



SUMMARY OF CONTRACTS

Eastern Creek UR-3R Facility

September 2003

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1. INTRODUCTION

This report summarises the main contracts relating to the Eastern Creek UR-3R project (**Project**).

It has been prepared by Waste Recycling and Processing Corporation (**Waste Service NSW**) in accordance with the public disclosure provisions of the NSW Government's *Working with Government Guidelines for Privately Financed Projects* dated November 2001, and is submitted to the Auditor-General for audit prior to tabling in Parliament.

1.1 The Project

The Eastern Creek "Urban Resource–Reduction, Recovery and Recycling", or "UR-3R", facility (**Facility**) will be the first of a new generation of waste processing plants capable of diverting 80 per cent of waste processed by the Facility from landfill and cutting greenhouse emissions. The Facility will be constructed on land owned by Waste Service NSW at Eastern Creek, New South Wales (**Site**).

The Facility is being built, owned and operated by Global Renewables (Eastern Creek) Pty Limited (**GRL**), a company backed by a consortium of Global Renewables Limited and Hastings Funds Management. With an estimated capital cost of \$70 million, the project is expected to be one of the largest alternative waste technology plants in the southern hemisphere.

Construction of the Facility is planned to begin in 2003, with commissioning of the Facility to occur in the second half of 2004. The Facility has a project life of 25 years, after which Waste Service NSW will have an option to purchase the Facility. It is expected that the Facility will process between 175,000 tonnes per annum (t/a) and 260,000 t/a of waste.

1.2 Why the UR-3R Facility is being built

In line with the NSW Government's policy of waste minimisation and resource recovery, Waste Service NSW is repositioning its Sydney core business from predominantly landfill-based waste disposal to technology-based resource recovery.

Features of the UR-3R Facility include:

- capacity to process the equivalent of up to 17,500 garbage trucks of household waste per year, diverting up to 11 per cent of Sydney's total putrescible waste (waste that readily decomposes, such as food scraps) from landfill;

- mechanical and manual sorting of the recyclable materials (in addition to those recovered in kerbside recycling) that go into landfill such as glass and plastic, recovering for recycling up to 17,000 tonnes of plastic, glass, paper and metals each year;
- biological treatment of organic material that would otherwise go into landfill to produce both compost and biogas for the production of electricity, generating up to 17,000 megawatt hours of electricity to be used to power the Facility;
- diversion of up to 80 per cent of waste from landfill; and
- compliance with the broad criteria established by the *Alternative Waste Management Technologies and Practices* report commissioned by the NSW Government.

1.3 Selection of private sector consortium

In November 2000, Waste Service NSW advertised a worldwide Expression of Interest (**EOI**), attracting 48 responses from both domestic and overseas technology providers. After completing a detailed technical assessment, Waste Service NSW short-listed seven proponents and invited them to respond to a request for proposals (**RFP**) by 15 February 2002.

In July 2002, following a rigorous assessment by Waste Service NSW of the commercial viability of each proposal, the Budget Committee of Cabinet approved the selection of, and commencement of detailed negotiations with, two proponents - Novera Energy Ltd and GRL.

On 15 October 2002, the New South Wales Minister for the Environment, The Honourable Bob Debus MP, announced the approval of a public / private partnership between Waste Service NSW and GRL to construct the Facility at the Site.

The evaluation criteria and weightings used in the EOI and RFP stages of selection are disclosed in Appendix A to this report. As the selection process was a two stage process, different criteria were given different weight in the EOI and RFP stages. In the EOI stage, waste minimisation, resource recovery and environmental outcomes were given significant weight. All 7 short-listed proponents had satisfactory scores in these areas. Therefore these areas were given less weight in the RFP stage, which focussed on assurance of project delivery and economic viability, to enable greater differentiation of the bids.

The selection and negotiation processes were overseen by a probity auditor from Deloitte Touche Tohmatsu. Waste Service NSW was assisted in its negotiations with GRL by legal advisers Gilbert + Tobin and financial advisors Deloitte Touche Tohmatsu.

1.4 Environmental impact assessment and planning approval

A full Environmental Impact Statement was completed in respect of the Project. Final development consent for the Project was granted by the Minister for Planning on 25 November 2002.

2. OVERVIEW OF THE PROJECT'S CONTRACTS

2.1 Participants in the project

The public sector parties to the UR-3R contracts are:

- **Waste Service NSW:** a State Owned Corporation, established under the *Waste Recycling and Processing Corporation Act 2001*. Its powers in relation to the UR-3R project arise under the *State Owned Corporations Act 1989*, which empowers Waste Service to enter into contracts in connection with the performance of its functions (which include researching, developing and implementing alternative technologies for managing waste); and
- **The Treasurer of the State of NSW (Treasury):** as guarantor of certain of Waste Service NSW's obligations.

The private sector parties to the contracts to which Waste Service NSW is also a party are:

- **Global Renewables (Eastern Creek) Pty Limited (GRL):** as the project vehicle. GRL is a subsidiary of GRL Holdings Limited. GRL Holdings Limited is owned by each of GRD NL (a public company listed on the Australian Stock Exchange) and the Utilities Trust of Australia (a trust managed by Hastings Funds Management Limited);
- **GRL Investments Pty Ltd (GRL Investments):** as guarantor of certain of GRL's obligations. GRL Investments is also a subsidiary of GRL Holdings Limited; and
- **Commonwealth Bank of Australia (Finance Party):** as provider and arranger of debt finance to GRL for the Project.

2.2 Contractual structure

- **Waste Processing Deed:** The main project contract is the Waste Processing Deed (WPD) between Waste Service NSW and GRL dated 11 March 2003. Under the WPD, subject

to certain conditions precedent discussed in section 2.3 below, GRL must build the Facility and, in return for a fee paid by Waste Service NSW, process a specified quantity of waste delivered to the Facility by Waste Service NSW for the following 25 years.

- **Lease:** Waste Service NSW owns the Site on which the Facility is to be constructed and on 20 August 2003 granted a lease of the Site to GRL for the term of the WPD.
- **WSN Charge:** Under the WSN Charge dated 25 July 2003, GRL grants to Waste Service NSW a fixed and floating charge over all of GRL's assets and undertaking, to secure certain amounts owed to Waste Service NSW by GRL, which are specified in section 4.1 below.
- **Finance Tripartite Deed:** The Finance Tripartite Deed dated 25 July 2003 records Waste Service NSW's consent to the Finance Party's securities, sets out the relative priorities of the Finance Party's securities and the WSN Charge and regulates some of the rights and obligations of Waste Service NSW and GRL under the other project documents, including Waste Service NSW's right to terminate the WPD.
- **GRLI Side Deed:** Under this deed dated 11 March 2003, GRL Investments gives certain undertakings, including that it and its subsidiaries will comply with the protection of goodwill provisions in the WPD.
- **IP Agreements:** GRL will operate the Facility using licensed technology, know-how and contracted technical services. If Waste Service NSW purchases the Facility pursuant to the WPD, these agreements each dated 25 July 2003 with GRL technology suppliers (ISKA, SCT and GRD Minproc) are intended to ensure that Waste Service NSW has the benefit of those licences and contracts.
- **Certifier Deeds:** Under the WPD, major construction milestones relating to the Facility (such as practical completion and expansion of the Facility) must be certified by an Independent Engineer. This deed specifies the Independent Engineer's scope of works and gives Waste Service NSW the legal right to rely on the Independent Engineer's certification.

2.3 Conditions precedent

The WPD was subject to a number of conditions precedent, however each of these conditions were satisfied or waived on or before 7 August 2003.

3. THE WASTE PROCESSING DEED, LEASE AND IP AGREEMENTS

3.1 Structure of the WPD and general obligations

- **Two phases:** The WPD structures the contractual relationship of Waste Service NSW and GRL relating to the Facility into 2 phases.
- **Operational Phase:** During the first phase, known as the “Operational Phase”, GRL is obliged to finance, design and construct the Facility (GRL will satisfy its design and construction obligations under the WPD through GRD Minproc performing its obligations under a Design & Construct Contract between GRL and GRD Minproc).

Once the Facility is constructed, Waste Service NSW will be obliged to supply to the Facility, and GRL will be obliged to process using the Facility, a certain tonnage of waste (and Waste Service NSW will be obliged to pay to GRL a performance-based fee for processing that waste) for the following 25 years.

- **Merchant Phase:** The second phase, known as the “Merchant Phase”, applies in limited circumstances if the Operational Phase is terminated and GRL is entitled to continue operating the Facility on the terms of the WPD (for example, if Waste Service NSW defaults under the WPD). If GRL is not entitled to continue operating the Facility, the WPD terminates and the Merchant Phase does not commence.

During the “Merchant Phase”, Waste Service NSW acts as a “mere lessor” to GRL. GRL must pay Waste Service NSW a rent for the use of the Site and none of the WPD’s “operational” provisions relating to the supply and processing of waste apply.

3.2 Design, construction and expansion of the Facility

- **Failure to construct within 3 years:** GRL is obliged to finance, design and construct the Facility, and if it does not complete construction of the Facility within 3 years after satisfaction or waiver of the conditions referred to in section 2.2, GRL may elect to terminate the WPD or operate the Facility under the Merchant Phase.
- **Plans, reports and certificates:** During construction of the Facility, GRL must report regularly to Waste Service NSW on the status of construction and certify stages of construction to Waste Service NSW as and when they occur.
- **Design specification:** There is no obligation on GRL to construct the Facility to any agreed specification. The approach taken by Waste Service NSW is that the WPD is essentially a service delivery contract. The risk of how the service delivered is a GRL

risk, and not Waste Service NSW's primary focus. Waste Service NSW's fundamental concern is measuring and having enforcement rights in respect of the standards to which the service is delivered, not how it is delivered.

- **Access:** During construction, Waste Service NSW must construct and maintain a temporary access road to the Facility over the completed portion of the Eastern Creek landfill.
- **Waste Service NSW option to expand capacity of Facility:** At any time within a specified period after the Facility is constructed, Waste Service NSW may elect to require GRL to expand the capacity of the Facility from 175,000 tonnes per annum to 260,000 tonnes per annum. Under the terms of the WPD, the election by Waste Service NSW whether or not to expand the Facility will vary the commercial arrangements between Waste Service NSW and GRL in terms of fee payments.
- **Risk allocation during construction and expansion:** The periods in which GRL has to construct and expand the Facility will be extended for any force majeure delays. If Waste Service NSW causes or contributes to those delays, it must pay any reasonable and direct costs incurred by GRL. Otherwise, GRL bears construction risk.

3.3 GRL's operation, maintenance and service delivery obligations

- **Services:** GRL's primary service obligation is to accept and process the contracted quantity of waste, using the Facility. GRL must also provide educational services to the public and assist Waste Service NSW to enter into supply contracts.
- **Service Levels:** To avoid operational default, GRL must divert a minimum percentage of input material accepted for processing at the Facility from landfilling. In addition, the WPD incorporates strong financial incentives for GRL to divert waste from landfill, whilst financially discouraging the production of residual materials.
- **Continuous improvement:** GRL must endeavour to improve the Facility's performance and increase the landfill diversion rate in accordance with conditions in the WPD.
- **Maintenance:** GRL must maintain the Facility in accordance with good engineering practices and otherwise pursuant to its annual maintenance plans.
- **Safety, environmental and emergency management:** In addition to complying with all environmental and occupational health and safety laws, GRL must have appropriate safety, environmental and emergency plans in place to ensure compliance.

3.4 Waste Service NSW's general obligations

- **Delivery and payment:** Waste Service NSW must deliver a contracted quantity of municipal solid waste to the Facility and must pay a waste processing fee for the delivery of that contracted amount. Municipal solid waste may be delivered in excess of the contracted quantity on commercial terms agreed between the parties.
- **Green waste:** In addition to municipal solid waste, Waste Service NSW must also deliver, if requested by GRL, a specific quantity of green waste to the Facility per year to assist the Facility's biological functions. GRL must process that green waste for an agreed fee.
- **Specification and supply risk:** Waste Service NSW has no obligation to ensure that waste delivered to the Facility meets any specific standard. The specification of waste is and will continue to be outside of Waste Service NSW's control. However, to the extent that waste delivered to the Facility does not meet the agreed specification, GRL may reject it thus impacting Waste Service NSW's supply risk. The onus is on GRL to identify and reject non-specification material.
- **Waste Service NSW's business risks:** Waste Service NSW's bears the risk that (a) it cannot source sufficient supply (the supply risk) and (b) the waste it can source does not meet the agreed specification, entitling GRL to reject it (the specification risk). These risks are related, because if GRL rejects non-specification waste, that waste is not counted towards satisfaction of Waste Service NSW's supply obligation.
- **Removal of residual materials, ADC and OGM:** It is anticipated that approximately 80 percent of waste treated by the Facility will be diverted from landfill. Waste Service NSW must remove the remainder in consideration of a residual disposal fee. Until the tenth anniversary of construction of the Facility, Waste Service NSW must remove all EPA approved alternative daily cover, and an amount of the organic growth medium, produced by the Facility. After the tenth anniversary, GRL must make its own arrangements or negotiate new arrangements with Waste Service NSW for the removal of such material.
- **Quiet enjoyment and access to the Site:** Under the Lease and the WPD, Waste Service NSW has accepted responsibility for giving GRL quiet enjoyment and access to the Site. During the term of the WPD, Waste Service NSW must construct and maintain, at its cost, an access road to the Facility for use by GRL. The WPD specifies that such access must be reasonable.

3.5 Pricing and review mechanisms

- **Waste Processing Fees:** The main fees payable under the WPD are the inerting fee and green waste processing fee paid by Waste Service NSW to GRL for accepting waste.
- **Other fees:** Other fees payable under the WPD include a fee paid by Waste Service NSW to GRL to encourage diversion of waste from landfill and a fee paid by GRL to Waste Service NSW to discourage production of residual materials.
- **Five yearly review:** Every five years during the Operational Phase, or at any time there is a material change in a “critical factor” affecting either party during the Operational Phase, GRL and Waste Service NSW must meet to negotiate how they may protect and, if possible, enhance their respective commercial interests. There is no obligation on either party to renegotiate the Project Documents at any such meeting.

3.6 Benefit sharing

- **Waste Service NSW share of GRL renewable resource revenue:** Waste Service NSW is entitled to share in a specified amount of GRL’s renewable resource revenue above an agreed hurdle.
- **GRL share of Waste Service NSW gate fee revenue:** GRL is entitled to share in a specified amount of Waste Service NSW’s margin relating to the Facility (being the difference between its gate fee revenue and its costs) above an agreed hurdle.

3.7 Term, default and termination

- **Term:** Unless terminated earlier, the WPD will expire at the end of the 25 year term (calculated from the date of final completion of the Facility). The term may be extended by agreement or, if the Facility is damaged or destroyed, for the period required to repair or rebuild the Facility up to a maximum extension of 2 years.
- **GRL defaults:** Subject to the terms of the Financier Tripartite Deed, Waste Service NSW may terminate the WPD if GRL commits an “insolvency default”, “material default” or “operational default”. The WPD specifies the rights of GRL to remedy a default and the period in which GRL it may do so. If the default is not remedied within the specified period (up to 90 days for a “material default” and 180 days for an “operational default”), Waste Service NSW may give notice to terminate the WPD and, under the Finance Tripartite Deed, must give a copy of that notice to the Finance Party.
- **Finance Party remediation of GRL defaults:** In addition to GRL’s rights to remedy its defaults under a Project Document, the Finance Party also has rights to remedy those defaults within periods specified in the Finance Tripartite Deed, extending the period of

time in which a default may be remedied. Under that deed, the Finance Party may also appoint an appropriate substitute operator to perform GRL's obligations, or dispose of GRL's rights and obligations under the Project Documents to a purchaser which meets certain criteria. The Finance Party's rights under the Finance Tripartite Deed are more fully described in section 4.2.

- **Termination for GRL defaults:** Once the remedy rights of GRL and the Finance Party expire, Waste Service NSW has an option to purchase the Facility. If Waste Service NSW does not exercise that option, except if the default is an insolvency default, GRL may elect to either remove the Facility and make good the Site or operate the Facility under the Merchant Phase, described in section 3.1 above. If the default is an insolvency default, and Waste Service NSW does not exercise its option, GRL must remove the Facility and make good the Site (and if GRL does not, Waste Service NSW may recover the cost of it doing so from GRL).
- **Termination for Waste Service NSW defaults:** Payment default is the only default by Waste Service NSW which entitles GRL to terminate the WPD. Payment default is defined as failure to pay an amount owing within 90 days of a notice requiring payment. The immediate consequence of payment default is that Waste Service NSW must pay to GRL a "Termination Sum".

3.8 Transfer of the Facility to Waste Service NSW

- **Option to purchase after termination for GRL default:** If Waste Service NSW agrees to purchase the Facility following a GRL default, GRL must assign the Facility and all material agreements relating to the Facility to Waste Service NSW. Waste Service NSW will be entitled to the intellectual property required to operate the Facility, discussed below in section 3.9, and has the option to employ any or all of the Facility's employees.
- **Option to purchase on expiry of term:** On expiry of the term of the WPD, Waste Service NSW may purchase the Facility (including all electrical and piping equipment) for a specified purchase price, or just the building on the Site, for nil consideration. Under this option Waste Service NSW is also entitled to employ GRL's employees and use GRL's intellectual property and material agreements relating to the Facility.

3.9 Intellectual property

- **GRL's intellectual property:** GRL's intellectual property is a mixture of licences to use patented technology, know-how and rights under long term service contracts. Under the WPD, GRL gives usual warranties as to its intellectual property.

- **Waste Service NSW's right to intellectual property after asset transfer:** If Waste Service NSW purchases the Facility, then in consideration of Waste Service NSW paying a per tonne licence fee, it is intended that Waste Service NSW will be entitled to use GRL's intellectual property under agreements between GRL and each of the licensors and technology service providers to GRL, including ISKA, SCT and GRD Minproc.

3.10 Merchant Phase

- **Application of Merchant Phase:** The Merchant Phase applies if the Operational Phase is terminated and GRL is entitled to continue operating the Facility on the terms of the WPD.
- **General obligations during Merchant Phase:** During the Merchant Phase, GRL and Waste Service NSW must comply with usual lessee and lessor obligations, respectively.
- **Rent:** If the Merchant Phase applies because GRL fails to construct the Facility within the agreed construction period, GRL must pay Waste Service NSW rent calculated as the higher of a base rent and a per tonne royalty. In any other case, the rent payable by GRL during the Merchant Phase is a per tonne royalty.
- **Termination of Merchant Phase:** Waste Service NSW may terminate the Merchant Phase if GRL fails to pay an amount due within 30 days of a notice requiring payment, fails to remedy any other default within 90 days or otherwise becomes insolvent. The provisions of the Finance Tripartite Deed relating to the Finance Party's rights to remedy GRL's defaults apply to defaults during the Merchant Phase. If the Merchant Phase applies because GRL failed to construct the Facility within the agreed construction period, GRL may also terminate the WPD and the Lease on 6 months notice.

3.11 General provisions

- **Changes in Law:** Each party must comply with all changes in law at its own cost, except to the extent that the change in law is of a direct or discriminating nature in respect of the Facility or is a change to an existing or is a new environmental law, in which case Waste Service NSW must pay the cost of GRL's compliance with that change in law (after GRL pays a threshold amount in each year incurred in compliance with all such changes in law).
- **Rates, levies, taxes and stamp duty:** Each party must pay its own taxes, except waste taxes which, during the Operational Phase, must be paid by Waste Service NSW. GRL is responsible for all rates and levies relating to the Site, and for payment of any stamp duty relating to the WPD and the Lease.

- **Loss or damage and insurance:** If the Facility is damaged or destroyed, GRL has no obligation to rebuild the Facility unless GRL has sufficient insurance proceeds available, the damage or destruction occurs before the tenth anniversary of completion of construction of the Facility, and the rebuilding can reasonably be undertaken within a period of three years.
- **Force majeure:** Any party prevented from performing its obligations due to a force majeure event is excused from performing its obligations for a maximum of 6 months.
- **Additional indemnities:** During the term of the WPD each party gives a limited number of indemnities to the other party.
- **Limitation of liability:** The WPD contains a very strong limitation of liability clause. The effect of this provision is that unless a liability is covered by an indemnity or is an obligation to pay money under the WPD, the party who suffers loss in respect of the liability has no right to recover that loss from the other party. The exception to this rule is that Waste Service NSW may claim an amount from GRL in each year during the term of the WPD in respect of direct losses (including damage, costs and expenses that are in the nature of direct losses) suffered by Waste Service NSW by reason of breach of the WPD or breach of any duty of care (including negligence) by GRL up to a specified cap in each year.
- **Structure and adequacy of security package:** The key elements to Waste Service NSW's security against default by GRL are its right to set-off in each year, a bank guarantee during construction of the Facility, a remediation and make good fund to cover known remediation during the term of the WPD, and a bank guarantee which applies during the Merchant Phase.
- **Accounting and reporting:** During the term of the Operational Phase, GRL must give monthly reports to Waste Service NSW about the Facility's operation.
- **Assignment, subcontracting and negative pledge:** Each party is restricted from assigning the WPD without the prior consent of the other party, which must not be unreasonably withheld. GRL may subcontract performance of its obligations and may refinance the Facility if certain conditions are met. Nothing in the WPD or the Lease restricts Waste Service NSW from assigning its interest in the Site or the Lease.
- **Protection of goodwill:** During the Operational Phase, GRL gives certain undertakings, including that it will not provide alternative waste technology services within the Eastern Creek waste catchment area without the prior consent of Waste Service NSW. These undertakings are repeated by GRL Investments in the GRLi Side Deed.

- **Dispute resolution:** The WPD contains usual dispute resolution provisions.

4. THE WSN CHARGE AND THE FINANCIER TRIPARTITE DEED

4.1 WSN Charge

- **Secured Moneys:** The WSN Charge secures: (a) a “Remediation Fund” to be established by GRL pursuant to the WPD; (b) moneys Waste Service NSW is entitled to set-off under the WPD (subject to a cap on GRL’s liability under the WPD); and (c) an “IP Escrow Account” to be established under the WPD if Waste Service NSW purchases the Facility from GRL.
- **Terms:** The WSN Charge contains the usual provisions contained in a corporate fixed and floating charge. However, Waste Service NSW’s ability to enforce its rights under the WSN Charge is limited by the provisions of the Financier Tripartite Deed.

4.2 Financier Tripartite Deed

- **Ranking of securities:** Under the deed, except in respect of the Waste Service NSW set-off amount under the WPD or of an amount that the Finance Party lends to GRL in breach of the provisions of the WPD, the Finance Party’s securities rank ahead of the WSN Charge.
- **Limitations on enforcement actions by Waste Service NSW:** As the WSN Charge is effectively a second ranking charge, the Finance Tripartite Deed limits Waste Service NSW’s ability to enforce its charge whilst the Finance Party is also entitled to enforce its securities.
- **Proceeds of insurance:** If the Facility is damaged or destroyed, the Finance Tripartite Deed specifies that, in certain circumstances, notwithstanding the provisions of the WPD, the insurance proceeds from that damage or destruction must be used to pay out debt, rather than rebuild the Facility.
- **Remedy of GRL defaults:** The Finance Tripartite Deed gives the Finance Party a right to remedy defaults of GRL under the WPD and other Project Documents such as the Lease. The remedy periods granted to the Finance Party are 30 days in respect of payment defaults or certain breaches of the protection of goodwill provisions in the WPD, 6 months in respect of insolvency defaults, up to 12 months in respect of operational defaults and 90 days in respect of all other defaults. This right is usual and commercial.

- **Enforcement actions by the Finance Party:** The Finance Tripartite Deed also gives the Finance Party the right to appoint a substitute operator or dispose of the Facility to a purchaser which meets certain criteria.
- **Amendments to Project Documents:** Under the Finance Tripartite Deed, Waste Service NSW and GRL each agree to not amend material provisions of the WPD and other Project Documents without the consent of the Finance Party, which must not be unreasonably withheld.

5. THE PAFA ACT DEED OF GUARANTEE

- **Guarantee:** Under the Public Authorities (Financial Arrangements) Act Deed of Guarantee of 25 July 2003, between the Treasurer (on behalf of the State of NSW), Waste Service NSW, GRL, GRLi and the Finance Party, the State of NSW unconditionally and irrevocably guarantees Waste Service NSW's performance of all its obligations under the WPD, the Lease, the Finance Tripartite Deed and the GRLi Side Deed to all the other parties to these contracts.
- **Continuing obligation:** This guarantee is a continuing obligation, remaining in force until seven months after the term of these contracts, or until seven months after any earlier termination of the contracts. The State's liability under the guarantee will continue even if Waste Service NSW is discharged from any or all of its guaranteed obligations under the contracts for any reason whatsoever.
- **Performance of guaranteed obligations:** The State must perform the obligations it has guaranteed within 21 days of a demand being made by any of the other parties to the guaranteed contracts. Such a demand may be made if a demand has previously been made on Waste Service NSW and Waste Service NSW has failed to perform within 21 days. In turn, Waste Service NSW indemnifies the State against any and all of the liability it may incur because of the Deed of Guarantee.

6. BENEFITS AND COSTS

Waste Service NSW is a trading operation, which operates commercially and actively competes in the market for waste services. Therefore, all projects which Waste Service NSW undertakes must be viable from a commercial perspective without the need to take into account broader economic considerations.

A financial analysis of the Project was undertaken by Manidis Roberts & Associates which concluded that "the Project is firmly viable in commercial terms at any capacity configuration considered reasonable for the Site". The details of the financial analysis are commercial-in-

confidence due to the trading nature of Waste Service NSW and its need to compete in the market for waste services.

Although Waste Service NSW considers that a broader economic analysis was not required for the reasons above, an independent economic analysis was undertaken by Manidis Roberts & Associates which suggested that the Project will bring substantial economic benefits to the community, and that these benefits will be greater than the project's economic costs.

The economic benefits of the Project include:

- (a) the Project's production of saleable products, renewable energy certificates and emission reduction units;
- (b) reduced reliance on landfilling which is an unsustainable medium-term business;
- (c) environmental benefits of decreasing landfilling, including:
 - (i) the subsequent production of gases which contribute to the greenhouse effect, the value of which cannot yet be estimated; and
 - (ii) the abatement of odour, noise and dust in the local vicinity and reduced probability of leachate infiltrating the local watertable (causing a corresponding reduction in environmental liabilities)
- (d) additional direct employment of 100 people; and
- (e) performance of local R&D in Australia.

The costs taken into account include:

- (a) construction and capital costs; and
- (b) processing costs.

The detailed economic evaluation of the Project performed by Manidis Roberts & Associates concluded a benefit cost ratio for the Project of 3.08 (based on the Project base case, using 2001 real values, discounted at 7%).

Waste Service NSW undertook a form of public sector comparator in which Manidis Roberts & Associates performed a detailed financial and economic analysis of the Project, which compared the financial and economic outcomes of the project under various scenarios, including whether

the Project was undertaken by the private sector or “in-house” by Waste Service NSW. The analysis was undertaken in accordance with the NSW Government's Guidelines for Economic Appraisal and separately measured the Net Present Value (NPV) of cash flows, the Net Present Value per Dollar of Capital Outlay (NPVI), the Benefit Cost Ratio (BCR), and the Internal Rate of Return (IRR) for each option.

The analysis concluded that, on financial and economic terms, a project undertaken by the private sector and a similar project undertaken “in-house” by Waste Service NSW would have very similar financial and economic costs and benefits. While such a comparison is possible in a theoretical sense, it was not possible for Waste Service NSW to undertake the Project, as the Project relied heavily on proprietary technology to which Waste Service NSW did not have access.

7. PRICING

This report does not disclose the price to paid by the public or the basis for future changes in prices charged at the Facility, as this information it is commercial-in-confidence as between Waste Service NSW and the participants in the Project. Such disclosure would put the private sector participants in the Project at a commercial disadvantage with their competitors. It would also provide Waste Service NSW's competitors and customers with information which could be used to Waste Service NSW's commercial detriment and significantly inhibit Waste Service's ability to compete effectively in the marketplace for waste services in furtherance of its statutory objectives.

APPENDIX A – EVALUATION CRITERIA AND WEIGHTINGS

SELECTION CRITERIA FOR EXPRESSION OF INTEREST

The Expression of Interest (**EOI**) specification document provided the details of the selection criteria for the shortlisting of proposals. These selection criteria were further refined and categorised for the purpose of detailed assessment of the proposals as follows:

MANDATORY CRITERIA

A. Adequacy of information provided to Waste Service NSW

This was the information outlined in the EOI document, as essential information required by Waste Service NSW to conduct proper assessment of the proposal/technology.

B. Integration of the proposal with Waste Service NSW business strategy

This was assessed for the ability of the proposal to provide a holistic technology based solution that fits with Waste Service NSW strategy to migrate its core business from landfill based disposal to an ecologically sustainable technology based waste management solution.

The above mandatory criteria had to be satisfied for further consideration in the assessment process. Each of the following scored criteria were given equal weight.

SCORED CRITERIA

C. Waste Minimisation/Resource Recovery Rate

- C1. Ability to deliver commercially sustainable waste processing and disposal methods
- C2. Diversion capacity for directing waste away from landfill for disposal
- C3. Resultant Products
- C4. Proven performance

D. Environmental Outcome

- D1. Ecologically sustainable processes
- D2. Effluent and emissions
- D3. Noise and odour potential
- D4. Experience and expertise of the vendor

E. Social Impacts

- E1. Solution for the community's needs and expectations for municipal solid waste management
- E2. Social acceptance of proposed technologies
- E3. Process footprint

F. Economic Viability

- F1. Provision of cost effective solid waste processing and disposal
- F2. Capital costs
- F3. Operational costs
- F4. Potential revenue from products

WASTE SERVICE NSW - EVALUATION SCORESHEET

RFP PROCESS

CATEGORIES	MAXIMUM SCORE	ALLOCATED SCORE	WEIGHTAGE	WEIGHTED SCORE	COMMENTS
1. FINANCIAL/COMMERCIAL	10		45%		
1.1 Value for money, and Economic and Financial viability					
1.2 Cost to Waste Service NSW					
1.3 Willingness to enter into strategic relationships with WSNSW					
1.4 Risk management strategies					
1.5 Recovered material market strategies					
1.6 Financial capability/funding availability					
1.7 Risk sharing/allocation					
2. ENVIRONMENTAL OUTCOMES	10		10%		
2.1 Environmental regulations/compliance					
2.2 Environmental philosophy/policy					
2.3 Resource recovery levels					
2.4 Past environmental performance					
3. PROJECT DELIVERY AND ASSURANCE	10		25%		
3.1 Design/construction - Ability and Experience					
3.2 Project Management - Ability and Experience					
3.3 Community Consultation and Acceptance of technology					
3.4 Working examples/experience - Australia and overseas					
3.5 Design merits and technology risks					
4. OPERATION AND MAINTENANCE	10		10%		
4.1 Experience and strategies					
4.2 Ongoing research and development					
4.3 Plant upgrade strategy - Lifecycle Design					
4.4 Community consultation approach and experience					
5. GENERAL	10		10%		
5.1 Understanding of project outcomes					
5.2 Clarity of Proposal					
5.3 Highest Resource Value Use of Products					
5.4 Suitability of the technology to other site(s)					

WASTE SERVICE NSW - EVALUATION SCORING GUIDANCE

Description	Maximum Score
	10
Exceptional. Full achievement of requirements in the RFP with desirable strengths; no errors, risks, weaknesses, omissions. Meets and exceeds best practice.	10
Superior. Sound achievement of the requirements in the RFP with some minor errors, risks, weaknesses or omissions which may be acceptable as offered. Meets best practice.	8 - 9
Good. Sound achievement of the requirements in the RFP with some minor errors, risks, weaknesses or omissions which may be acceptable as offered.	6 - 7
Adequate. Basic achievement of the requirements in the RFP with errors, risks, weaknesses, or omissions which are possible to correct and make acceptable.	4 - 5
Poor to Deficient. Partial achievement of the requirements in the RFP with major errors, risks, weaknesses, or omissions which are difficult to correct and make acceptable.	2 - 3
Unacceptable. Totally deficient and non-responsive. No achievement of the requirements in the RFP because of errors, risks, weaknesses or omissions which are not possible to correct and make acceptable.	0 - 1