

CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2022

#	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
105	6 June 2016	Adelaide Hills Region Waste Management Authority – Offer from Resource Co	<p><b>Section 90 (3) (i) Order</b></p> <p>1. Pursuant to Section 90(3)(h) and (i) Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the CEO, General Manager Corporate Services, General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, Risk and Governance Officer and Minute Secretary, be excluded from attendance at the meeting for Agenda Item 17.2 Adelaide Hills Region Waste Management Authority.</p> <p>The Council is satisfied that pursuant to Section 90(3)(h) and (i) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to:</p> <ul style="list-style-type: none"> <li>- Legal advice;</li> <li>- actual litigation, or</li> <li>- litigation that the Council or Council Committee believes on reasonable grounds will take place</li> </ul> <p>involving the Council or an employee of the Council in relation to legal advice and information related to litigation ought not be made available to the public as it could detrimentally affect the Council's position if the court case is commenced.</p> <p>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 this information may compromise the Council's position if the court case proceeds.</p>	Report, attachments 1, 3 - 5 and minutes	<p>The Council is satisfied that pursuant to Section 90(3)(h) and (i) of the Act the information to be received, discussed or considered in relation to this Agenda item is information relating to:</p> <ul style="list-style-type: none"> <li>- Legal advice;</li> <li>- actual litigation, or</li> <li>- litigation that the Council or Council Committee believes on reasonable grounds will take place</li> </ul> <p>involving the Council or an employee of the Council in relation to legal advice and information related to litigation ought not be made available to the public as it could detrimentally affect the Council's position if the court</p>	Until the end the conclusion of the legal process and any appeal or a negotiated settlement whichever is the sooner; and attachment 2 be retained until 30 June 2021, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.	5 Sep 22	Within 12 months	<i>Report, Attachments Minutes released on website 30 September 2022</i>

**CONFIDENTIAL ITEMS 2003 – SEPTEMBER 2022**

#	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><u>Pursuant to Section 91(7)</u>            That having considered Agenda Item 17.2 Adelaide Hills Region Waste Management Authority, in confidence under 90(2) and 3(h) and (i) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments 1, 3 - 5 and minutes be retained in confidence until the end the conclusion of the legal process and any appeal or a negotiated settlement whichever is the sooner; and attachment 2 be retained until 30 June 2021, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.</p>		<p>case commenced.</p> <p>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 this information may compromise the Council's position if the court case proceeds.</p>				

RELEASED

**17.2                      REPORT TITLE:            ADELAIDE HILLS REGION WASTE  
MANAGEMENT AUTHORITY – OFFER  
FROM RESOURCE CO**

**DATE OF MEETING: 6 JUNE 2016**

**FILE NUMBER:            DOC/16/50288**

**Strategic Plan 2035 Ref:**

NE 2.5: Promote, practice and enable best practice waste minimisation, waste reduction and recycling systems.

NE 2.6: Increase recycling rates.

**Purpose:**

To endorse the recommendation from the Board of the Adelaide Hills Regional Waste Management Authority (the Authority) relating to the Southern Waste ResourceCo (SWR) Offer (dated 3 March 2016) in light of the TJH Management Services review and subsequent clarification received from SWR relating to their offer.

**Summary – Key Issues:**

- SWR have made a claim against the Authority concerning the Hartley Landfill agreement.
- SWR have offered to withdraw their claim if Member Councils accept a \$35.90 per tonne rate and redirect Council waste to SWR's Hartley Landfill for a period of 7 plus 3 years
- The issue to determine is whether the SWR Offer demonstrates that it offers better short term and long term value to Member Councils compared to the Brinkley Landfill and the other value adding activities undertaken by the Authority. This involves assessing both financial and non-financial benefits
- It is a matter for each Member Council to make a decision regarding accepting an offer and committing their waste streams to SWR. The Authority can only make a recommendation as to what it assesses to be in the best interest of its Member Councils.

**Recommendation:**

**Section 90 (3) (i) Order**

1. Pursuant to Section 90(3)(h) and (i)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the CEO, General Manager Corporate Services, General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, Minute Secretary, be excluded from attendance at the meeting for Agenda Item 17.2 Adelaide Hills Region Waste Management Authority.

The Council is satisfied that pursuant to Section 90(3)(h) and (i) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to:

- Legal advice;
- actual litigation, or
- litigation that the Council or Council Committee believes on reasonable grounds will take place

involving the Council or an employee of the Council in relation to legal advice and information related to litigation ought not be made available to the public as it could detrimentally affect the Council's position if the court case is commenced.

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 this information may compromise the Council's position if the court case proceeds.

2. That Council notes the following recommendations from the Adelaide Hills Region Waste Management Authority:

On the 26 May 16, the Adelaide Hills Region Waste Management Authority resolved that:

- (i) The Board consider the financial and non-financial analysis of the Authority continuing with its current adopted Business and Long Term Financial Plans compared to accepting the SWR Offer which includes SWR discontinuing their claim.
- (ii) The Board advise its Member Councils that after conducting an analysis of the financial and non-financial aspects of the SWR offer on its Member Councils, it recommends that the offer be rejected. This assessment is on the basis that Member Councils will continue to bring their waste tonnes to the Brinkley Landfill.
- (b) In rejecting the SWR Offer it is noted that the claim made by SWR (which the Authority denies) will likely continue to trial.
- (c) The Authority commits to undertaking a due diligence process prior to each future landfill cell investment decision. The due diligence process will include an assessment of the Authority's landfill costs and benefits against:



- landfill disposal rates achievable in the market and,
  - alternative to landfill technologies as they emerge and are proven.
- (d) The Executive Officer approach the Authority's Lawyers for advice with regards to the Authority putting forward a counter offer to SWR for consideration and that this be reported back to the Board for further consideration.
- (e) That the Executive Officer prepare a standard report in this regard for consideration by the member Councils.
- (iii) The Chair of the Authority sends an interim response to SWR advising that the Authority is considering the SWR offer and will get back to them with a formal response before the SWR deadline of 23 June 2016.

#### **Section 91(7) Order**

3. Pursuant to Section 91(7)  
That having considered Agenda Item 17.2 Adelaide Hills Region Waste Management Authority, in confidence under 90(2) and 3(h) and (i) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments 1, 3 - 5 and minutes be retained in confidence until the end the conclusion of the legal process and any appeal or a negotiated settlement whichever is the sooner and attachment 2 be retained until 30 June 2021, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

---

#### **Background:**

1. The Adelaide Hills Region Waste Management Authority (the Authority) is a regional subsidiary comprised of four Councils (Mount Barker District Council, Rural City of Murray Bridge (RCMB), Alexandrina and Adelaide Hills Councils) established under Section 43 of the Local Government Act, 1999.
2. The following background information has been prepared by the Authority .
3. The Authority executed an agreement with SWR and relocated its landfill operations from Hartley to Brinkley on 13 February 2013. On the same day SWR took possession of the Hartley Landfill and the Authority's EPA licence was transferred to them along with all future liabilities.

4. On 16 July 2013 a letter was received from Botten Levinson, solicitors for SWR, making claims in relation to the Hartley site and allegations of misrepresentations in relation to future waste contracts.
5. SWR formally lodged a claim in the Supreme Court against the Authority on 19 February 2014. The claim alleges that there were implied representations as to Member Councils business continuing to use the Hartley Landfill and that there were alleged representations as to Cell capacity at Hartley.
6. The claims made by SWR are strongly refuted by the Authority.
7. In late 2015 and early 2016 SWR approached Member Councils seeking to discuss what issues would need to be resolved for a commercial outcome to be achieved in regards to the use of the Hartley Landfill. This was a precursor to an offer being made.
8. At its Board Meeting on 18 February the Authority recommended that Trevor Hockley from TJH Management Services (TJHMS) be approached to undertake an external review of the proposal should one be received.
9. Subsequently on 3 March 2016 SWR submitted a revised offer (**Attachment 1**) through the Authority. The revised offer included that SWR would discontinue their claim if Member Councils accept a \$35.90 per tonne waste disposal rate and redirect Council waste to SWR's Hartley Landfill.
10. TJH Management Services conducted an external review of the SWR Offer dated 3 March 2016 and presented it to a Special Board Meeting held on 12 May 2016 (**Attachment 2**). This report was then referred to Member Councils for their information and also included recommendations to:
  - seek clarification regarding the cost implications on member Councils identified within the TJHMS Review as a result of ceasing operations at the Brinkley Landfill. (clarification letter (**Attachment 3**) and SWR response (**Attachment 4**) are attached)
  - make an offer that if SWR discontinue their claim that the Authority would accept that each party to bear their own costs. (the offer (**Attachment 5**) was rejected)
  - seek further advice from RCMB on land tenure at the Brinkley Landfill.
11. Subject to the Authority's recommendation and responses from Member Councils the Court trial is due to commence on 6 June 2016.

**Discussion & Analysis:**

12. Based on SWR's response to our request seeking clarification of their offer the assumptions contained in the TJHMS report titled Independent Review of the Southern Waste Resource Co Offer dated 3 March 2016 remained unchanged. In addition, SWR have not revised their offered rate per tonne.
13. The TJHMS Review modelled 3 scenarios:

- Option 1 - Business as usual win legal case
  - Option 2 - Business as usual lose legal case
  - Option 3 - Accept SWR Offer
14. The assumptions used for the business as usual scenarios (Options 1&2) were very conservative in terms of forward projections for tonnages and assume that there is no tonnage growth in the future. In addition, when considering the quantum of legal expenses and damages in the 'lose legal case' (Option 2) the maximum value possible has been assumed which is considered extremely unlikely.
  15. The Accept SWR Offer (Option 3) includes an assessment of the costs associated with the Authority ceasing landfill operations at Brinkley which includes; capping costs, redundancy payouts, post closure monitoring and maintenance, lease payout and administration costs to run the Authority. These costs are offset by the sale of plant and equipment. The assessment also takes into account individual Member Council transport costs or savings.
  16. The Authority's administration costs (approximately \$269k per annum) assumes that the Authority continues to perform a regional coordinating role and includes a part time executive officer, part time finance officer, a portion of the waste strategy coordinator role and office expenses.
  17. An extract of Tables 1 and 2 from the TJHMS Review are shown below;

**Table 1:** Net Present Value of Disposal Costs over the next 10 Years

	<b>Option 1 Business as usual Win Legal Case</b>	<b>Option 2 Business as usual Lose Legal Case</b>	<b>Option 3* Accept SWR offer as presented</b>
<b>AHC</b>	\$ 3,809,135	\$ 3,667,385	\$ 3,744,784
<b>Alex</b>	\$ 937,520	\$ 1,142,602	\$ 1,514,024
<b>MBDC</b>	\$ 2,298,436	\$ 2,801,218	\$ 3,137,001
<b>RCMB</b>	\$ 1,723,827	\$ 2,100,914	\$ 2,849,701

**Table 2:** summarises the outcomes of the financial assessment by comparing the commencing rate per tonne in 2017

	<b>Option 1 Business as usual Win Legal Case</b>	<b>Option 2 Business as usual Lose Legal Case</b>	<b>Option 3* Accept SWR offer as presented Member Council adjusted rates</b>
<b>AHC</b>	\$ 32.00	\$ 39.00	\$ 40.53
<b>Alex</b>	\$ 32.00	\$ 39.00	\$ 52.38
<b>MBDC</b>	\$ 32.00	\$ 39.00	\$ 44.44
<b>RCMB</b>	\$ 32.00	\$ 39.00	\$ 53.65

\*Note - Option 3 in both Table 1 and 2 show SWR's rate adjusted to include costs associated with landfill closure, transport adjustments and Authority admin costs.

18. Both Tables 1 and 2 clearly indicate that Option 1 is the least cost option for all Member Councils assuming the assumptions and projections for Option 1 in the Long Term Financial Plan (LTFP) are met. Option 2 is still a cheaper option for all Member Councils when compared to Option 3. Option 3 is the least attractive option for Member Councils from a financial perspective.
19. Table 3 below is derived from the TJHMS Review and indicates the rate per tonne that SWR would need to offer to Member Councils to be equivalent to the financial benefits of the Authority's business model. This is done using both the conservative TJHMS Review assumptions (assumes no growth in tonnes) and those of the Authority's current LTFP (assumes conservative 2.4% future growth in tonnes) for comparative purposes. Both cases assume the SWR claim is dismissed.
20. This table effectively shows the rate that would need to be offered by SWR to compensate member councils for the cost that would be incurred by the Authority in closing the Brinkley Landfill.

**Table 3:** Rate per tonne required in an offer to be equivalent to financial benefits of Authority

	Rate per tonne required in an offer to be equivalent to financial benefits of Authority	
	Using \$32 per tonne conservative TJHMS commencing rate	Using \$24.50 per tonne rate commencing rate achievable from Authority's current LTFP Model
AHC	\$ 27.37*	\$ 19.87 <sup>#</sup>
Alex	\$ 15.52*	\$ 8.02 <sup>#</sup>
MBDC	\$ 23.46*	\$ 15.96 <sup>#</sup>
RCMB	\$ 14.25*	\$ 6.75 <sup>#</sup>
Weighted Average Rate	\$ 22.01*	\$ 14.51 <sup>#</sup>

\*The rates shown in the first column of Table 3 above are calculated by taking the difference between SWR's adjusted rate (Option 3 of Table 2) and the \$32 per tonne TJHMS conservative rate (Option 1 of Table 2). This difference is then subtracted from SWR's offered rate of \$35.90 per tonne.

<sup>#</sup>The rates shown in the second column of Table 3 are calculated by taking the difference between SWR's adjusted rate (Option 3 of Table 2) and the \$24.50 per tonne rate projected using the Authority's current LTFP model. This difference is then subtracted from SWR's offered rate of \$35.90 per tonne.

21. Future rates per tonne are assumed to increase by CPI in both the SWR offer and Authority models.
22. Table 3 shows that SWR's offered rate of \$35.90 per tonne would need to be reduced to at least \$22.01 per tonne using the conservative TJHMS assumptions to be equivalent to the financial benefit offered by the Authority.
23. Using the Authority's current LTFP assumptions, which assumes some future tonnage growth, SWR's offered rate of \$35.90 per tonne would need to be reduced to at least \$14.51 per tonne to be equivalent.

24. For clarification, if SWR were to match the \$22.01 or \$14.51 per tonne rates shown above, Member Councils would still need to pay an additional amount of approximately \$10 per tonne to cover costs associated with the Authority ceasing landfill operations ie capping, redundancies, post closure costs etc and the administration costs to run the Authority. ie Member Councils would pay \$32 per tonne using the TJHMS conservative assumptions.
25. It should also be noted that the \$32 per tonne commencing rate is based on calculating the average costs over the next ten years and like the SWR Offer assumes annual CPI increases. The actual costs in each year will vary slightly. As such adjustments will need to be made back to actual results at the end of each year.
26. Table 3 demonstrates that the Authority based model is able to return the lowest cost per tonne to its Member Councils. This is in part achieved through economies of scale but is also due to offsetting costs using the profit obtained from full and partial fee paying customers.
27. The TJHMS review included the following SWOT analysis.

	Advantages and Opportunities	Barriers and Threats
Option 1 and 2 – Business as Usual Win or Lose Legal Claim	<ul style="list-style-type: none"> <li>• <b>Lowest cost option as customer's tonnes reduce costs for Member Councils</b></li> <li>• <b>Control over waste stream to implement resource recovery options or test the market</b></li> <li>• <b>Hook-lift and crusher operations fully utilized</b></li> <li>• <b>Option to attract additional waste from Rural Councils</b></li> <li>• <b>Use of Bio-solids from waste water schemes to rehabilitate Landfill</b></li> <li>• <b>Economies of scale and management expertise to implement additional services for Member Councils</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>The loss of waste from a Member Council</b></li> <li>• <b>Competition from the Hartley Landfill</b></li> <li>• <b>Environmental and compliance risk</b></li> <li>• <b>Local Government held to a higher standard than Private Sector</b></li> <li>• <b>The additional transport cost for three Member Councils</b></li> <li>• <b>The loss of Management expertise.</b></li> <li>• <b>The political risk of running a commercial business as Local Government</b></li> <li>• <b>The Legal case is lost and damages awarded (option 2)</b></li> </ul>

	Advantages and Opportunities	Barriers and Threats
Option 3 – Accept SWR Offer	<ul style="list-style-type: none"> <li><i>No commercial risk</i></li> <li><i>The Legal case is withdrawn</i></li> <li><i>Guaranteed disposal price</i></li> <li><i>Access to other services offered by SWR</i></li> <li><i>Hartley more central for 3 Member Councils</i></li> <li><i>Competitive price if considered in isolation from the AHRWA</i></li> <li><i>Possible other opportunities for Member Councils from the operations of SWR and ResourceCo</i></li> </ul>	<ul style="list-style-type: none"> <li><i>Member Councils become price takers at the mercy of the Market</i></li> <li><i>The airspace available at Brinkley is lost.</i></li> <li><i>Ongoing post closure costs funded directly by Member Councils</i></li> <li><i>Administration costs for the Authority funded equally by Member Councils</i></li> <li><i>In-house expertise is lost.</i></li> <li><i>The opportunity to value add for Member Councils is reduced</i></li> </ul>

28. The depositing of waste at Brinkley offers long term certainty, control of waste streams and resource recovery efforts to meet environmental and social expectations, reliability and compliance with environmental regulations. It also achieves a level of economies of scale that enables other value adding services to continue to be performed and pursued for Member Councils.
29. There is also flexibility in terms of pursuing alternatives to landfill technology when viable without being locked into a contract to supply waste to landfill.
30. The Special Meeting held on 12 May 2016 also included a recommendation to seek further advice from ROMB on land tenure at the Brinkley Landfill.
31. A new lease has been drafted that includes 5 plus 5 year terms that will essentially correspond to future landfill cell investment decisions. This draft lease will be the subject of a future report.

**Community Engagement:**

Informing only	Via Confidential Council Agenda Item.
----------------	---------------------------------------

**Policy:**

N/A

**Budget:**

Council has 35% equity of the Adelaide Hills region waste Management Authority which is based on the accumulated tonnes disposed to landfill. A share of the surplus or deficit from this subsidiary based on the level of equity is distributed to Council which is included in the budget.

**Statutory/Legal:**

N/A

**Staff Resource Requirements:**

N/A



**Environmental:**

The Authority aims for a very high standard in waste disposal that meets EPA requirements.

**Social:**

N/A

**Risk Assessment:**

Financial and non financial risk issues have been addressed to take into account litigation risk for the Supreme Court case as well as assessment of the SWR offer.

**Asset Management:**

All planning takes into account future cell renewal as well as replacement of plant & equipment.

**Conclusion:**

32. The TJH Management Services Pty Ltd review reports that the use of the Brinkley Landfill to accept Member Council waste remains the best vehicle to achieve both the short term and long term goals of its Member Councils when compared to SWR's offer regardless of the outcomes of their claim.
33. This is on the basis that all Member Councils will continue their support of the Authority model and continue to bring their waste tonnes to the Brinkley Landfill.
34. It should be noted that if the Board rejects the SWR Offer that this commits the Authority to defend itself in court against the claims (which it denies) made by SWR.
35. It should also be noted that the SWR claims against the Authority are considered to be weak as per legal advice obtained.
36. To avoid the disruption caused by unsolicited offers being made to the Authority or its Member Councils the Authority should commit to undertaking a due diligence process prior to each future landfill cell investment decision.

The due diligence process should include an assessment of the Authority's landfill costs and benefits against:

- landfill disposal rates achievable in the market
- alternative to landfill technologies as they emerge and are proven.

---

**Key Contact**

David Peters, General Manager Corporate Services

**Manager or Sponsor of Project**

Andrew Stuart, Chief Executive Officer



**Attachments**

1. SWR revised Offer for Council's waste disposal services - doc/16/50309
2. TJH Management Services Pty Ltd Independent review of the Southern Waste ResourceCo Offer dated 3 March 2016. - Doc/16/50310
3. Authority correspondence seeking further clarification to the waste disposal offer - Doc/16/50316
4. SWR Response to the letter for clarification– doc/16/50317
5. Offer to discontinue of the Supreme Court claim via Wallmans Lawyers – doc/16/50320

**RELEASED**  
Confidential



Privileged and Confidential

Attachment 1  
Southern Waste ResourceCo  
Pty Ltd  
ABN: 46 151 241 093Lot 2605 Main South Road, Maslin  
Beach SA  
PO Box 542 Enfield Plaza SA 5085  
Tel (08) 8386 2212 Fax (08) 8327 4306  
www.resourceco.com.au

WITHOUT PREJUDICE

3 March 2016

Councillor Ian Bailey  
Chairman  
Adelaide Hills Region Waste Management Authority  
PO Box 519  
MURRAY BRIDGE SA 5253

Dear Councillor Bailey,

RE: WASTE DISPOSAL SERVICES

Southern Waste ResourceCo (SWR) has undertaken a without prejudice consultation with the Adelaide Hills Regional Waste Management Authority (AHRWMA) and its key stakeholders to understand what issues existed with the previous waste disposal services offer made by SWR.

We were told by your Executive Officer that you are concerned or wish to better understand:

- That Southern Waste ResourceCo (SWR) will not dramatically increase prices at the end of the contract period.
- SWR's ability and track record to service the waste disposal needs of its customers including Councils.
- The long term ability of SWR Hartley to supply waste disposal services.
- What happens to the Brinkley landfill and its staff should the landfill volumes be transferred to Hartley.
- Other services that SWR could offer to the Councils to their benefit in the future.
- The legal case on foot and associated costs.

We have listened carefully and believe this revised without prejudice offer addresses the issues raised. In addition, from a commercial perspective this offer provides the AHRWMA members as a whole a very significant reduction in their current and future waste transportation and disposal costs, savings which the Authority and/or Councils will be able to invest in additional services or pass on as savings to their rate payers.

In summary, our revised offer is as follows:

- As a basis we propose to start with the last offer that was made in October 2013 which incorporated the following elements:
  - Agreement term of 7 years (which is suggested to be 1/7/16 – 30/6/23) with an option to extend by a further 3 years.
  - Disposal rate adjustment calculated each year and to be based on CPI (All Groups Adelaide) for the previous 12 months.
  - Pricing exclusive of all government taxes and levies.

## Privileged and Confidential

## Attachment 1

- Disposal rate of \$35.90/tonne (please note this rate is a CPI escalation of the last offer made which was in October 2013. The CPI escalator used is All Groups Adelaide from October 2013 to December 2015).
- Additional service offerings where viable for both parties including sludges and muds, bio-solids, contaminated soils and wastes, and various recycling and resource recovery opportunities. SWR has both the assets and expertise to offer very compelling solutions to a wide range of waste management requirements and would be pleased to put forward solutions to any issues that the Authority would like addressed.
- In addition to this last offer, we propose the following further elements and information to address the issues raised recently regarding the old offer:
  - We do not intend to dramatically increase the price at the end of the term. This offer is very competitive, but it is genuine. It is based on the anticipated volumes from the member Councils and on SWR's confidence in the efficiency of its operations. We have not put this forward as "bait" pricing. It is for 7 years, plus a 3 year option. This itself should provide confidence over a substantial term. We expect that the parties will be able to reach mutually acceptable arrangements on a similar basis in 10 years. In the event the two parties cannot agree on a new price, we propose that an independent price setter be engaged to independently assess what is a fair price to both parties for the new term. We are open to discuss in what form and process this independent price setter would take.
  - Should the AHRWMA decide to mothball and interim cap the Brinkley landfill as a result of accepting this offer, SWR would be willing to undertake the caretaking of the site at its cost to relieve AHRWMA of this operating burden. In addition SWR will use best endeavors to try to absorb any impacted AHRWMA operational employees into the SWR Group. (Please note that SWR will need to undertake an assessment of Brinkley before being able to finalise the details of this component of the offer).
  - SWR can assure the AHRWMA that airspace exists at Hartley to service this disposal requirement well beyond the proposed term. We are happy to detail this information should it be required.
  - SWR has a strong track record of outstanding customer service in waste disposal and resource recovery – we have operated landfills and resource recovery facilities for over 20 years. Mitcham City Council would be a relevant reference customer should AHRWMA wish to check our performance as a waste disposal service provider.
  - SWR also has the advantage of being part of the broader ResourceCo Group which is the most advanced resource recovery company in South Australia and one of the most advanced in Australia and Asia. Such service offerings we can make include the following:
    - The recycling of waste tyres through our Tyrecycle operation where we manufacture the tyres into tyre derived fuel for sale to cement kilns as fuel.
    - The recycling of waste construction and demolition (C&D) materials through our ResourceCo C&D recycling facilities as well as the provision of recycled concrete and construction materials from these facilities.
    - The recycling of dry commercial and industrial (C&I) waste materials through our Suez-ResourceCo facility where we manufacture this into fuel for cement kilns.
    - The recycling of contaminated soils through our soil treatment facility.
    - The sourcing or disposal of engineered and non-engineered fill materials as well as materials transport solutions through our materials solutions operation.
    - The provision of technical advice regarding waste treatment and solutions.
    - Through our broader partnerships the provision of solutions to all other hazardous and non-hazardous waste and resource recovery requirements.

## Privileged and Confidential

## Attachment 1

This offer will remain open for 30 days from the date of this letter.

Should this offer be accepted, including the signing of all relevant documentation, then SWR is prepared to withdraw its legal action with AHRWMA and propose that each party bear its own costs in this matter.

Please note that we have copied this letter to each of the Council CEOs as a courtesy following our meetings with them. In these meetings the CEOs reiterated that the AHRWMA does not control the waste of each member Council, and that each Council is free and able to make its own decision about where waste is disposed and on what terms. Accordingly, should this offer be rejected by the AHRWMA, then SWR will be putting forward compelling individual offers to each of the Councils for their waste disposal services.

We look forward to the re-engagement of our organisations as we work toward mutually beneficial commercial, environmental and regulatory outcomes.

Kind Regards,



Ben Sawley  
Chairman of the Board  
Southern Waste ResourceCo

cc: CEOs of the AHRWMA member Councils

CONFIDENTIAL  
RELEASED



Privileged and Confidential

Attachment 2



## Independent Review of the Southern Waste ResourceCo Offer dated 3 March 2016

Confidential and subject to Legal Privilege

Prepared for

Adelaide Hills Region Waste Management Authority

May 2016

**RELEASED**  
Confidential

Independent Review of the SWR offer dated 3 March 2016  
Confidential and subject to Legal Privilege  
May 2016

Page 1

**Return to Order of Business**

Privileged and Confidential  
Confidential and subject to Legal Privilege



## **Independent Review of the Southern Waste ResourceCo Offer dated 3 March 2016**

Prepared for  
**Adelaide Hills Region Waste Management Authority**

Prepared by

**TJH Management Services Pty Ltd**  
21 Rundle Street, Kent Town SA 5067  
T +61 8 8363 9100 F +61 8 8363 9725 www.tjhms.com.au  
ABN 77 085 990 101

**May 2016**

The information contained in this document produced by TJH Management Services Pty Ltd is solely for the use of the Client identified on the cover sheet for the purpose for which it has been prepared and TJH Management Services Pty Ltd undertakes no duty to or accepts any responsibility to any third party who may rely upon this document.

All rights reserved. No section or element of this document may be removed from this document, reproduced, electronically stored or transmitted in any form without the written permission of TJH Management Services Pty Ltd.

Privileged and Confidential  
Confidential and subject to Legal Privilege



Contents

1. Background..... 4

2. Project Brief..... 5

3. Conflict of Interest..... 5

4. Methodology ..... 5

5. Key Assumptions in the Financial Analysis ..... 7

6. Financial Analysis ..... 9

7. Non-Financial Analysis ..... 10

8. Negotiating Framework..... 12

RELEASED

Privileged and Confidential  
Confidential and subject to Legal Privilege



## 1. Background

The Adelaide Hills Region Waste Management Authority (Authority) ceased landfill operations at Hartley on 13 February 2013. The Authority in accordance with its strategic plan moved their landfill operations to the Brinkley landfill and entered into a three-year lease with the Rural City of Murray Bridge (RCMB).

Prior to vacating the Hartley landfill the Authority entered into two Deeds that effectively transferred the right to occupy the land from the landowner and transferred the EPA licence for the Hartley landfill to Southern Waste ResourceCo Pty Ltd (SWR) for the sum of \$900,000. The Authority also transferred future environmental liability for the Hartley landfill to SWR.

SWR took over the operation of the Hartley landfill and on 16 July 2013 SWR through its solicitors wrote to the Authority alleging misrepresentations relating to whether or not Member Councils would continue to deposit their waste at the Hartley landfill and the available airspace in Cell 6 as at 13 February 2013. These allegations are now the subject of litigation in the Supreme Court between SWR and the Authority due to be heard on 6 June 2016.

On 20 September 2013 SWR wrote to the Authority offering to accept all Member Council's waste at their Hartley landfill for \$34.70 per tonne. The rate was to be escalated by CPI annually over an initial seven-year term with the option for an extension of three years. The Board of the Authority assessed this offer against the Brinkley landfill operation and recommended to Member Councils that this offer should be rejected. It also sought a commitment from Member Councils to support the Brinkley landfill so that the Authority could effectively plan and commit capital to the ongoing operation of the landfill. It received formal recommendations of support from three Member Councils and administrative support from the remaining Member Council.

All Member Councils continued to deposit their waste at the Brinkley landfill and on 3 March 2016 SWR again wrote to the Authority offering to accept Member Council's waste at the Hartley landfill for \$35.90 per tonne. This offer was effectively the same as 20 September 2013 but with CPI increases applied. There are two key differences in this offer involving the court case and ongoing closure management of the Brinkley landfill. SWR have offered to withdraw their legal action if the offer is accepted. SWR have also offered to assist with the closure management of the Brinkley landfill and possibly employ some of the Authority redundant employees. This component of the offer is not quantified and would need to be negotiated.



Privileged and Confidential  
Confidential and subject to Legal Privilege



Attachment 2

## 2. Project Brief

TJH Management Services Pty Ltd (TJHMS) has been engaged by the Authority to undertake an independent review of the latest offer by SWR. TJHMS is required to assess the financial and non-financial elements of the SWR proposal from the Authority's perspective and has been provided with background information, access to the financial information of the Authority and a verbal summary of legal advice provided to the Authority by their lawyers, relating to the quantum of the claim.

Following a special meeting of the Board of the Authority on Thursday, 5 May 2016 TJHMS has also been requested to provide a possible negotiating framework for the Authority based on its assessment of the SWR offer compared with the ongoing operation of the Brinkley landfill.

## 3. Conflict of Interest

TJHMS has been made aware of correspondence from SWR alleging a conflict in providing advice to the Authority. For the avoidance of doubt TJHMS makes the following disclosures regarding any conflicts in providing this advice:

- Trevor Hockley is the sole director of TJHMS and provides management and administration services to the Highbury Landfill Authority. This is a Regional Subsidiary that manages a closed landfill at Highbury.
- TJHMS undertakes consultancy work primarily in the Local Government waste sector and the container deposit system (CDS) in South Australia, Northern Territory and potentially in New South Wales.
- Trevor Hockley is a director of several companies involved in CDS both here and interstate.

TJHMS is not aware of any conflict of interest that would compromise independent advice to the Authority

## 4. Methodology

The Authority undertakes the following activities:

1. The Brinkley landfill operation
2. The waste transfer operations across several Member Councils
3. The waste coordinator shared services across three Member Councils
4. The hook-lift truck operation
5. The construction and demolition waste crushing operation

Clause 1.5.17 of the Authority's charter requires that Member Councils are charged the actual cost of providing these services. An analysis of the financial accounts indicates that this requirement is generally applied. The landfill operation being the most complex and capital intensive attracts most of the overhead cost for the Authority and any additional costs that cannot be directly charged to the other activities.

TJHMS has been provided with the projected income and expenditure to the end of June 2016 based on the budget review and actual financial results to the end of March 2016. These costs have been

Privileged and Confidential  
Confidential and subject to Legal Privilege



analysed to determine the current cost of operating the Brinkley landfill. The cost to operate the landfill is projected to be \$1,709,782 with an estimated tonnage throughput of 39,350 tonnes for the year ending in June 2016. This expenditure does not include the EPA waste levy which is charged at cost for all tonnes received at the Landfill. The average cost to operate the landfill for the June 2016 year is \$43.45 per tonne excluding the levy. The revenue generated from non-Member Council waste and commercial and industrial waste is \$803,160 without the levy. This means that the minimum cost to Member Councils to comply with clause 1.5.17 of the Charter is \$34.67 per tonne. These calculations include an abnormal legal cost of \$165,000 for the year. The Member Council rate for this year is \$40.44 per tonne and hence the Authority is projecting a small profit around \$100,000.

The Authority has a long term financial plan (LTFP) and the key assumptions contained in the plan for the landfill operation are:

- Tonnage throughput is increased by the CPI percentage to reflect population growth year on year
- Landfill charges to all customers including Member Councils are increased by CPI compounded year-by-year
- Expenditure is increased by CPI compounded year by year
- There is a significant reduction in airspace costs when cells 8 and 9 are used around the 18/19 year. This reflects the better utilisation of the landfill liner when compared to the current cell.

While these assumptions are justified for future financial planning by the Authority TJHMS has adopted a much more conservative approach to estimate the future cost for Member Councils to comply with clause 1.5.17 in the Charter. The key difference in TJHMS modelling is the assumption that there will be no tonnage growth from the year ending June 2016. This provides a very conservative approach and minimises future commercial risk for Member Councils.

The offer from SWR is for all the Member Council's waste. TJHMS has reviewed the Charter and Member Councils are free to make their own decision on whether or not to accept the recommendation from the Authority and/or the offer from SWR. If Member Councils accept the offer, then the Brinkley landfill operation will not be viable and need to be closed.

From the Authority's perspective and without further negotiation with SWR there are three possible scenarios to consider in assessing the impact on Member Councils of the SWR offer namely:

1. Member Councils reject the SWR offer and the Brinkley operation continues and the Authority runs the legal case and has a judgement in its favour.
2. Member Councils reject the SWR offer and the Brinkley operation continues and the Authority runs the legal case and has a judgement against it.
3. Member Councils accept the SWR offer and the Brinkley operation is closed and the Authority continues to provide all other services to the Member Councils.

To assess these options the Board of the Authority needs to understand the impact on each Member Council of the three options. TJHMS has assessed each option against the base case of business as usual and the assumption that the legal case is determined in the Authority's favour (option 1).

Option 2 assumes that the Supreme Court awards damages and costs against the Authority of \$2.1 million and legal fees of \$400,000. These estimates are based on a verbal summary of legal advice provided to the Authority by their lawyers relating to the quantum of the claim and would occur in the

Privileged and Confidential  
Confidential and subject to Legal Privilege



financial year 2017. To be conservative TJHMS has considered the worst legal outcome from running the court case.

Option 3 would see the closure of the Brinkley landfill from the start of the new financial year resulting in all assets being written off and plant and equipment sold. Employees are retrenched and capping of the existing cell needs to be completed. Lease payments to RCMB would continue for two years and a post closure cost charged to Member Councils to fund the environmental monitoring obligations for cell 6 in the Brinkley landfill. Three Member Councils would have kerbside collection savings based on the shorter distance to travel to the Hartley landfill and RCMB would have additional transport costs to travel to Hartley.

Member Councils would also need to fund the administration costs of the Authority that had previously been absorbed by the landfill operation. Clause 4.3.2 of the Charter requires the Board to set these fees and charge them equally to Member Councils monthly in advance.

## 5. Key Assumptions in the Financial Analysis

### Option 1 (business as usual win legal case)

Option 1 in Appendix 1 attached to this report has been developed by using the methodology described above and inputting the following assumptions into the Authority's LTFP:

1. Waste received at the Brinkley landfill remains constant at the 2016 financial year tonnages
2. The financial assessment is made over a 10-year period commencing the financial year 2017 and ending the financial year 2026
3. CPI increases annually to revenue and expenses based on Access Economics March 2016 projections
4. The Member Council tonnage rate is determined in the 2017 financial year based on charging the actual cost of running the Brinkley landfill over the 10-year period. This rate is then escalated annually in line with CPI projections to compare directly to the SWR rate over 10 years
5. All costs in this report are GST exclusive.
6. All costs are exclusive of the EPA waste levy which is charged at cost to Member Councils and all other customers.

### Option 2 (business as usual lose legal case)

Option 2 in Appendix 1 attached to this report has been developed by using the methodology described above and inputting the following assumptions into the Authority's LTFP:

1. Waste received at the Brinkley landfill remains constant at the 2016 financial year tonnages
2. The financial assessment is made over a 10-year period commencing the financial year 2017 and ending the financial year 2026
3. CPI increases annually to revenue and expenses based on Access Economics March 2016 projections
4. The Member Council tonnage rate is determined in the 2017 financial year based on charging the actual cost of running the Brinkley landfill over the 10-year period. This rate is then escalated annually in line with CPI projections to compare directly to the SWR rate over 10 years

Privileged and Confidential  
Confidential and subject to Legal Privilege



5. Includes legal expenses and damages to the value of \$2.5 million in the 2017 financial year. A loan of 2.9 million is taken out in that year and progressively paid back as the cash flow allows over the 10-year term
6. All costs in this report are GST exclusive.
7. All costs are exclusive of the EPA waste levy which is charged at cost to Member Councils and all other customers.

### **Option 3**

Option 3 included in Appendix 1 has been developed using the Authority's LTFP with the same methodology and assumptions for Options 1 and 2 with the exception of legal losses described in point 5 above. The additional assumptions for option 3 are as follows:

1. The Brinkley landfill is closed and all assets connected with the landfill e.g. unused airspace are written off and the plant and equipment in the landfill is sold for 70% of the written down value (approximately \$444,000). For consistency this is modelled in the LTFP to occur in the 2016 financial year.
2. The current cell is capped in the 2017 financial year costing approximately \$400,000 and offset against the revenue generated by the equipment sales.
3. A redundancy payment of \$90,000 is included in the 2017 wages expense and absorbed in the costs for 2017
4. Lease payments of \$50,000 are included in the 2017 and 2018 financial years required under the lease with RCMB. As this cost is no longer recoverable from landfill revenue it is payable by Member Councils in their equity proportions.
5. A sum of \$25,000 is included designed to cover the ongoing monitoring costs for cell 6 at Brinkley from 2018. This cost is also payable by Member Councils in their equity proportions.
6. Administration costs that had previously been absorbed by the landfill operation have been revised to the minimum cost for the Authority to manage the other activities for Member Councils and comply with Local Government statutory obligations. This administration cost is estimated at \$269,280 in the 2017 financial year and under the charter is shared equally by Member Councils
7. The remaining activities of the Authority are assumed to be charged to each Member Council at full cost recovery in accordance with the Charter.
8. All costs are exclusive of the EPA waste levy which is charged at cost to Member Councils and all other customers.

Privileged and Confidential  
Confidential and subject to Legal Privilege



## 6. Financial Analysis

Appendix 1 models the escalated cash outflows for each Member Council's waste disposal costs from the LTFP for each option and then calculates the net present value of these cash outflows at a discount rate of 3%. The discount rate of 3% is used to mirror the current investment rate by the Local Government Finance Authority (LGFA) and provides Council with the amount it would need to invest at 3% in 2017 to generate the cash outflows to pay waste disposal fees for each option over the 10-year period.

The disposal rate within Appendix 1 in year 2017 is the Member Council rate required to meet the full cost of disposal for options 1 and 2 over the 10 years and Option 3 is the rate offered by SWR and escalated as per their offer. Option 3 also includes the additional costs that Member Councils are required to pay as a result of the Brinkley operation closing and the impact of transport costs or savings in using the Hartley landfill.

The transport cost savings for MBDC and RCMB are based on the tendered rates in the recently awarded collection contract and reflect the reduced travelling time for the contractor. TJHMS has estimated the cost savings for Alexandrina Council and Adelaide Hills Council based on knowledge gained from providing benchmarking reports for the Fleurieu Region Waste Authority and East Waste respectively. The cost or saving for each Council has been calculated by assuming an additional 30 minutes travel time for each load delivered to the landfill at an average of 8.5 tonnes of domestic waste per truck. An hourly rate has been estimated based on the additional cost to travel the extra distance, namely labour at time and a half plus on-costs (\$56/hour), fuel (\$16/hour), repairs and maintenance (\$18/hour) for a total of \$90/engine hour for a truck operating 2,500 engine hours per year.

Table 1 summarises the Net Present Value (NPV) of disposal costs over the 10 year period for each option and is taken from the calculations within Appendix 1.

**Table 1: Net Present Value of Disposal Costs over the next 10 Years**

	<b>Option 1 Business as usual Win Legal Case</b>	<b>Option 2 Business as usual Lose Legal Case</b>	<b>Option 3* Accept SWR offer as presented</b>
<b>AHC</b>	\$ 3,009,136	\$ 3,667,385	\$ 3,744,784
<b>Alex</b>	\$ 937,520	\$ 1,142,602	\$ 1,514,024
<b>MBDC</b>	\$ 2,298,436	\$ 2,801,218	\$ 3,137,001
<b>RCMB</b>	\$ 1,723,827	\$ 2,100,914	\$ 2,849,701

\*Note - Option 3 includes costs associated with landfill closure, transport adjustments and Authority admin costs

Table 2 summarises the outcomes of the financial assessment by comparing the rate per tonne in 2017 and the average rate per tonne over 10 years.

Privileged and Confidential  
Confidential and subject to Legal Privilege



**Table 2:** Year 1 rate (2017) and the Average Rate Per Tonne Over the 10 Year Period

Scenarios	Member Council rate in 2017	Average rate over 10 years
<b>Option 1</b> <b>Business as usual – win legal case</b>	\$32.00/tonne	\$35.66/tonne
<b>Option 2</b> <b>Business as usual – lose legal case</b>	\$39/tonne	\$43.46/tonne
<b>Option 3</b> <b>Accept SWR offer as presented including associated additional costs</b>		
AHC	\$40.53/tonne	\$44.31/tonne
Alexandrina	\$52.38/tonne	\$57.52/tonne
MBDC	\$44.44/tonne	\$48.67/tonne
RCMB	\$53.65/tonne	\$58.88/tonne

Both tables 1 and 2 clearly indicate that option 1 is the least cost option for all Member Councils assuming the assumptions and projections for option 1 in the LTFP are met. Option 2 is still a cheaper option for all Member Councils when compared to option 3. Option 3 is the least attractive option for Member Councils from a financial perspective.

As stated previously the rates calculated within Appendix 1 and the tables above are based on no population growth over the ten-year period to be conservative. TJHMS has checked what the rate would be if the current Authority LTFP is used and for option 1 in 2017 the rate to Member Councils would be \$24.50/tonne compared to \$32/tonne with no growth in annual tonnages.

## 7. Non-Financial Analysis

The Authority was originally set up to run a landfill. The 10-year strategic plan included a strategy for the Authority to be in control of its own destiny regarding landfill options. In the event that the landowners of the Hartley landfill would not renew the agreement with the Authority then the option to move to the Brinkley landfill was always maintained.

The Authority has run the Brinkley landfill for the last 3 years and has met its budget for this financial year despite competition from the Hartley landfill. The continued operation of the Brinkley landfill requires long-term commitment from all Member Councils to minimise the commercial risk and maximise the opportunities for this business. However, the continued operation of the Brinkley landfill and the operations of the Regional Subsidiary require commercial acumen from the management and the highest standards of governance and oversight from Member Councils. The Authority must comply with all the statutory requirements of the Local Government Act while undertaking commercial activities in the solid waste market. It is not difficult to see how poor management or lack of good governance can easily expose Member Councils to the risk of financial loss or non-compliance with the legislation.



Privileged and Confidential  
Confidential and subject to Legal Privilege



The Authority would appear to have implemented its strategic plan successfully and provided disposal options and other coordinated activities that are competitive and add value for Member Councils. These achievements have been documented for the Board and Member Councils by the management of the Authority in previous reports and are not repeated in this report.

A SWOT analyses is provided for the options 1 and 2 and then option 3

	Advantages and Opportunities	Barriers and Threats
Option 1 and 2	<ul style="list-style-type: none"> <li>• <b>Lowest cost option as customer's tonnes reduce costs for Member Councils</b></li> <li>• <b>Control over waste stream to implement resource recovery options or test the market</b></li> <li>• <b>Hook-lift and crusher operations fully utilized</b></li> <li>• <b>Option to attract additional waste from Rural Councils</b></li> <li>• <b>Use of Bio-solids from waste water schemes to rehabilitate Landfill</b></li> <li>• <b>Economies of scale and management expertise to implement additional services for Member Councils</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>The loss of waste from a Member Council</b></li> <li>• <b>Competition from the Hartley Landfill</b></li> <li>• <b>Environmental and compliance risk</b></li> <li>• <b>Local Government held to a higher standard than Private Sector</b></li> <li>• <b>The additional transport cost for three Member Councils</b></li> <li>• <b>The loss of Management expertise.</b></li> <li>• <b>The political risk of running a commercial business as Local Government</b></li> <li>• <b>The Legal case is lost and damages awarded (option 2)</b></li> </ul>
Option 3	<ul style="list-style-type: none"> <li>• <b>No commercial risk</b></li> <li>• <b>The Legal case is withdrawn</b></li> <li>• <b>Guaranteed disposal price</b></li> <li>• <b>Access to other services offered by SWR</b></li> <li>• <b>Hartley more central for 3 Member Councils</b></li> <li>• <b>Competitive price if considered in isolation from the AHRWA</b></li> <li>• <b>Possible other opportunities for Member Councils from the operations of SWR and ResourceCo</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Member Councils become price takers at the mercy of the Market</b></li> <li>• <b>The airspace available at Brinkley is lost.</b></li> <li>• <b>Ongoing post closure costs funded directly by Member Councils</b></li> <li>• <b>Administration costs for the Authority funded equally by Member Councils</b></li> <li>• <b>In-house expertise is lost.</b></li> <li>• <b>The opportunity to value add for Member Councils is reduced</b></li> </ul>

Privileged and Confidential  
Confidential and subject to Legal Privilege



## 8. Negotiating Framework

Given the impact on Member Councils of closing the Brinkley landfill the Authority needs to understand how the offer from SWR to assist with the post closure management of this landfill could reduce costs for its Member Councils. A without prejudice meeting with SWR prior to formulating a recommendation to Member Councils provides the opportunity to better understand 3 key issues facing the Authority and Member Councils:

1. The continued threat of litigation while Member Councils assess the merits of a long-term offer for waste disposal that will impact on the Authority's operations. This assessment is conducted in the knowledge that SWR will discontinue its legal action if their offer is accepted.
2. The ongoing cost for Member Councils to fund the lease and ongoing maintenance and management of Cell 6 operated by the Authority at Brinkley.
3. The continued operation of the Authority without the Brinkley landfill requires Member Councils to fund the administration and management costs that are required to deliver the other services of the Authority and comply with all statutory requirements.

There are significant costs for the Authority to run the legal case and there remains the risk of significant financial loss and political fallout from this litigation. A negotiating position for the Authority could be to explore the possibility of SWR discontinuing its legal action and revising its offer based on the costs to Member Councils of ceasing landfill operations.

Prior to any negotiation with SWR legal advice should be sought by the Authority to ensure that its legal case is not in any way compromised.



Privileged and Confidential

Attachment 2

## Appendix 1

Equity		Tonnes		Lease Payment		Post Closure		Administration					
AHC	36%	9950		\$	50,000								
Alex	11%	3100		\$	25,000								
MBDC	30%	7600											
RCMB	22%	5700											
		26350											
CPI - Access Economics Mar 2016		2.7%	2.4%	2.3%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%		
Financial Year End		30-June-2017	30-June-2018	30-June-2019	30-June-2020	30-June-2021	30-June-2022	30-June-2023	30-June-2024	30-June-2025	30-June-2026	NPV	Ave Rate over 10 Years
Option 1	Rate per tonne	32.00	32.77	33.52	34.33	35.15	35.99	36.82	37.55	38.38	39.58	3,009,136	35.66
	AHC Disposal Fee	318,400	326,042	333,541	341,546	349,743	358,136	366,722	375,530	384,580	393,775		
	Alex Disposal Fee	99,200	101,581	103,917	106,411	108,965	111,580	114,258	117,000	119,808	122,684		
	MBDC Disposal Fee	243,200	249,037	254,765	260,879	267,140	273,551	279,917	286,839	293,724	300,773		
	RCMB Disposal Fee	182,400	186,778	191,073	195,659	200,355	205,170	210,088	215,115	220,293	225,580		
Option 2	Rate per tonne	39.00	39.94	40.85	41.84	42.84	43.87	44.93	46.00	47.10	48.23	3,667,385	43.46
	AHC Disposal Fee	388,050	397,363	406,503	416,259	426,249	436,484	446,955	457,681	468,666	479,914		
	Alex Disposal Fee	120,900	123,802	126,649	129,689	132,801	135,988	139,252	142,594	146,016	149,521		
	MBDC Disposal Fee	296,400	303,514	310,494	317,946	325,577	333,391	341,392	349,586	357,976	366,567		
	RCMB Disposal Fee	222,300	227,635	232,871	238,460	244,388	250,672	256,044	262,189	268,482	274,925		
Option 3	SWR Rate per tonne	35.90	36.76	37.61	38.46	39.43	40.38	41.35	42.34	43.36	44.40	3,375,875	40.00
	AHC Disposal Fee	357,205	365,778	374,191	382,471	390,771	400,368	410,784	411,427	421,301	431,413		
	Administration	67,320	68,936	70,521	72,114	73,747	75,422	77,539	79,400	81,305	83,257		
	Lease	18,226	18,226										
	Post Closure	9,113	9,113	9,113	9,113	9,113	9,113	9,113	9,113	9,113	9,113		
	Transport	(39,483)	(40,431)	(41,360)	(42,353)	(43,370)	(44,410)	(45,476)	(46,568)	(47,685)	(48,830)		
	Total Cost	403,768	421,622	422,464	422,145	422,055	442,208	452,603	463,746	474,145	485,306		
	Adjusted Rate per tonne	40.53	42.37	43.65	44.43	45.44	46.44	47.49	48.56	49.65	50.77		
	Alex Disposal Fee	111,290	113,961	116,582	119,380	122,245	125,179	128,183	131,260	134,410	137,636		
	Administration	67,320	68,936	70,521	72,114	73,747	75,422	77,539	79,400	81,305	83,257		
	Lease	5,652	5,652										
	Post Closure	2,826	2,826	2,826	2,826	2,826	2,826	2,826	2,826	2,826	2,826		
	Transport	(21,882)	(22,440)	(23,007)	(23,446)	(24,036)	(24,613)	(25,204)	(25,808)	(26,428)	(27,062)		
	Total Cost	162,380	168,966	175,607	179,947	184,982	189,114	193,345	197,677	202,113	206,656		
	Adjusted Rate per tonne	52.38	54.51	56.87	58.14	59.45	60.78	62.14	63.54	64.97	66.44		
MBDC	Disposal Fee	272,840	279,528	286,214	292,674	299,698	306,891	314,256	321,798	329,521	337,430	2,578,558	57.52
	Administration	67,320	68,936	70,521	72,114	73,747	75,422	77,539	79,400	81,305	83,257		
	Lease	15,000	15,000										
	Post Closure	7,544	7,544	7,544	7,544	7,544	7,544	7,544	7,544	7,544	7,544		
	Transport	(17,508)	(18,025)	(18,542)	(19,062)	(19,584)	(20,116)	(20,640)	(21,166)	(21,693)	(22,221)		
	Total Cost	337,747	345,025	352,547	359,659	366,966	374,472	382,182	389,101	397,235	406,587		
	Adjusted Rate per tonne	44.44	46.45	48.47	50.43	52.45	54.47	56.53	58.63	60.77	62.94		
RCMB	Disposal Fee	204,630	209,340	214,361	219,505	224,773	230,168	235,692	241,349	247,141	253,072	1,933,918	58.88
	Administration	67,320	68,936	70,521	72,114	73,747	75,422	77,539	79,400	81,305	83,257		
	Lease	11,035	11,035										
	Post Closure	5,518	5,518	5,518	5,518	5,518	5,518	5,518	5,518	5,518	5,518		
	Transport	22,800	23,347	23,884	24,457	25,044	25,645	26,261	26,891	27,537	28,197		
	Total Cost	305,785	318,377	324,284	331,694	339,282	347,053	355,009	363,157	371,501	380,044		
	Adjusted Rate per tonne	53.65	55.86	58.14	60.44	62.77	65.13	67.53	69.96	72.42	74.92		

Privileged and Confidential

Attachment 3

ADELAIDE HILLS REGION  
WASTE MANAGEMENT AUTHORITY  
PO BOX 519  
MURRAY BRIDGE SA 5253  
www.ahrwma.com

**AHRWMA****"Sustainable Waste Management Through Shared Services"**

WITHOUT PREJUDICE

18 May 2016

Ben Sawley  
Chairman of the Board  
Southern Waste ResourceCo  
PO Box 542  
Enfield Plaza SA 5085

Dear Ben,

RE: Waste Disposal Offer dated 3 March 2016

We have identified that there will significant costs and reduced revenue associated with ceasing landfill operations at Brinkley and are seeking for you to both clarify and quantify some key elements within your offer.

**Brinkley Caretaking**

Your offer refers to SWR being willing to undertake caretaking at the Brinkley site, at its cost, should the Authority decide to mothball the site. Could you clarify what this means with regard to the following:

- Capping of the current Cell 6, (Cell 1 to 5 are capped)
- Rehabilitation planting works,
- Groundwater, surface water and landfill gas monitoring on a six monthly basis into the future including EPA reporting requirements,
- Maintenance of cap, vegetation and fencing,
- Maintenance of leachate evaporation ponds including pumping from cell sumps if and when required.

**Adequate Air Space**

We understand that there is currently adequate airspace available at the Hartley Landfill. To give some level of comfort could you provide some forward projections relating to future tonnages?

Future projected annual tonnages are important in terms of understanding when space within the current approved landfill footprint is exhausted and if any risks exist relating to making a new planning application to expand the landfill onto new land.

**Disposal Rate**

Our preference would be for your rate per tonne offer to be adjusted to take into account the value of the caretaking aspects that you are willing to allow for. It should be assumed that the Authority would continue to manage these aspects.

Yours sincerely,

Ian Bailey  
Chairperson  
Adelaide Hills Region Waste Management Authority



Privileged and Confidential

**Attachment 4**  
Southern Waste ResourceCo  
Pty Ltd  
ABN: 46 151 241 093Lot 2605 Main South Road, Maslin  
Beach SA  
PO Box 542 Enfield Plaza SA 5085  
Tel (08) 8386 2212 Fax (08) 8327 4306  
www.resourceco.com.au

WITHOUT PREJUDICE

25 May 2016

Councillor Ian Bailey  
Chairman:  
Adelaide Hills Region Waste Management Authority  
PO Box 519  
MURRAY BRIDGE SA 5253**RE: RESPONSE TO LETTER**

Dear Councillor Bailey,

Please find below Southern Waste ResourceCo's (SWR) response to the questions raised in your letter of 18 May 2016.

SWR proposes that its caretaking of a mothballed Brinkley site would involve the aftercare component for the site, specifically bullet points 3, 4 and 5 noted in your letter. It would not include the capping nor rehabilitation planting works – these are the responsibility of the current operator. It should be noted that SWR's caretaking offer is based upon the assumption that the capping and rehabilitation works are completed to the EPA's required standard and are approved by the EPA.

The remaining airspace at Hartley is approximately 875,000 cubic metres. With the projected volumes and airspace utilization this represents approximately 15-20 years of future filling for the AHRWMA's waste requirements. Therefore SWR is confident we can accommodate well over 50,000 tonnes per year for the 10 years of the proposal and beyond. In addition to this large amount of capacity in the current approval, future applications can if necessary be submitted which would further extend the airspace availability of this site. This site truly represents a very long term potential waste disposal solution for the AHRWMA Council's requirements (even beyond the 10 years we have presently proposed to you).

In terms of the cost for SWR to undertake the caretaking of a mothballed Brinkley site, it is negligible to SWR as SWR has all the necessary technical and equipment resource existing in its current business to undertake the incremental Brinkley caretaking requirements. Therefore the offered rate will not change should SWR undertake the Brinkley caretaking as outlined above. The AHRWMA will therefore not need to undertake the caretaking of the Brinkley site as SWR can absorb this incremental work within its existing business. This represents another saving to the AHRWMA Council's rate payers.

Please also be aware that as per our letter of 5 May 2016 Deloitte is currently progressing with the independent comparison of the SWR offer versus the current costs AHRWMA is experiencing in the waste service provided to the member Councils. The results of this comparison are expected

Privileged and Confidential

Attachment 4

to be completed and shared with the AHRWMA and its member Councils by the end of next week.  
In line with this timing SWR will extend the closing date of its offer to 23 June 2016.

Kind Regards,



Ben Sawley  
**Chairman of the Board**  
**Southern Waste ResourceCo**

cc: AHRWMA member Council CEOs

CONFIDENTIAL  
RELEASED



WALLMANS  
LAWYERS

Our Ref: SLL:szp:113663

Your Ref:

13 May 2015

Mr James Levinson  
Botten Levinson  
140 South Terrace  
ADELAIDE SA 5000

**By Email:** jal@bllawyers.com.au

Privileged and Confidential

Attachment 5

Expert advice,  
human approach.

L5, 400 King William St  
Adelaide SA 5000

GPO Box 1018  
Adelaide SA 5001

Tel (08) 8235 3000  
Fax (08) 8232 0926

general@wallmans.com.au  
www.wallmans.com.au

ABN 98 802 494 422

Without prejudice save as to costs

Dear James

**SOUTHERN WASTE RESOURCECO V ADELAIDE MILLS REGION WASTE  
MANAGEMENT AUTHORITY  
SUPREME COURT OF SOUTH AUSTRALIA ACTION NO 236 OF 2014**

As you know, this matter is listed for trial commencing on 6 June 2016.

This letter contains our clients offer to settle the proceedings.

**SWR's claims: liability**

1. SWR's primary case appears to be that the Authority made some sort of implied representations to the effect pleaded in paragraph 29 of the statement of claim.
  - 1.1 Paragraphs 29.1 to 29.6, in substance, appear to amount to an allegation that the Authority made an implied representation that, following handover of the Hartley site to SWR, it would not compete with SWR for the business of member Councils.
  - 1.2 Paragraph 29.7 refers to representations concerning the capacity of cell 6.
2. Those representations are said to arise by implication from the matters referred to in paragraph 30. However, those matters simply do not provide any proper foundation for the alleged representations. For example, paragraphs, 23.3, 23.4 and 25.3 confirm that SWR was clearly informed that:
  - 2.1 the Authority did not control the waste and that all member Councils were free to do what they like with the waste;
  - 2.2 the Authority was setting up a new cell at Brinkley; and
  - 2.3 the Authority could not make member Councils take waste to SWR.
3. It is plain that SWR fully understood at the time that member Councils were free to make their own decisions. This is reflected in the pleading at paragraph 27.3 of the

1443708\_1::113663::SLL::SZP

## Privileged and Confidential

Attachment 5  
Page 2 of 4

Statement of Claim that SWR entered into the settlement on the basis that it could "[get] in front of all the councils to introduce themselves" (which of course it has). It is also reflected in internal forecasts for the operation of the Hartley site which include scenarios in which SWR would receive no waste from the member Councils.

4. The reality is that SWR was prepared to enter into the settlement in February 2013 without any guarantee of business from the member Councils or any agreement by the Authority that it would not use Brinkley as a competing site. SWR never sought any covenant that the Authority would not compete for the Councils' business.
5. In short, the Authority's conduct during the negotiation of the settlement was in no way misleading or deceptive. Nor was SWR in any way misled with respect to the position of the member Councils, or as to the ability of the Authority to continue to take their waste to the Authority's facilities if that is what the member Councils chose to do.
6. The alleged representations in relation to cell 6 can also be addressed fairly shortly. The statements as to the capacity of cell 6 in the email of 22 January 2013 (referred to in paragraph 28 of the Statement of Claim) were plainly expressions of opinion. They were expressly stated in the email to be estimates.
7. An expression of opinion is not misleading simply because the opinion is inaccurate: *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* (1984) 2 FCR 82 at 88 and *Forrest v ASIC* (2012) 247 CLR 486 at [102] and [103].
8. It may well be that the estimate that cell 6 would have 184,000 m<sup>3</sup> of additional space upon construction of cell 7 was a representation as to a future matter. However, the Authority clearly had reasonable grounds for the making of the representation. This is reflected in the fact that the independent expert retained by the Authority, Mr Richardson, has expressed his opinion that the capacity was in fact more than the estimated capacity referred to in the 22 January 2013 email.
9. For these reasons, and others, we fully expect SWR's claims to fail.

**Quantum**

10. SWR has, in its more recent formulation of its loss dated 22 April 2016, reduced its primary claim from \$3.6 million (as per your letter dated 15 December 2015) to \$1.64 million.
11. In our view, the question of loss will be academic because your client will lose on liability. However, even if it were to succeed, we are confident that it will not be able to prove any loss.
12. The assessment of loss set out in Mr Morris' report obviously depends upon the assumptions he has been given. Those assumptions are unrealistic. For example, it appears he has been asked to assume that there will be only 2% growth in the amount of waste deposited at Hartley over a period of 20 years, and that it will not receive any council waste in that period.
13. Those assumptions do not reflect SWR's own appraisal of the opportunities available at Hartley or when they would be realised. As pleaded (paragraphs 20.1 and 25.2 of the Statement of Claim), SWR regarded the site as a "long-term plan", and that "it would take SWR a few years to build up the business".
14. All in all, SWR considered (as per its "Hartley Information Paper") that the site was a "great asset" with "earnings potential of 500k per annum in the medium term". This

1443708\_1::113663::SLL::SZP





Privileged and Confidential

Attachment 5  
Page 3 of 4

appears to have been based in part on the assumption that "growth in volume is available from customers such as SITA 10-15k tonnes, Solo up to 70k tonnes as well as Mitcham Council 6k tonnes", against the backdrop of the Authority receiving approximately 40,000 tonnes of waste from member Councils and commercial customers (i.e. a total less than half the contemplated growth in volume from SITA and Solo alone).

15. Despite SWR's very positive views concerning the potential of the site, Mr Morris has simply not accounted for, or been asked to account for, the possibility that SWR will grow the business at Hartley in any meaningful way.
16. The "Further Alternative Claim" relates only to the value of the alleged "lost space" in cell 6. The amount of loss referred to in your letter dated 22 April 2016 is \$952,000.
17. Even leaving aside the question of whether our client engaged in misleading or deceptive conduct in relation to cell 6, (and, for the reasons already stated, it did not), this claim is misconceived. It is SWR's case that it would not have entered into the settlement at all if the Authority had not made the allegedly misleading representations. The claim for loss in relation to cell 6 has been formulated as a loss of bargain or loss of profits claim. It is inconsistent with the "no transaction" claim. It is calculated as if the alleged representation had the status of a warranty in a contract which SWRA says it would never have entered into.
18. Further, and in any event, the estimates in the 22 January 2013 letter were not warranties. The Authority gave no warranty as to the capacity of cell 6, and even, with SWR's agreement, removed a warranty relating to capacity from the draft settlement deed. In fact, the parties expressly contemplated in the executed version of the settlement deed the possibility that the "available cell space at the site is filled prior to settlement" (clause 4.4).

#### Our client's offer

19. Our client is willing and able to proceed to trial on 6 June. Its preparations, including with respect to lay and expert witnesses, are substantially progressed. Counsel are briefed.
20. If your client is not prepared to settle this matter, it will have, at best, only a very remote prospect of success. The overwhelming likelihood is that it will have to bear its own costs and pay our client's costs as well.
21. To date, our client has incurred costs (including disbursements) in the order of \$450,000. Those costs will of course increase substantially over the next three weeks as the parties prepare for trial, and more so over the course of the trial itself.
22. Our client recognises that not all of those costs will be recoverable. It also recognises that final preparation for trial will consume significant management time. It is therefore prepared to settle the matter on the following terms:
  - 22.1. Your client agrees to an order that its claim in the proceedings is dismissed.
  - 22.2. There be no order as to costs.
  - 22.3. Except for any claim to enforce the terms of the Deed and Further Deed dated 13 February 2013, each party agrees to release each other from any claim, and not to bring any further claim, relating to the subject matter of the proceedings.

Privileged and Confidential

Attachment 5  
Page 4 of 4

- 
23. This offer is made with a view to avoidance of further costs. As the Authority's (and no doubt SWR's) costs will increase substantially and quickly as a result of further preparation for trial, there would be little utility in leaving this offer open for an extended period. Accordingly, this offer will remain open until 5pm on Wednesday 18 May 2016, following which it will lapse.
24. This offer is made in accordance with the principles in *Calderbank v Calderbank* and the Authority may rely upon this letter on the question of costs.

Yours faithfully  
WALLMANS LAWYERS



SCOTT LUMSDEN  
Partner  
Direct Line: 08 8235 3038  
Email: [scott.lumsden@wallmans.com.au](mailto:scott.lumsden@wallmans.com.au)

CONFIDENTIAL  
RELEASED



**17.2**                      **REPORT TITLE:**                      **ADELAIDE HILLS REGION WASTE MANAGEMENT  
AUTHORITY – OFFER FROM RESOURCE CO**  
**DATE OF MEETING:**                      **6 JUNE 2016**  
**FILE NUMBER:**                      **DOC/16/50288**

### **CONFLICT OF INTEREST**

After further consideration of potential Conflict of Interest Councillors Morrison and Campbell determined that they do not have a conflict as Council appointments to a subsidiary is a listed exclusion.

Moved Councillor Keen that

#### **Section 90 (3) (i) Order**

1. Pursuant to Section 90(3)(h) and (i)  
Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except the CEO, General Manager Corporate Services, General Manager Infrastructure and Projects, General Manager Council Services, General Manager Planning and Development, Risk and Governance Officer and Minute Secretary, be excluded from attendance at the meeting for Agenda Item 17.2 Adelaide Hills Region Waste Management Authority.

The Council is satisfied that pursuant to Section 90(3)(h) and (i) of the Act, the information to be received, discussed or considered in relation to this Agenda item is information relating to:

- Legal advice;
- actual litigation, or
- litigation that the Council or Council Committee believes on reasonable grounds will take place

involving the Council or an employee of the Council in relation to legal advice and information related to litigation ought not be made available to the public as it could detrimentally affect the Council's position if the court case is commenced.

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 this information may compromise the Council's position if the court case proceeds.

Seconded Councillor Seager

CARRIED  
OM20160606.13

Moved Councillor Morrison

2. That Council notes the following recommendations from the Adelaide Hills Region Waste Management Authority:

On the 26 May 16 the Adelaide Hills Region Waste Management Authority resolved that:

- (i) The Board consider the financial and non-financial analysis of the Authority continuing with its current adopted Business and Long Term Financial Plans compared to accepting the SWR Offer which includes SWR discontinuing their claim.
- (ii)(a) The Board advise its Member Councils that after conducting an analysis of the financial and non-financial aspects of the SWR offer on its Member Councils, it recommends that the offer be rejected. This assessment is on the basis that Member Councils will continue to bring their waste tonnes to the Brinkley Landfill.
- (b) In rejecting the SWR Offer it is noted that the claim made by SWR (which the Authority denies) will likely continue to trial.
- (c) The Authority commits to undertaking a due diligence process prior to each future landfill cell investment decision. The due diligence process will include an assessment of the Authority's landfill costs and benefits against:
  - landfill disposal rates achievable in the market and,
  - alternative to landfill technologies as they emerge and are proven.
- (d) The Executive Officer approach the Authority's Lawyers for advice with regards to the Authority putting forward a counter offer to SWR for consideration and that this be reported back to the Board for further consideration.
- (e) That the Executive Officer prepare a standard report in this regard for consideration by the member Councils.

- (iii) The Chair of the Authority sends an interim response to SWR advising that the Authority is considering the SWR offer and will get back to them with a formal response before the SWR deadline of 23 June 2016.

Seconded Councillor Keen

CARRIED  
*OM20160606.14*

Moved Councillor Keen

**Section 91(7) Order**

3. Pursuant to Section 91(7)

That having considered Agenda Item 17.2 Adelaide Hills Region Waste Management Authority, in confidence under 90(2) and 3(h) and (i) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report, attachments 1, 3 - 5 and minutes be retained in confidence until the end the conclusion of the legal process and any appeal or a negotiated settlement whichever is the sooner; and attachment 2 be retained until 30 June 2021, or such lesser period as may be determined by the Chief Executive Officer and that this order be reviewed every 12 months.

Seconded Councillor Seager

CARRIED  
*OM20160606.15*

MEETING DECLARED CLOSED AT 10.08 PM

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE