

**CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2022**

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
69	3 Dec 2012	Adelaide Hills Region Waste Management Authority	<p>1.Pursuant to Section 90(2) of the Local Government Act 1999, the Council orders that all members of the public, with the exception of the CEO, General Manager Corporate Services, General Manager Infrastructure and Projects, General Manager Council Services, Adelaide Hills Region Waste Management Authority CEO, and the Minute Secretary be excluded from attendance at the meeting for agenda item 16.1.</p> <p>The Council is satisfied that pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:</p> <ul style="list-style-type: none"> <li>- conducting business; and</li> <li>- would prejudice the commercial position of the Council</li> </ul> <p>in that the Council as a member of the AHRWMA is engaged in negotiations with another party which includes detailed costings the disclosure of which would prejudice the Council's commercial position during the current ongoing negotiations.</p>	Agenda Attachments		Pursuant to section 91(7) of the Local Government Act 1999, orders that the attachments, reports and minutes pertaining to this matter, including discussions and considerations, be retained in confidence until the negotiations are complete and the matter is determined, but not longer than 12 months.	5 Sep 22	Within 12 months	Minute only released and on web 20/6/13 Agenda and Attachments released on website 30/9/22

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#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommendation to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
			<p>The Council is satisfied that pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda item 16.1 is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:</p> <p>-to prejudice the commercial position of the person who supplied the information</p> <p>in that the financial details of will be provided and discussed.</p> <p>In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice</p>						

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#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
			<p>Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.</p> <p>3. That having considered this matter in confidence under section 90(2) and 90 (3) (b) and (d) of the Local Government Act 1999, the Council, pursuant to section 91(7) of the Local Government Act 1999, orders that the attachments, reports and minutes pertaining to this matter, including discussions and considerations, be retained in confidence until the negotiations are complete and the matter is determined, but not longer than 12 months.</p>						

**16. CONFIDENTIAL REPORTS**

**16.1 REPORT TITLE: CONFIDENTIAL: ADELAIDE HILLS REGION  
WASTE MANAGEMENT AUTHORITY**

**DATE OF MEETING: 3 DECEMBER 2012**

**FILE NUMBER: 12/101167**

**Strategic Plan Ref:**

N/A

**Purpose:**

To provide Council with an update regarding negotiations between the Adelaide Hills Region Waste Management Authority and the Hartley Landfill Landowners/Southern Waste ResourceCo.(SWRC) and present a final offer proposal from SWRC for consideration.

**Summary – Key Issues:**

1. The Adelaide Hills Region Waste Management Authority (AHRWMA) is a regional subsidiary comprised of four Councils (Mount Barker, Murray Bridge, Alexandrina and the Adelaide Hills) established under Section 43 of the Local Government Act, 1999. The Authority operates the Hartley Landfill at Callington where member Councils waste is disposed. This landfill has been operated under a licence agreement with the Landowners since 1991.
2. The landowners where the Hartley Landfill is located have challenged the Authority's right to renew its licence with them to conduct a landfill operation on their land.
3. The landowners want the Authority to vacate the site and allow them to provide a new operator, Southern Waste ResourceCo (SWRC), to access the landfill.
4. The Authority has negotiated its position with the Landowners and SWRC and has reached agreement on a final proposal from SWRC. The Board of the Authority has considered this proposal and has resolved that it be presented to each Member Council for adoption.
5. Acceptance of the proposal will result in the Authority moving its landfill operation to Brinkley, located within and owned by the Rural City of Murray Bridge.

**Recommendation:**

1. Pursuant to Section 90(2) of the Local Government Act 1999, the Council orders that all members of the public, with the exception of the CEO, General Manager Corporate Services, General Manager Infrastructure and Projects, General Manager Council Services,

Adelaide Hills Region Waste Management Authority CEO, and the Minute Secretary be excluded from attendance at the meeting for agenda item 16.1.

The Council is satisfied that pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

- conducting business; and
- would prejudice the commercial position of the Council

in that the Council as a member of the AHRWMA is engaged in negotiations with another party which includes detailed costings the disclosure of which would prejudice the Council's commercial position during the current ongoing negotiations.

The Council is satisfied that pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda item 16.1 is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:

- to prejudice the commercial position of the person who supplied the information

in that the financial details of will be provided and discussed.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in continued non-disclosure of this information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information. The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

2. That Council endorse the Adelaide Hills Region Waste Management Authority Board's resolution to accept the Southern Waste ResourceCo Settlement Proposal as detailed in Attachment 2 to this report.
3. That having considered this matter in confidence under section 90(2) and 90 (3) (b) and (d) of the Local Government Act 1999, the Council, pursuant to section 91(7) of the Local Government Act 1999, orders that the attachments, reports and minutes pertaining to this matter, including discussions and considerations, be retained in confidence until the

negotiations are complete and the matter is determined, but not longer than 12 months,

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**Background:**

1. The Adelaide Hills Region Waste Management Authority (AHRWMA) operates the Hartley Landfill at Callington where member Councils waste is disposed. This landfill has been operated under a licence agreement with the Landowners, which was due to expire on 26th November 2011.
2. The Authority recognised the uncertainty surrounding a licence arrangement to operate the landfill and has made numerous attempts to secure the future tenure of the landfill via purchasing the land or a long term lease arrangement with the landowners, prior to the expiry of the licence term.
3. Failing an agreement for purchase or long term lease, on the 23rd August 2011, the Authority exercised its right to extend the licence for an additional 10 years, while options for purchase of the land or an alternative site were also considered.
4. On 22nd November 2011 the Landowners refused the Authority's right to extend its licence based on a number of minor matters, which are unlikely to legally warrant discontinuation of the licence, and requested the Authority to exit the site.
5. The Authority attempted to negotiate with the landowners to come to an agreement to continue operating on the land, including increased royalty payments, until it became clear that a third party (Southern Waste ResourceCo, SWRC) was involved with the Landowners and the therefore the landowners were not interested in negotiating further with the Authority.
6. Consequently the Authority established an alternative landfill cell at the Brinkley Landfill Site within the Rural City of Murray Bridge Council area.
7. SWRC put forward an initial proposal, which was rejected by the Authority's board and after further negotiations, at a meeting held on Monday 12 November 2012 a position was eventually reached that the Authority's negotiating team believed was a good outcome for the Board to consider. Please refer to the Hartley Land Tenure Report (Attachment 1) presented to and adopted by the Board at its meeting of 15 November 2012 for additional information on the initial proposal and further negotiations.

**Discussion:****Final proposal**

1. The offer as presented by SWRC is included as attachment 2 to this report and the Authority's Board has accepted this offer subject to Member Council approval.
2. The pros of accepting this offer:
  - The Authority will no longer be subject to a restrictive and insecure licence with a landowner who does not want them there.
  - Future activities will not be hindered by tenure affected investment decisions.
  - The Authority will avoid a potentially long and costly legal battle with costs in the order of \$300k plus an additional \$120k of our opponent's legal costs if not successful. In addition if not successful, the Authority would still be liable for \$4.5m in cell construction, capping and closure costs.
  - The Authority will be able to potentially expand its waste catchment area and be able to offer contracts into the future.
3. The cons of accepting this offer:
  - The Authority will lose approximately 6,000 tonnes per annum of commercial waste to SWRC's new operations at the Hartley Landfill.
  - There is a possibility that the Authority may lose some Member Council waste as SWRC seeks to negotiate for their waste streams. This will be dependant on the rate per tonne offered by SWRC taking into account transport costs and Member Council increased equity by continuing with the Authority.
  - The Authority may lose some flexibility in terms of future carbon tax planning.
  - There will be an increased transport cost for some Member Councils.

**Further considerations**

4. The original intent of the Authority in regards to the land tenure issue at the Hartley Landfill was to move from its current licence to a more secure form of tenure (either purchase or long term lease).
5. In the event that the Authority could not negotiate an acceptable outcome with the Landowners it would have sought an alternative site and left. However, the Authority would have negotiated an orderly exit of the site within an appropriate timeframe allowing it the ability to fully utilise the remaining cell assets that it had already created.
6. It is the Board's view that the proposal negotiated with SWRC adequately compensates the Authority without the need to undertake a potentially extended legal battle of which success is not guaranteed.
7. By commencing landfill operations at the Brinkley Landfill, which has a newly constructed cell, the Authority can commence longer term planning and be in total control of the types of activities that it chooses

to undertake. In addition it will no longer be subject to a restrictive and insecure licence with a landowner who no longer wants them there.

8. If the Authority accepts the offer it will receive compensation totalling \$5.7m using its own book values and the SWRC cash payment.
9. If the Authority rejects the SWRC offer and is successful in a damages claim the upper end of a compensation claim will be of a similar amount. However, its net legal fees will be approximately \$180,000 assuming costs are awarded in the Authority's favour. In addition, the Authority will still be on a site with a Landowner who does not want them to be there and who will still seek to introduce a landfill competitor on the same site. SWRC would, however have to start a new landfill which may take 3 to 4 years to establish and obtaining the necessary planning and EPA Licence approvals is not guaranteed.
10. Further, if the Authority rejects the SWRC offer and is not successful in a damages claim, it will still be liable for \$4.5m in construction, capping and post closure costs. Its own legal costs will be approximately \$300,000 and if costs are awarded to the Landowners an additional \$120,000 would be payable. In addition the Authority would not be compensated for its transport, relocation and new facility costs associated with commencing landfill operations at Brinkley.

#### **Impacts to Member Councils**

11. The Adelaide Hills Region Waste Management Authority will be located at the Brinkley Landfill in the near future. This will result in higher transport costs for some Member Councils. However the Authority is confident the Brinkley Landfill can be run efficiently to achieve economies of scale over the next three years, which will reduce the rate per tonne for waste disposal and offset the higher transport costs. Member Councils also have equity in the Authority, based on the tonnes of waste disposed to the Authority's landfill, and this again could offset any increased transport costs to some member Councils.
12. SWRC wishes to engage with the constituent Councils to explore opportunities to provide waste services addressing their on-going waste stream requirements. SWRC will likely contact individual Councils and decisions regarding future disposal sites will be assessed individually by relevant Council staff members taking into consideration disposal rates, travel distance, equity in the Authority and any other relevant factors.

#### **13. OPTIONS**

- A. Accept the offer (granting SWRC access to the Hartley Landfill site)
- B. Reject the offer and Leave (resisting SWRC access to the Hartley Landfill site) and pursue a damages claim

#### **Community Engagement:**

N/A



**Policy:**

N/A

**Budget:**

Southern Waste ResourceCo's (SWRC's) offer involves taking over all responsibility for the future management of capping, landfill gas, carbon tax, post closure management and all associated liability, which covers the Authority's loss of assets, profit and moving costs. SWRC will pay an additional sum to the Authority of \$900,000, which recognises the value of the Authority not resisting the transfer of its EPA licence, which will enable SWRC to access the landfill in a short time frame.

Accepting the proposal will result in the transfer of the landfill operations from Hartley to Brinkley, which will impact each member Council differently and these impacts will be assessed individually by Council staff at a later stage.

For some Member Councils this change will involve contractual changes for collection service providers and the budgetary impacts of these changes will be assessed individually by Council Staff. Some member Councils, specifically The Rural City of Murray Bridge, should benefit from this move as travel distances will be reduced, while others will incur additional travel costs.

Individual Council budgets for waste collection and disposal will continue to be monitored and costs/options will be assessed based on travel distances, disposal rates, AHRWMA equity and all other relevant factors.

**Statutory/Legal:**

Section 43 of the Local Government Act, 1999, and;

Clause 1.5.11 of the Adelaide Hills Region Waste Management Authority's charter;

The Authority has delegation to "enter into any kind of contract or arrangement to undertake projects and to undertake all manner of things relating to and incidental to the collection, treatment, recycling and disposal of waste, provided that any project with a value of \$500 000 or more requires the prior approval of all the Constituent Councils"

**Staff Resource Requirements:**

Council's Waste Strategy Coordinator will manage any contractual changes within their normal role for Council.

**Environmental:**

N/A – there will be no significant environmental impact, other than increased travel, as both landfill cells are EPA compliant.

**Social:**

N/A

**Risk Assessment:**

N/A

**Asset Management:**

N/A

**Conclusion:**

The Authority and its board have considered the proposal from SWRC, and believe that an acceptable outcome has been reached. The proposal negotiated with SWRC adequately compensates the Authority without the need to undertake an extended legal battle of which success is not guaranteed. It is recommended that Member Councils resolve to approve the proposal and assess the budget impacts to incorporate a landfill location change to Brinkley.

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**Key Contact**

David Peters, General Manager Corporate Services

**Manager or Sponsor of Project**

David Peters, General Manager, Corporate Services

**Attachments**

Attachment 1: Item 5.5 Confidential Report Hartley Land Tenure

Attachment 2: SWRC offer

Attachment 1 to Item 16.1

**ITEM NO. 5.5**

**TO: ADELAIDE HILLS REGION WASTE MANAGEMENT AUTHORITY**  
**FROM: EXECUTIVE OFFICER**  
**SUBJECT: HARTLEY LAND TENURE**

**GROUND'S FOR CONFIDENTIALITY****Section 90(3) (b) & (d) of the *Local Government Act, 1999*:**

- (b) information the disclosure of which —
- (i) could reasonably be expected to confer a commercial advantage on a person with whom the Authority is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Authority; and
  - (ii) would, on balance, be contrary to the public interest;
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
  - (ii) would, on balance, be contrary to the public interest;

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**PURPOSE**

To update Board Members on the negotiations with the Hartley Landfill Landowners/Southern Waste ResourceCo (SWRC) and present a final offer proposal from SWRC for consideration and response.

**KEY ISSUES**

- The landowners where the Hartley Landfill is located have challenged the Authority's right to renew its licence with them to conduct a landfill operation on their land.
- The landowners want the Authority to vacate the site and allow them to give a new operator Southern Waste ResourceCo (SWRC) access to the landfill.
- The landfill has long term liabilities and responsibilities attached to it that currently rest with the Authority.
- It is unlikely that the EPA would allow the transfer of the Authority's licence unless the Authority consented to the transfer. However the Act is not clear in this regard and the EPA may allow a transfer if they were satisfied that all of the future liabilities were taken on by another party.
- The Authority needs to ensure that it is adequately compensated whether it resists the transfer of its EPA licence or not.

**RECOMMENDATION**

**That:-**

- (1) With the amendments indicated in the report the Authority accept the Southern Waste ResourceCo proposal subject to Member Council approval.**
- (2) The amended proposal be presented to Member Councils recommending their approval.**
- (3) The outcome of Member Council considerations and recommendations be advised to Southern Waste ResourceCo.**
- (4) In accordance with Section 91 (7) & (9) of the *Local Government Act 1999* and on the grounds that Item No. 5.1 listed on the Agenda for the meeting of the Adelaide Hills Region Waste Management Authority held on 16 December 2010 was received, discussed and considered in confidence pursuant to Section 90(3) (b) & (d) of the *Local Government Act, 1999*, this meeting of the Committee, do order that:**
  - (a) the resolution, the report, the discussion and any other associated information submitted to this meeting and the minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 14 November 2013;**
  - (b) the confidentiality of the matter be reviewed in November 2013;**
  - (c) the Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.**

## **REPORT**

### **Background**

1. The Landowners where the Hartley Landfill is located are challenging the Authority's right to renew its licence with them to conduct a landfill operation on their land.
2. This is being done in an attempt to allow Southern Waste ResourceCo to access our landfill and for the Landowners to receive higher royalty payments for a future licence.
3. On 4 October 2012 SWRC put a proposal to the Authority which essentially said that they would take over the landfill operations and pay for all site assets, including plant and equipment, at book value and make additional payments totalling \$800k. The payments would then be offset by future liabilities for the site. The \$800k payment was subject to the Authority using its best endeavours to have Member Council waste continue to come to the site at a future market rate significantly higher than the existing Member Council rate. In addition the payment would be subject to the Authority transferring its EPA licence. The net result of the payments offset by liabilities would have most likely have been a negative amount. Ie the Authority would have been required to make a payment to SWRC and would no longer have any assets.
4. At a Special Meeting held on 17 October 2012 the Authority considered its legal position and options. Present at that meeting was one of our legal advisors, Scott Lumsden (Partner, Wallmans Lawyers)
5. The Authority determined to reject the SWRC offer and further made a recommendation that due to repudiation of the agreement by the Landowners the Authority determined to exit the Hartley Landfill site either in a short time frame reserving its rights to damages or a longer term exit where it may not have pursued damages.
6. In a meeting held with SWRC on Monday 5 November 2012 it became clear that the Authority's longer term exit proposal was not an option for them if legal action was to be avoided. It also became clear that they needed access to the Authority's landfill for their activities. In the event that the Authority resisted the transfer of its EPA licence it would impact SWRC's feasibility significantly. It would also mean that a legal battle would commence around the validity of the Authorities licence extension. At the end of the meeting SWRC realised that their previous offer was not acceptable and may have been misunderstood. They wanted to avoid taking a legal action route if possible. It was agreed that both parties come together at a subsequent meeting to see if the impasse could be resolved to each parties satisfaction.
7. At a subsequent meeting on Monday 12 November 2012 a position was eventually reached that the Authorities negotiating team believed was a good outcome for the Board to consider. The Authority was represented by Board Member (Marc Salver), the Executive Officer (Michael Lorenz), Operations Manager (Robert Coleman) and our legal advisor (Scott Lumsden).

## Discussion

### **The Offer**

8. The offer as presented by SWRC is included as (**Attachment 1**)
9. Upon review with our lawyers the offer is presented below with some recommended changes shown.

*Southern Waste ResourceCo (SWRCC) will –*

1. *Pay \$900,000 (exclusive of GST) to Authority on settlement;*
2. *Take over all responsibility for the operation of the site on settlement;*
3. *Take over all responsibility for the future management of capping, landfill gas, carbon tax, post closure management and all associated liability on settlement;*
4. *Release and indemnify the Authority from all liability relating to in relation to the Authority's prior occupation and use of the site and the capping and post closure management of the site;*
5. *Obtain the EPA's confirmation that any ongoing liability in relation to the site is not the responsibility of the Authority;*
6. *Pay any stamp duty payable for the transaction.*

*The Authority will –*

7. *Take all necessary steps to transfer the EPA licence to SWRCC expeditiously with a view to SWRCC taking over operation of the site by January 2013 (subject to settlement occurring);*
8. *Transfer the ownership of and rights to all fixed assets (including cells, roadways, fixed fencing, ~~systems~~, water tank and the rock stockpile located adjacent to Cell 7 on the area of proposed Cell 9) to SWRCC on settlement;*
9. *Provide free and unencumbered vacant possession of the site to SWRCC on settlement;*
10. *Subject to the owner's compliance with the matters detailed in paragraph 15 below, release the owners from all claims and causes of action relating to the dispute;*
11. *Pay any stamp duty payable for the transaction;*
11. *Consider this offer at a meeting of the Authority on Thursday 15 November 2012 and if accepted, put the offer to the member Councils of the Authority expeditiously and no later than at the next ordinary meetings of those Councils or 30 January 2013 (whichever is the sooner);*
12. *If the offer is accepted, the Authority will provide copies of all documents in its possession concerning the site (other than ~~those already provided~~ documents concerning the business operated at the site and those documents already provided) by 30 November 2012;*

13. *If the offer is accepted by the Authority at its meeting on 15 November then notwithstanding that the member Councils are yet to decide whether to agree, the Authority must use its best endeavours to prepare (cooperatively with SWRCC) all necessary deeds, agreements, contracts, licence transfer applications and any other necessary statutory approval applications or assignments to be in a position to effect the settlement by 30 January 2013. The parties will each bear their own legal costs of the preparation, negotiation and execution of such documents.*
14. *Use its best endeavours to prosecute the transfer of the EPA licence and support the grant of any other necessary statutory approvals for the operation of a landfill at the site by SWRCC.*

The Harveys (Landowners) will :

15. *Release and indemnify the Authority from all claims and causes of action in relation to the Authority's prior occupation and use of the site, the licence to occupy, and the capping and post closure management of the site.*

*Settlement shall occur within 5 business days of the later of execution of all necessary agreements, the transfer of the EPA licence on suitable terms from the Authority to SWRCC and the granting of any other necessary statutory approvals. The parties agree to use their best endeavours to achieve settlement on or about 30 January 2013.*

*SWRCC remains committed to engaging with the constituent Councils to explore opportunities to provide services addressing their on-going waste requirements.*

## Options

10. The following options are available for the Authority:
  - A. Accept the offer (granting access to the landfill)
  - B. Reject the offer and Leave (resisting access to the landfill) and pursue a damages claim

Analysis

11. The following table indicates our liabilities in the left column assuming the Authority were to remain on site for the next 9 years of the current licence. Items to be compensated for are shown on the right also assuming we were to remain on site for the remainder of the current licence. Figures used in the table come from the Authority's asset and liabilities register. The additional compensation amount comes from SWRC's negotiated offer.

Capping and Post Closure Liabilities		Profit, Lost Assets and Moving Costs	
Capping Cells 1-4	\$500k	Profit - assume \$300k/a x 9 years	
Capping Cells 5a,b	\$840k	<u>Total Profit</u>	<u>\$2.7m</u>
Capping Cell 6	\$890k	Written down value Cell 6 \$1.2m	
Capping Cell 7a	\$575k	Written down value Cell 7a \$100k	
<u>Total Capping</u>	<u>\$2.8m</u>	<u>Total Landfill Cell Assets</u>	<u>\$1.3m</u>
Construct Cell 7a*	\$695k		
*(needed to give 9 years space)		Rock Stockpile	\$130k
<u>Total Construction</u>	<u>\$0.7m</u>	Road	\$13k
		Tank/Pump	\$6k
Post Closure costs	\$98k/annum	Digital Capture System	\$20k
<u>Post Closure Provision</u>	<u>\$1.0m</u>	<u>Total Other Assets</u>	<u>\$169k</u>
		Transport equipment	\$50k
		New Office/Ablutions	\$300k
		<u>Total Cost to Move</u>	<u>\$350k</u>
<u>Total Liabilities</u>	<u>\$4.5m</u>	<u>Total Lost Assets and Moving Cost</u>	<u>\$4.5m</u>
		<u>Additional Compensation</u>	<u>\$0.9m</u>
		<u>Total Compensation</u>	<u>\$5.7m</u>

12. SWRC's offer to take over all responsibility for the future management of capping, landfill gas, carbon tax, post closure management and all associated liability covers our loss of assets and moving costs.
13. The additional payment of \$900,000 is essentially a bonus.



**Pros of Accepting Offer**

14. The Authority will no longer be subject to a restrictive and insecure licence with a landowner who does not want them there.
15. Future activities will not be hindered by a restrictive licence agreement.
16. The Authority will avoid a long and costly legal battle with costs in the order of \$300k plus an additional \$120k of our opponent's legal costs if not successful. In addition if not successful the Authority would still be liable for \$4.5m in cell construction, capping and closure costs.
17. The Authority will be able to potentially expand its waste catchment area and be able to offer contracts into the future.

**Cons of Accepting Offer**

18. The Authority will lose approximately 6000 tonnes per annum of commercial waste to SWRC's new operations at Hartley.
19. There is a risk that the Authority may lose some Member Council waste as SWRC seeks to negotiate for their waste streams. This will be dependant on the rate per tonne offered taking into account transport costs and increased equity by continuing with the Authority.
20. The Authority may lose some flexibility in terms of future carbon tax planning.
21. There will be an increased transport cost for some Member Councils.

**Other Considerations**

22. It is unlikely that the EPA would allow the transfer of the Authority's licence unless the Authority consented to the transfer. However the Act is not clear in this regard and the EPA may allow a transfer if they were satisfied that all of the future liabilities were taken on by another party.
23. If a transfer of licence to SWRC is considered great care will need to be taken in the detail of the contract to protect the Authorities interests and safeguard against the Hartley Landfill liability coming back in the event that SWRC default.

**Conclusion**

24. The original intent of the Authority in regards to the land tenure issue at the Hartley Landfill was to move from its current licence to a more secure form of tenure (either purchase or long term lease). In the event that the Authority could not negotiate an acceptable outcome with the Landowners it would have sought an alternative site and left. It would have however done this in an orderly timeframe giving it the ability to fully utilise cell assets that it had already created.
25. The proposal negotiated with SWRC adequately compensates the Authority without the need to undertake an extended legal battle of which success is not guaranteed.
26. By commencing landfill operations at the Brinkley Landfill which has a newly constructed cell the Authority can commence longer term planning and be in total control of the types of activities that it chooses to undertake. In addition it will no longer be subject to a restrictive and insecure licence with a landowner who does not want them there.

27. If the Authority accepts the offer it will receive compensation totalling \$5.7m using its own book values and the SWRC cash payment.
28. If the Authority rejects the SWRC offer and is successful in a damages claim the upper end of a compensation claim will be of a similar amount however our net legal fees will be approximately \$180,000 assuming we are awarded costs. In addition we will still be on a site with a Landowner who does not want us there and who will still seek to introduce a landfill competitor to the site however they will have to start a new landfill which may take 3 to 4 years and not be guaranteed to be approved.
29. If the Authority rejects the SWRC offer and is not successful in a damages claim it will still be liable for \$4.5m in construction, capping and post closure costs. Its own legal costs will be approximately \$300,000 and if costs are awarded to the Landowners an additional \$120,000 would be payable. In addition the Authority would not be compensated for its transport relocation and new facility costs associated with commencing landfill operations at Brinkley.

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The offer

**Southern Waste ResourceCo (SWRCC) will –**

1. Pay \$900,000 (exclusive of GST) to Authority on settlement;
2. Take over all responsibility for the operation of the site on settlement;
3. Take over all responsibility for the future management of capping, landfill gas, carbon tax, post closure management and all associated liability on settlement;
4. Release and indemnify the Authority from all liability in relation to the Authority's prior occupation and use of the site and the capping and post closure management of the site;
5. Obtain the EPA's confirmation that any ongoing liability in relation to the site is not the responsibility of the Authority;
6. Pay any stamp duty payable for the transaction.

**The Authority will –**

7. Take all necessary steps to transfer the EPA licence to SWRCC expeditiously with a view to SWRCC taking over operation of the site by January 2013 (subject to settlement occurring);
8. Transfer the ownership of and rights to all fixed assets (including cells, roadways, fixed fencing, water tank and the rock stockpile located adjacent to Cell 7 on the area of proposed Cell 9) to SWRCC on settlement;
9. Provide free and unencumbered vacant possession of the site to SWRCC on settlement;
10. Subject to the owner's compliance with the matters detailed in paragraph 15 below, release the owners from all claims and causes of action relating to the dispute;
11. Consider this offer at a meeting of the Authority on Thursday 15 November 2012 and if accepted, put the offer to the member Councils of the Authority expeditiously and no later than at the next ordinary meetings of those Councils or 30 January 2013 (whichever is the sooner);
12. If the offer is accepted, the Authority will provide copies of all documents in its possession concerning the site (other than documents concerning the business operated at the site and those documents already provided) by 30 November 2012;
13. If the offer is accepted by the Authority at its meeting on 15 November then notwithstanding that the member Councils are yet to decide whether to agree, the Authority must use its best endeavours to prepare (cooperatively with SWRCC) all necessary deeds, agreements, contracts, licence transfer applications and any other necessary statutory approval applications or assignments to be in a position to effect the settlement by 30 January 2013.

*The parties will each bear their own legal costs of the preparation, negotiation and execution of such documents.*

14. *Use its best endeavours to prosecute the transfer of the EPA licence and support the grant of any other necessary statutory approvals for the operation of a landfill at the site by SWRCC'.*

***The Harveys (Landowners) will –***

15. *Release and indemnify the Authority from all claims and causes of action in relation to the Authority's prior occupation and use of the site, the licence to occupy, and the capping and post closure management of the site.*

*Settlement shall occur within 5 business days of the later of execution of all necessary agreements, the transfer of the EPA licence on suitable terms from the Authority to SWRCC and the granting of any other necessary statutory approvals. The parties agree to use their best endeavours to achieve settlement on or about 30 January 2013.*

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