applied by Council, as it sees fit, on capital projects/community assets across the Sutherland Shire Local Government Area.

- 5.3 Another objective of the Planning Agreement is to improve the environmental performance of the LHRRP by ensuring that the facility will be operated in accordance with stringent environmental controls, as well as preserving the existing right of Council to require WSN's land to be transferred to Council or another public authority following closure of the site.
- 5.4 The Planning Agreement:
- (a) relates to the development of the LHRRP by SITA;
 - (b) excludes the application of sections 94, 94A and 94EF of the Act to the Development;
 - (c) requires the payment by SITA of specified financial contributions to the Council;
 - (d) requires WSN to dedicate that part of the LHRRP that is owned by WSN to Council (or another public authority) at no cost to Council (or the public authority); requires SITA to meet certain environmental undertakings;
 - (e) requires SITA to give Council certain preferential treatment for Council's use of the waste services at the LHRRP; and
 - (f) requires SembSITA Australia Pty Ltd (the Guarantor) to guarantee the performance of SITA's obligations under the Planning Agreement.
- 5.5 No relevant capital works program by the Minister is associated with the Planning Agreement.

6 Assessment of the merits of the Planning Agreement

The Public Purpose of the Planning Agreement

- 6.1 In accordance with section 93F(2) of the Act, the Planning Agreement promotes the following public purposes:
- (a) the provision of funding that Council may use towards capital projects, community assets and public amenities or services across the Sutherland Shire Local Government Area including new projects and facilities and upgrades or renewal of existing assets, facilities and amenities;
 - (b) the dedication of land at no cost to Council or another public authority;
 - (c) monitoring of the impacts of the LHRRP;
 - (d) improved environmental outcomes as a result of the proposed method of operation of the LHRRP;
 - (e) preferential treatment of Council's waste;
 - (f) the new LHRRP will be operated in accordance with stringent environmental controls, including best practice, prevention, mitigation and rectification measures for odour, noise, dust and other potential environmental impacts.
- 6.2 The parties have assessed the Planning Agreement and hold the view that the Planning Agreement provides a reasonable means of achieving the public purposes set out above by ensuring that:

- (a) SITA will make considerable financial contributions that may be applied by Council towards multiple capital projects and community assets;
- (b) there will be improved monitoring of the impacts of the LHRRP through the complaints investigation and rectification process and the environmental reporting requirements of the Planning Agreement;
- (c) there will be improved environmental outcomes through new and improved environmental management controls, which are based on industry best practice;
- (d) will preserve the existing right of Council to require part of WSN's land to be transferred to Council or another public authority following closure of the landfill and rehabilitation and landscaping of the site; and
- (e) there is preferential treatment of Council's waste at the LHRRP.

How the Planning Agreement Promotes the Public Interest

- 6.3 The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made by SITA towards the provision of infrastructure and facilities across the Sutherland Shire Local Government Area.
- 6.4 The Council will apply the financial contributions, as it sees fit, on capital projects/community assets across the Sutherland Shire Local Government Area (**Projects**). The Projects may include new projects or facilities or upgrades or renewal of existing assets or facilities, but the financial contributions will not be allocated to roads, drainage, footpaths or stormwater management unless associated with a qualifying Project, or to maintenance works of any kind.
- 6.5 Council will, in its annual budget, operating plans, delivery programs and financial plans identify the Projects which are to be funded by the financial contributions.
- 6.6 The Planning Agreement will also result in improved environmental outcomes. There will be improved environmental outcomes with the aim to have no or little impact to the community.
- 6.7 The Planning Agreement will also provide for the preferential treatment of Council's waste which will also be in the public interest.

How the Planning Agreement Promotes the Objects of the Act

- 6.8 The Planning Agreement promotes the objects of the Act by encouraging:
 - (a) the proper management, development and conservation of natural resources, natural areas, forests, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (b) the orderly and economic use of land
 - (c) the provision of land for public purposes;
 - (d) the provision and co-ordination of community services and facilities; and
 - (e) the protection of the environment.

How the Draft Planning Agreement Promotes the Elements of the Council's Charter

- 6.9 The Draft Planning Agreement promotes the elements of the Council's charter as follows:
- (a) providing directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
 - (b) exercising community leadership;
 - (c) properly managing, developing, protecting, restoring, enhancing and conserving the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
 - (d) having regard to the long term and cumulative effects of its decisions;
 - (e) bearing in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;
 - (f) engaging in long-term strategic planning on behalf of the local community.

How the Draft Planning Agreement Conforms with the Authority's Capital Works Program

- 6.10 The Draft Planning Agreement conforms with the Council's Capital Works Program by allocating the Monetary Contribution as follows:
- (a) may be applied by Council, as it sees fit on capital projects, community assets or beautification across the Sutherland Shire. The application of these funds may be for new projects/facilities upgrades or renewal of assets. In considering the allocation of these funds Council will ensure an appropriate amount is available for projects in Menai, Illawong, Alford's Point, Barden Ridge, Lucas Heights and any relevant adjacent area;
 - (b) may not be allocated to roads, drainage, footpaths or stormwater management unless associated with a qualifying project/facility as described above;
 - (c) may not be allocated to maintenance of any kind; and
 - (d) will be acknowledged in identified projects/facilities in Council's Annual Budgets, Operating Plans, Delivery Programs and Financial Plans as a source of funds for the project/facility.

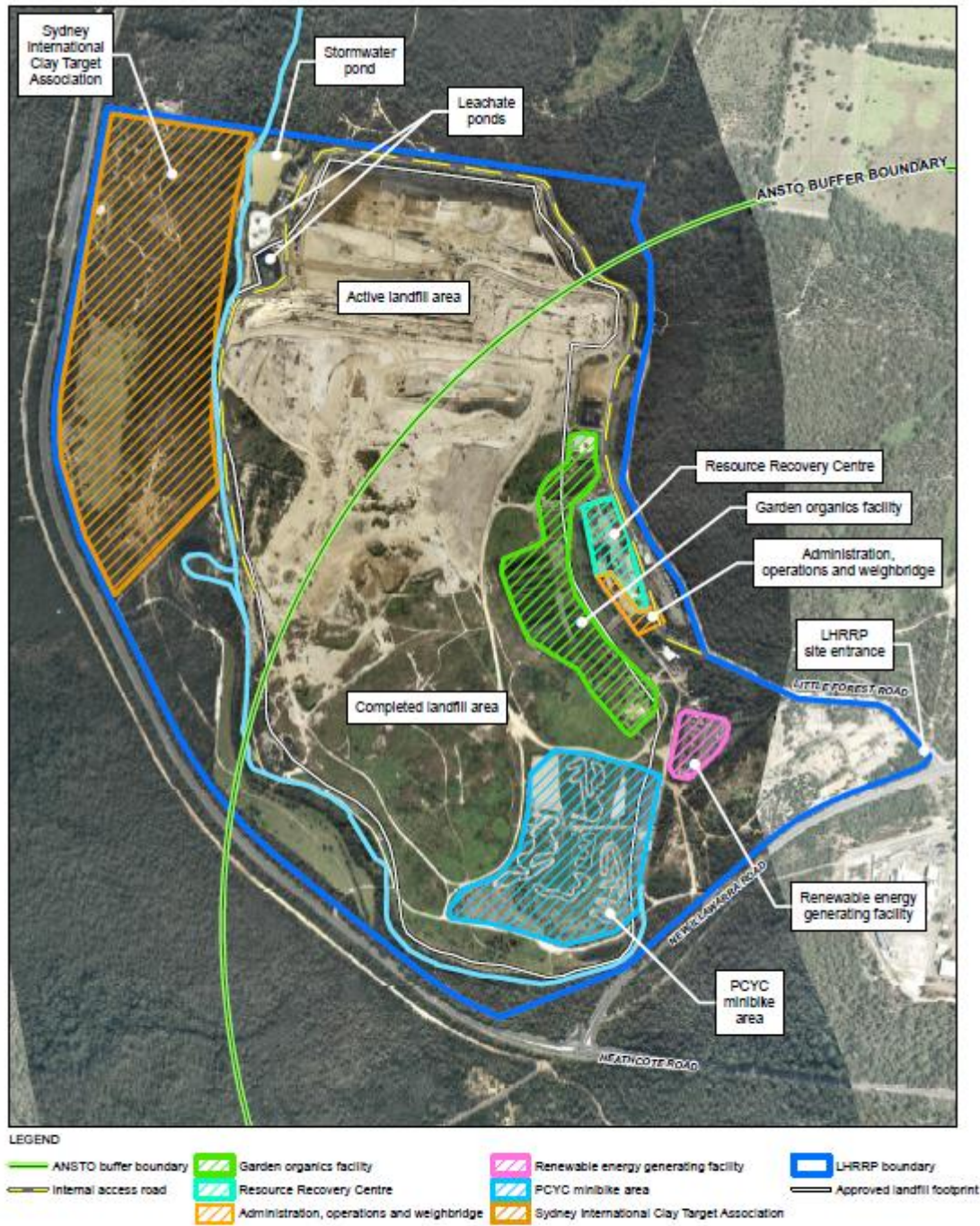
Issue of construction certificate, occupation certificate or subdivision certificate

- 6.11 The Draft Planning Agreement does not require that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

7 Use of this explanatory note

- 7.1 This explanatory note is not to be used to assist in construing the Planning Agreement.

Annexure A - Current Site Plan

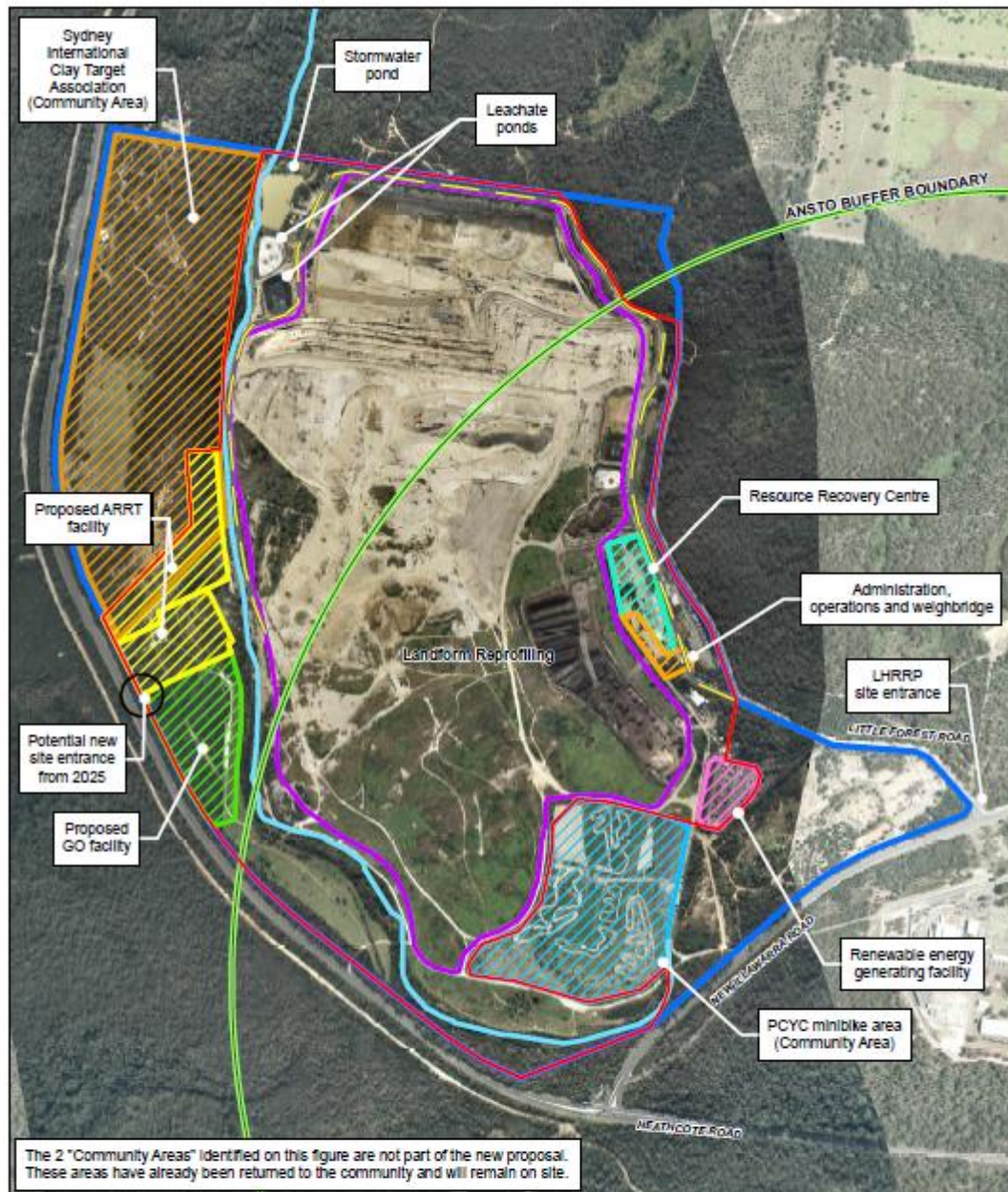


<p>Paper Size A4 0 37.5 75 150 225 300</p> <p>Metres</p> <p>Map Projection: Transverse Mercator Horizontal Datum: GDA 1984 Grid: GDA 1984 MGA Zone 56</p>			<p>SITA Australia Lucas Heights Resource Recovery Park</p> <p>Layout of existing key infrastructure and facilities</p>	<p>Job Number: 21-23482 Revision: 8 Date: 26 Aug 2014</p>
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 Aerial Imagery: ESRI, 2014. Works: GHD/SITA, 2014. Roads: NSW L.PMA, 2012. Created by: inbaird

Figure 2.1

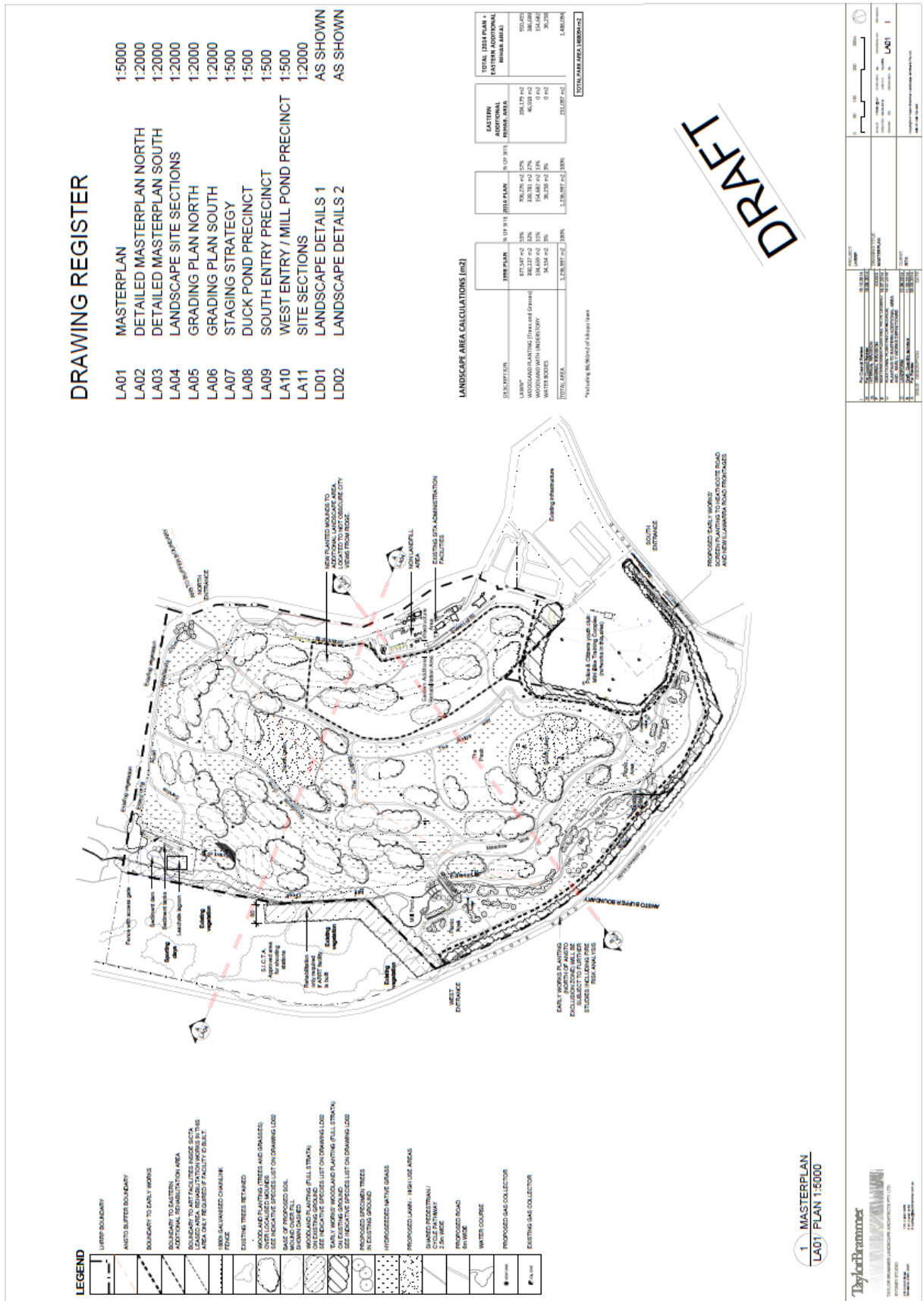
Annexure B - Proposed Development



<p>Paper Size A4 0 37.5 75 150 225 300 Metres Map Projection: Transverse Mercator Horizontal Datum: GDA 1984 GSD: GDA 1984 MGA Zone 56</p>			<p>SITA Australia Lucas Heights Resource Recovery Park</p>	<p>Job Number: 21-23452 Revision: 8 Date: 20 Oct 2014</p>
<p>180 Lorikeet Street Melbourne VIC 3000 Australia T 61 3 8887 8000 F 61 3 8887 8111 E info@ghd.com W www.ghd.com</p>			<p>Operational Environmental Management Plans Boundary Figure 1-1</p>	

G:\21023452\GIS\MapServer\2014-2016_OEM\Boundary.mxd
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Annexure C - Landscape Plan



Execution

Executed as an agreement.

Signed by
WSN Environmental Solutions Pty Limited

in accordance with section 127 of the Corporations Act 2001 by a director and secretary/director:

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Signed by
SITA Australia Pty Limited

in accordance with section 127 of the *Corporations Act 2001* by a director and secretary/director:

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Signed by
SembSita Australia Pty Limited

in accordance with section 127 of the *Corporations Act 2001* by a director and secretary/director:

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

The Common Seal of **Sutherland Shire Council** was affixed on this day of 2014 in accordance with a resolution of the Council made on the day of 2014

Mayor

General Manager

Name of Mayor (please print)]

Name of General Manager (please print)

Minsters Endorsement

Signed sealed and delivered for and on behalf of
MINISTER ADMINISTERING THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

by its delegate pursuant to instrument of delegation dated:

I certify that I have no notice of revocation of the delegation in the presence of:

Signature of witness

Signature of delegate

Name of witness (please print)

Name of delegate (please print)

Exhibit 1

Environmental and Other Reporting (Schedule 1D)

Reporting requirement	Reporting Frequency	Reporting Period	When Report	Comments
Deed and VPA				
Landfill tonnage	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	Landfill Waste (monthly data) Include EPA monthly S88 levy returns
Landfill tonnage	Quarterly Jan – Mar Apr – Jun Jul – Sept Oct - Dec	1 January to 31 December	Within two months following the Reporting Period	Payment for Additional Tonnage above 630k tpa Payment for Compaction Bonus Report tonnes received during the period and approved tonnes remaining at the end of the period
Landfill airspace consumed	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	In cubic metres
Compaction rate	Quarterly Jan – Mar Apr – Jun Jul – Sept Oct - Dec	Jan – Jun Jul – Dec	Within two months following the Reporting Period	In tonnes per cubic metre As per the VPA Schedule 1C
Garden Organics tonnage	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	Exclude blending materials
Garden Organics tonnage	Yearly	1 January to 31 December	Within two months following the Reporting Period	Payment for Additional Tonnage above 630k tpa
AWT tonnage	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	

Reporting requirement	Reporting Frequency	Reporting Period	When Report	Comments
AWT tonnage	Yearly	1 January to 31 December	Within two months following the Reporting Period	ARRT Payments above 200k tpa
SSC tonnes delivered to the LH RRP	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	Detailed by category
Remaining Capacity of landfill	Yearly	1 January to 31 December	Within two months following the Reporting Period	

Reporting requirement	Reporting Frequency	Reporting Period	When Report	Comments
Environmental (Landfill, Garden Organics, ARRT and Resource Recovery Centre)				
				Additional reporting requirements may be added to this list depending the Environment Protection License and Conditions of Consent.
Rainfall Surface water Wet weather overflow Leachate Landfill Gas Groundwater Dust Odour Noise Litter Traffic	Quarterly	Jan – Mar Apr – Jun Jul – Oct Sept – Dec	Within two months following the Reporting Period	Leachate treated and disposed to sewer Landfill surface monitoring Number of litter inspections undertaken Queuing beyond Little Forrest Road
Annual report	Yearly	In line with EPA Annual Return reporting	Within two months following the Reporting Period	
Compliance Report	Three yearly	In accordance with Development Consent	Within two months following the Reporting Period	
Other EMP information	As requested			

Reporting requirement	Reporting Frequency	Reporting Period	When Report	Comments
Complaints				
Less than or equal to 5 complaints per area of concern per month	Six monthly	Jan – Jun Jul – Dec	Within two months following the Reporting Period	Include number, type, location Comparison with previous year
Greater than 5 complaints per area of concern per month	Monthly	Monthly	Within two weeks following the reporting period	Include number, type, location
Greater than 5 complaints per area of concern on any day	Per event	Daily	Following day	Include number, type, location Email notification to Ian Drinnan and SSC general correspondence
Internal technical team, External Auditor and any other report as required under the complaints process set out in the LHRRP EMP	As required under the complaints process set out in the LHRRP EMP	As required under the complaints process set out in the LHRRP EMP	As required under the complaints process set out in the LHRRP EMP	
Consolidated Annual Report		Jan - Dec	Within two months	
Environmental Undertakings Audit and reporting (Schedule 1D of VPA)	As required under the VPA		As required under the VPA	Including the actions that have been undertaken.

Reporting requirement	Reporting Frequency	Reporting Period	When Report	Comments
Other				
Environmental reportable incidents	Per event	Daily		In accordance with EPA PIMRP requirements
Workplace health and Safety incidents	Per event	Daily	Following Day	Defined as Major or Severe in accordance with SITA's risk matrix
Community Reference Group Meetings	Three Monthly	Three Monthly	Following Meeting	Meeting Minutes approved at the following meeting Meeting frequency to be determined in consultation with the CRG
SSC / SITA meetings	Three Monthly	Three Monthly	Within one month of the meeting	Unless different meeting frequency is agreed Meetings to discuss: Tonnage received, technical issues, waste industry update, legal document issues, litter and illegal dumping campaigns etc

Exhibit 2

EMP for LHRRP, EMP for ARRT Facility, EMP for Garden Organics Facility, EMP for Post Closure Management

Exhibit 3

Contract for Sale of Land

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Contract for the sale of land – 2005 edition

MEANING OF TERM	
Vendor's Agent	WITHOUT THE INTERVENTION OF ANY AGENT
Co-agent	WITHOUT THE INTERVENTION OF ANY AGENT
Vendor	WSN ENVIRONMENTAL SOLUTIONS PTY LIMITED Level 3, 3 Rider Boulevard, Rhodes NSW 2138 ACN 147 652 677 ABN 93 524 709 106
Vendor's solicitor	Baker & McKenzie Level 27, AMP Centre 50 Bridge Street Sydney NSW 2000 DX 218 Sydney Phone: (02) 9225-0200 Fax: (02) 9225-1595 85186465-000267
Completion date	42 nd day after the contract date (clause 13)
Land (Address, plan details and title reference)	Lot DP Lucas Heights
Improvements	<input type="checkbox"/> VACANT POSSESSION <input type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> none <input checked="" type="checkbox"/> other: Vacant
Attached copies	<input checked="" type="checkbox"/> Documents in the List of Documents as marked or as numbered. <input type="checkbox"/> Other documents:
A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.	
Inclusions	<input type="checkbox"/> blinds <input type="checkbox"/> curtains <input type="checkbox"/> insect screens <input type="checkbox"/> stove <input type="checkbox"/> built-in wardrobes <input type="checkbox"/> dishwasher <input type="checkbox"/> light fittings <input type="checkbox"/> pool equipment <input type="checkbox"/> clothes line <input type="checkbox"/> fixed floor coverings <input type="checkbox"/> range hood <input type="checkbox"/> TV antenna <input type="checkbox"/> other:
Exclusions	
Purchaser	
Purchaser's solicitor	
Price	\$1.00
Deposit	\$- (10% of the price, unless otherwise stated)
Balance	\$1.00
Contract date	(if not stated, the date this contract was made)
Guarantor	Name
<input checked="" type="checkbox"/> NO <input type="checkbox"/> Yes	Address
For signatures please refer to the annexure headed "Signatures"	
GST: The price does not include GST subject to additional clause number 13.	
<input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common <input type="checkbox"/> in unequal shares	
Tax information (the parties promise this is correct as far as each party is aware)	
Vendor duty is payable	<input type="checkbox"/> NO <input type="checkbox"/> yes in full <input type="checkbox"/> yes to an extent
Deposit can be used to pay vendor duty	<input type="checkbox"/> NO <input type="checkbox"/> yes
Land Tax is adjustable	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes
GST: Taxable supply	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes in full <input type="checkbox"/> yes to an extent
Margin scheme will be used in making the taxable supply	<input type="checkbox"/> NO <input type="checkbox"/> yes
This sale is not a taxable supply because (one or more of the following may apply) the sale is:	
<input type="checkbox"/> not made in the course of furtherance of an enterprise that the vendor carries on (section 9-5(b))	
<input type="checkbox"/> by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))	
<input type="checkbox"/> GST-free because the sale is the supply of a going concern under section 38-325	
<input type="checkbox"/> GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-0	
<input type="checkbox"/> input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)	
<input checked="" type="checkbox"/> exempt from GST as the transfer of the land is a development contribution made under section 24F of the <i>Environmental Planning and Assessment Act 1979</i> (CR 2013/13).	
HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address and telephone number	

List of Documents

General		Strata or community title (clause 23 of the contract)	
1	property certificate for the land plan of the land		property certificate for strata common property
2	unregistered plan of the land		plan creating strata common property
3	plan of land to be subdivided		strata by-laws not set out in <i>legislation</i>
4	document that is to be lodged with a relevant plan		strata development contract or statement
			strata management statement
			leasehold strata – lease of lot and common property
5	section 149(2) certificate (Environmental Planning and Assessment Act 1979)		
6	Section 149(5) information included in that certificate		property certificate for neighbourhood property
7	sewerage connections diagram		plan creating neighbourhood property
			neighbourhood property development contract
8	sewer mains diagram		neighbourhood management statement
9	document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract		property certificate for precinct property
			plan creating precinct property
	Section 88G certificate (positive covenant)		precinct development contract
			precinct management statement
	Survey report		
	Section 317A certificate (certificate of compliance)		property certificate for community property
	building certificate given under <i>legislation</i>		plan creating community property
	insurance certificate (Home Building Act 1989)		community development contract
	brochure or note (Home Building Act 1989)		community management statement
	Section 24 certificate (Swimming Pools Act 1992)		
			document disclosing a change of by-laws
	lease (with every relevant memorandum or variation)		document disclosing a change in a development or management contract or statement
	other document relevant to tenancies		
	old system document		document disclosing a change in boundaries
	Crown tenure card		
	Crown purchase statement of account		certificate under Management Act – section 109 (Strata Schemes) or section 26 (Community Land)
	Statutory declaration regarding <i>vendor duty</i>		

WARNINGS

- Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving:

AGL Gas Networks Limited	Government Business & Government Procurement	Public Works Dept
Council	Heritage Office	Roads & Traffic Authority
County council	Infrastructure Planning and Natural Resources	Rural Lands Protection Board
East Australian Pipeline Limited	Land & Housing Corporation	Sustainable Energy Development
Education & Training Dept	Mine Subsidence Board	Telecommunications authority
Electricity authority	Owner of adjoining land	Water, sewerage or drainage authority
Environment & Conservation Dept	Primary Industries Department	
Fair Trading	RailCorp	

If you think that any of these matters affects the property, tell your solicitor.
- A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 1987 or the Retail Leases Act 1994.
- If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
- If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
- The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- The purchaser will usually have to pay a stamp duty on this contract. The sale will also usually be a vendor duty transaction. If duty is not paid on time, a party may incur penalties.
- If the purchaser agrees to the release of deposit any rights in relation to the land (for example, the rights mentioned in clause 2.8) may be subject to the rights of other persons such as the vendor's mortgagee.
- The purchaser should arrange insurance as appropriate.

DISPUTES

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example, mediation under the Law Society Mediation Guidelines).

AUCTIONS

Regulations made under the *Property Stock and Business Agents Act 2002* prescribe a number of conditions applying to sales by auction.

ANNEXURE TO CONTRACT FOR THE SALE OF LAND - 2005 EDITION

BETWEEN: WSN ENVIRONMENTAL SOLUTIONS PTY LIMITED (Vendor)

AND: (Purchaser)

PROPERTY: Lot DP

30. AMENDMENTS TO PRINTED FORM

30.1 The terms of the printed contract to which these clauses are annexed are amended as follows:

30.1.1 Clause 10 - insert the following additional clause:

"10.4 For the purposes of this clause 10 the vendor discloses all of the information appearing in the copy documents attached to this contract whether specified in the list of documents on page 2 or not."

30.1.2 Clause 6 - delete "can" in line 1 of clause 6.1 and substitute "cannot" and delete clauses 6.2 and 6.3.

30.1.3 Clause 7 - delete.

30.1.4 Clause 13- delete and substitute the following:

"13. Goods and Services Tax (GST)

13.1 In this clause "supply", "GST", "tax period", "attributable" and "tax invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

13.2 If any supply the vendor makes under this contract is subject to GST the purchaser must pay to the vendor, in addition to the price and any other money payable by the purchaser under this contract, an amount equal to the GST payable by the vendor on that supply.

13.3 If the purchaser makes any payment to the vendor under clause 13.2 the vendor must give the purchaser a tax invoice for that amount."

31. NOTICE TO COMPLETE

31.1 For the purposes of clause 15, the parties acknowledge that the period of 14 days after the date of service of a notice to complete is reasonable and sufficient to make time of the essence of this contract.

32. CONDITION OF PROPERTY

32.1 Subject to clause 11 and to the warranties in the Conveyancing (Sale of Land) Regulation 2010 and any other statutory obligations imposed on the vendor, the purchaser acknowledges that the property is being purchased:

32.1.1 in its present condition and state of repair; and

32.1.2 subject to any defects (whether latent or patent), dilapidation and infestation.

32.2 The purchaser further acknowledges that:

32.2.1 the vendor has not made any representation or warranty about the property other than as expressly set out in this contract nor has anyone made a representation or warranty of that kind on the vendor's behalf;

32.2.2 the purchaser has not relied on any representation or warranty about the property other than as expressly set out in the contract or implied under section 52A of the Conveyancing Act 1919;

32.2.3 the purchaser has satisfied itself in relation to the physical nature, state and condition of the soil and its sub-strata and groundwater and the presence of any contaminant, substance, chemical, residue or foreign substance in the soil, its substrata and groundwater; and

32.2.4 the purchaser must not make any requisition or claim for compensation about the condition of the property, its state of repair or its suitability for any purpose or require the vendor to carry out work on the property (other than as permitted under the deed of agreement between the parties, dated 5 September 2000, as amended from time to time, and the Voluntary Planning Agreement between WSN Environmental Solutions Pty Limited, SITA Australia Pty Limited, SembSITA Australia Pty Limited, Sutherland Shire Council and the Minister for Planning and Environment, dated []).

33. PAST USE

33.1 The purchaser acknowledges that the property was previously used as a landfill site and further acknowledges that:

33.1.1 the vendor makes no warranty as to the suitability of the property for any use intended by the purchaser;

33.1.2 the vendor will not be liable (and the purchaser indemnifies the vendor) in respect of any liability, requirement to remediate, monitor or do any other works on or in relation to the property to the extent that such requirement arises only as a result of:

(a) the purchaser's intended use of the land other than the uses identified in the Landscaping Plan exhibited with the voluntary planning agreement entered into between the Minister for Planning, the vendor, the purchaser, SITA Australia Pty Limited and SembSita Australia Pty Limited and dated [] (VPA); and

(b) the purchaser conducting any works on the property which have the effect of bringing to the surface, activating or otherwise disturbing substances which, at their depth at the date of completion, present no significant risk of human harm.

33.2 The purchaser acknowledges that the vendor has continuing monitoring and remediation obligations under the development consent issued by the Minister for Planning and Environment, dated [] to development application number [] and under the VPA. For the purpose of carrying out those obligations the purchaser grants to the vendor, on and from completion, a licence to:

(a) come onto the property and, to the extent necessary, any other land owned by the purchaser in the vicinity of the property to:

(i) test and monitor substances in or under the property;

- (ii) repair, maintain and replace existing equipment located on the property which is used by the vendor in complying with its monitoring and remediation obligations referred to in this clause 33.2;
- (iii) to remain and have the vendor's equipment remain on the property, provided that in exercising its rights under this clause 33.2 the vendor must use reasonable endeavours to minimise interference with the purchaser and anyone lawfully using the property.

33.3 The purchaser grants to the vendors and its employees and contractors a licence on and from completion to enter and remain on the property for the purposes and on the terms set out in clause 9.4 of the deed of agreement between the parties dated 5 September 2000, as amended from time to time and Schedule 1E of the VPA.

34. CLAUSE 11

The vendor acknowledges that nothing in clause 11 operates to reduce or otherwise alter the vendor's continuing monitoring and remediation obligations in respect of the property pursuant to the consent dated [] to development application number [], pursuant to the deed of agreement between the parties dated 5 September 2000, as amended from time to time and pursuant to the VPA.

Exhibit 4

Landscaping Plan

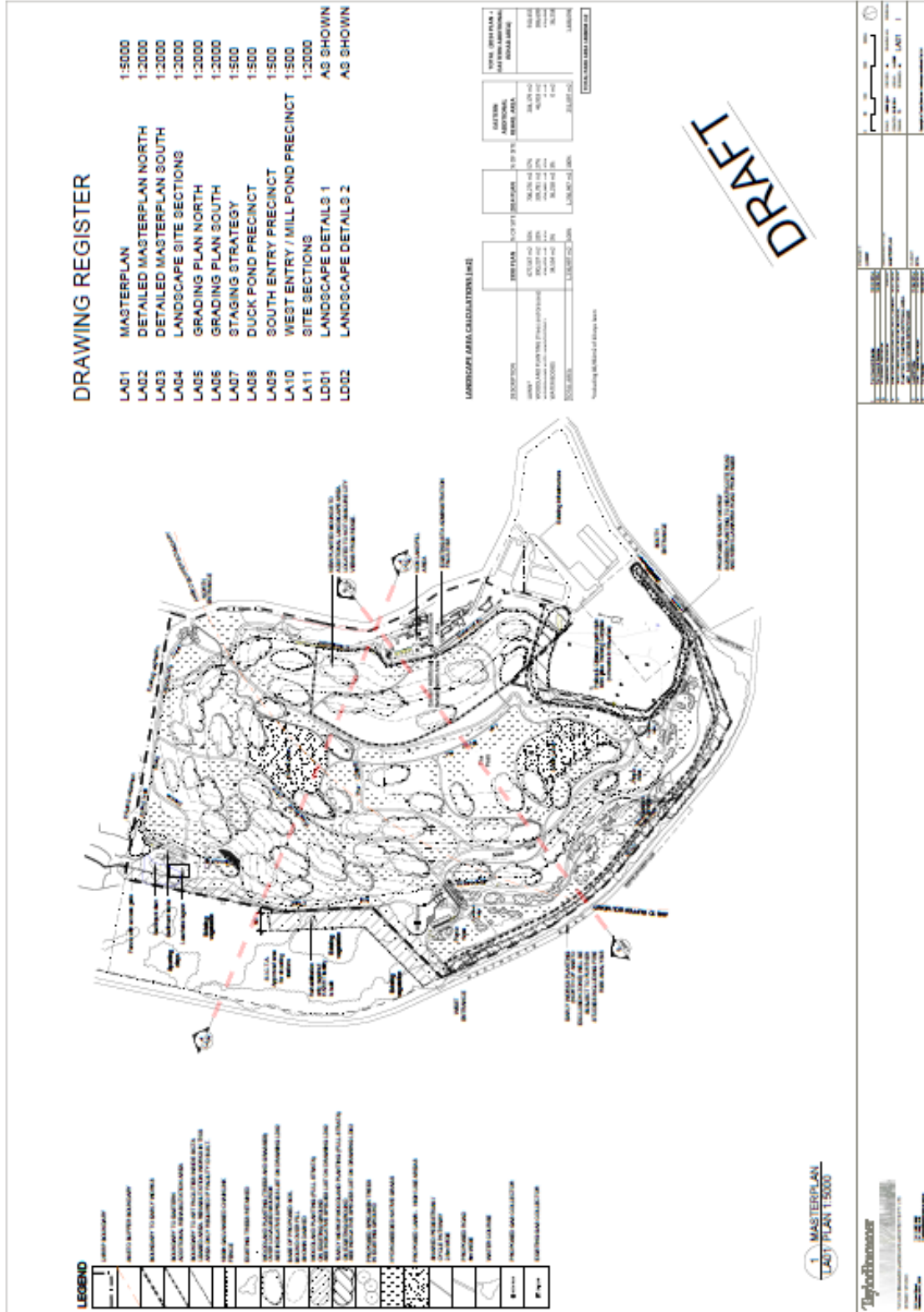
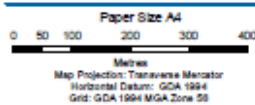
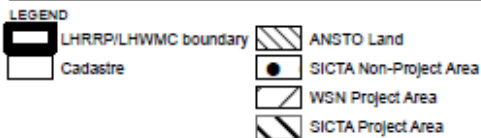
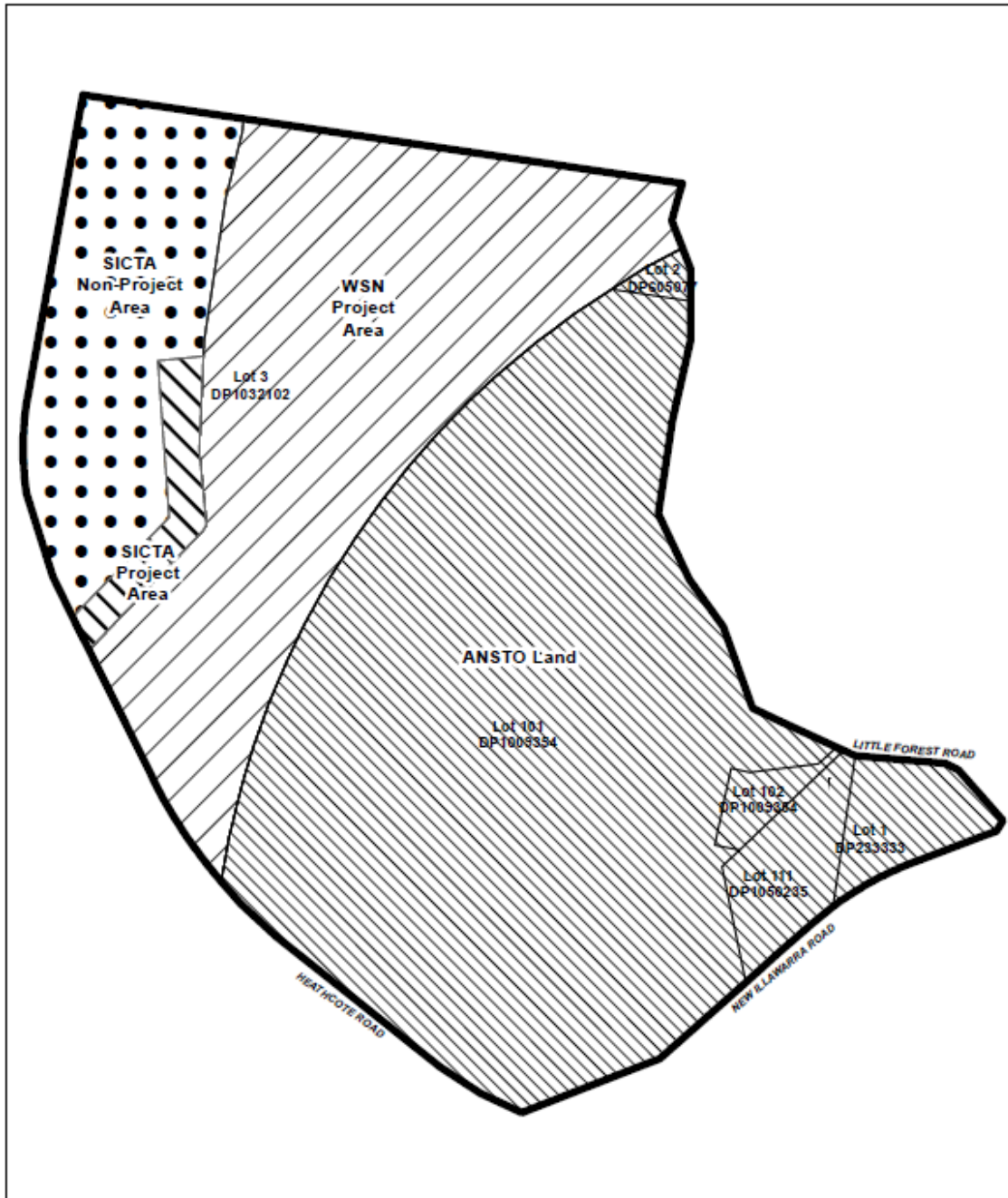


Exhibit 5

Site Plan



SITA Australia
Lucas Heights Resource Recovery Park/
Lucas Heights Waste Management Centre

Job Number 21-23482
Revision B
Date 20 Oct 2014

Land definitions

Figure 1

G:\2103482\GIS\Map\IMXD\21-23482-2014_LandDefinitions.mxd 180 Lorendale Street Melbourne VIC 3000 Australia T 61 3 9957 8000 F 61 3 9957 8111 E mel@ghd.com W www.ghd.com

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