JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
ACT	**:**	PLANNING AND DEVELOPMENT ACT 2005 (WA)
CITATION	**:**	SITA AUSTRALIA PTY LTD and WHEATBELT JOINT DEVELOPMENT ASSESSMENT PANEL [2016] WASAT 22
MEMBER	**:**	MR P McNAB (SENIOR MEMBER) MR J JORDAN (SENIOR SESSIONAL MEMBER) DR A HINWOOD (SESSIONAL MEMBER)
HEARD	**:**	18 AND 19 NOVEMBER 2015
DELIVERED	**:**	8 MARCH 2016
FILE NO/S	**:**	SAT 127 of 2014
BETWEEN	**:**	SITA AUSTRALIA PTY LTD Applicant AND WHEATBELT JOINT DEVELOPMENT ASSESSMENT PANEL Respondent

Catchwords:

Town planning - Development application - Proposed waste landfill development in rural area - 'Putrescible landfill' - Amended proposal under review - Significant regulation of facility by Department of Environment Regulation (DER) - DER indicating works approval would be given on extensive conditions - Land use classification - Whether proposal 'noxious industry' - Permissible land use under Town Planning Scheme - Significant agreement by all environmental experts on groundwater and hydrological issues

indicating no environmental threat - Significant agreement on planning and local amenity issues indicating approval warranted - Whether approval should be given - Whether approval should be given in the absence of strategic planning for wider regional area including site - Conditional approval given by Tribunal - Appropriate conditions to regulate facility - Observations on duplication and overlapping of planning with other conditions - Role of Shire in formulating conditions - Words and phrases: 'noxious industry' 'orderly and proper planning'

Legislation:

Environmental Protection Act 1986 (WA), Pt V
Planning and Development (Local Planning Schemes) Regulations 2015 (WA), cl 57, Sch 2
Planning and Development Act 2005 (WA), s 242
Shire of York Local Planning Strategy
Shire of York Town Planning Scheme No 2, cl 7.2, cl 8.5, Amendment 50 Sch 1
State Administrative Tribunal Act 2004 (WA, s 37(3)
Waste Avoidance and Resource Recovery Act 2007 (WA)

Result:

Review allowed
Conditional approval given

Summary of Tribunal's decision:

In late 2013, SITA Australia Pty Ltd applied to the Shire of York for planning approval for the construction and operation of a major waste management landfill facility proposed to be located on the Allawuna Farm in the Shire of York. The site is located approximately 18 kilometres from the York town centre. The Shire and various local residents opposed the development and, in 2014, the proposal was refused by the Wheatbelt Joint Development Assessment Panel (JDAP). A review of that decision was commenced in the Tribunal and mediation produced an amended proposal that, on its face, anticipated significant reductions in the potential impact of the amended proposal. Leave was granted in 2015 for the amended proposal to go forward for review in the Tribunal. This was upon the basis that the 'essence' of the proposal under review had remained unchanged. On reconsideration, the JDAP refused to approve the amended proposal.

The Department of Environment Regulation (DER) indicated that it would give approval for the proposed development upon extensive conditions. The DER is the principal regulator as regards environmental matters in this

State. In addition, various hydrogeological and geological experts, and town planning experts all gave evidence indicating that the proposal could be approved on its merits without harm to either the environment or to local amenity. The town planning experts, while agreeing that the proposal was not inconsistent with the local planning framework (including the relevant town planning scheme), nevertheless disagreed on whether the proposal should be deferred until more strategic, overarching and long-term planning had taken place. It was suggested by the respondent that not to take that course would offend notions of orderly and proper planning. The Tribunal disagreed and gave conditional approval for the proposal saying that a moratorium could not be justified in the circumstances, given that there was already in the planning framework sufficient indication of the need for such a facility and in a location such as that under consideration. The Tribunal did not see the approval giving rise to any prejudice to the continued strategic planning for the wider regional area (including the site) which was required to address the need for suitable waste disposal facilities.

The Tribunal gave leave to the Shire to make submissions on suitable conditions. However, the Tribunal declined to attach conditions to the approval that overlapped or duplicated the proposed conditions of any specialist governmental agencies, particularly the DER.

The Tribunal upheld the review and granted conditional approval for the proposed development.

Category: A

Representation:

Counsel:

Applicant	:	Mr P McGowan
Respondent	:	Ms C Ide
Third Party (by leave)	:	Mr D McLeod

Solicitors:

Applicant	:	Herbert Smith Freehills
Respondent	:	State Solicitor's Office
Third Party	:	McLeods

Case(s) referred to in decision(s):

Carey Baptist College Inc and Western Australian Planning Commission [2014] WASAT 113
Chiefari v Brisbane City Council [2005] QPEC 9; [2005] QPELR 500
GMF Contractors Pty Ltd and Shire of Serpentine-Jarrahdale [2006] WASAT 353; (2006) 151 LGERA 74; (2006) 48 SR (WA) 1
Hanson Construction Materials Pty Ltd and Shire of Serpentine-Jarrahdale [2012] WASAT 140
Keysbrook Leucoxene Pty Ltd and Shire of Serpentine-Jarrahdale [2012] WASAT 212
Marshall and City of Rockingham [2006] WASAT 249
Marshall v Metropolitan Redevelopment Authority [2015] WASC 226
Nightview Pty Ltd and City of Cockburn [2005] WASAT 275
Opal Vale Pty Ltd and Shire of Toodyay [2013] WASAT 88
Ransberg Pty Ltd and City of Bayswater [2014] WASAT 12
Re Kevin and Minister for the Capital Territory (1979) 2 ALD 238
SITA Australia Pty Ltd and Wheatbelt Joint Development Assessment Panel [2015] WASAT 40
SITA Australia Pty Ltd v Greater Dandenong City Council [2007] VCAT 156; (2007) 150 LGERA 266
Terra Spei Pty Ltd and Shire of Kalamunda [2015] WASAT 134
Veterinary Surgeons Board of Western Australia v Alexander [2013] WASC 136
Waddell and Western Australian Planning Commission [2007] WASAT 82
Westmore Corporation Pty Ltd and Shire of Chittering [2008] WASAT 290

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 This review concerns the development of the Allawuna Farm Landfill site, a major waste management facility proposed to be located in the Shire of York (Shire).

2 On 17 December 2013, SITA Australia Pty Ltd (applicant) formally applied for approval to construct and use a portion of Lots 4869, 5931, 9926 and 26932 Great Southern Highway, Saint Ronans in the Shire (subject land or site) as a 'Class II Landfill' (original proposal). The origin of this description of the proposed landfill as 'Class II Landfill' is explained below.

3 The original proposal contemplated a landfill operation on the Allawuna site with a 52 hectare footprint, located centrally to the subject land with a nominal or indicative lifespan of 37 years, based upon an input of between 150,000 and 250,000 tonnes of waste per year with a total volume of 11.1 million cubic metres. A 'composite liner system' with a series of 11 cells was proposed. Waste was to be confined to 'municipal household solid waste from commercial, retail, and industrial premises and construction waste'. No 'hazardous, liquid, noxious, or radioactive waste or toxic chemicals' were to be accepted.

4 The original proposal was refused on 14 April 2014 by the relevant planning authority, the Wheatbelt Joint Development Assessment Panel (respondent). (The respondent is now known as the Mid-West Wheatbelt Joint Development Assessment Panel.)

5 The respondent's statement of issues, facts and contentions (SIFC) provides the following details, which are common ground, of the site's locality (at [8] - [10]):

> The [farm] is located approximately 18 kilometres from the York town centre in the locality of Saint Ronans and has an area of 1,512.7 hectares. The [farm] has a balance of vegetation and cleared land that has been historically and is currently used for cropping and grazing. The balance of the land not affected by the landfill [proposal] will continue to be used for cropping and grazing.
>
> Access to the subject land is via Great Southern Highway which abuts the northern boundary.

> Adjoining the subject land to the west is the Mount Observation National Park. Privately owned broad hectare agricultural properties surround the subject land on all other boundaries.

6 The original proposal was refused on 14 April 2014 by the relevant planning authority, the Wheatbelt Joint Development Assessment Panel (respondent).

7 On 16 April 2014, the applicant filed with the Tribunal an application for review of the respondent's original decision.

8 For the reasons that follow, we have decided that conditional approval should be given to the proposal in its *amended* form (see immediately below).

Amended proposal

9 As part of the Tribunal proceedings, the applicant submitted an amended application. The Tribunal granted leave to amend the application and invited the respondent to reconsider its decision: ***SITA Australia Pty Ltd and Wheatbelt Joint Development Assessment Panel*** [2015] WASAT 40 (***SITA***). The Tribunal's summary of ***SITA*** records that:

> Following mediation in the Tribunal, [the applicant] had modified its original proposal, in part to address concerns raised by local objectors (including the Shire of York) and also, it appeared, in response to the requirements of the Department of Environment Regulation. On the face of it, there were significant reductions in the potential impact of the amended proposal.

10 The Tribunal held in ***SITA***, at [29] and [30]:

> [The cases show] that 'numerous and extensive' and 'significant changes' to a proposal do not mean that its essence necessarily changes. In addition, the fact that modifications might lead to new arguments as to the planning merits of the amended proposal does not mean that a new proposal has eventuated. Again, whether taken together or separately, in this case the proposed amendments, although 'significant', are not, in the Tribunal's view, 'so sweeping' as to amount to a new proposal. And, of course the proposed use does not change.
>
> In my view, applying, where necessary, an impressionistic approach to the proposed changes to the applicant's landfill proposal leads to the conclusion that the essence of the proposal remains unchanged. Leave should be granted for the proposed amendments to the development application under review.

11 On the 31 August 2015, the amended proposal was refused planning approval by the respondent. The applicant's amended proposal (which is currently before the Tribunal) may be summarised as follows:

1) A reduction from 52 to 36 hectares and a reduction of the total volume of waste from 11.1 to 5.1 million cubic metres.

2) A reduction in the nominal life of the landfill from 37 to approximately 20 years on forecast annual tonnages of 150,000 to 250,000 tonnes of waste per annum.

3) A reduction in the number of cells from 11 to 7.

4) A raising of the floor of the landfill to achieve at least a 2 metre clearance from the estimated maximum winter groundwater level.

5) A reduction in the maximum height of the waste deposited by 4.5 to 350.5 metres AHD.

6) Sequential development of three borrow areas (or pits) comprising a total of 20 hectares 'commencing from approximately year 10 onwards as a source of cover material and as a consequence of the reduction in material excavated from the now raised landfill'.

7) A reduction in the size and the extent of leachate ponds and stormwater dam.

12 The respondent's SIFC noted that the amended proposal:

> … does not modify the location of the landfill within the subject land, the composite liner system of construction, the type or forecast annual tonnage of waste, the hours of operation or the traffic movements and access arrangements.

13 The amended proposal suggested that there might be 'community benefits' flowing from the construction and operation of the site, including the 'potential use of local landfill management services and haulage contractors'. However, an earlier offer to receive the Shire's municipal waste free of any disposal fee was withdrawn by the applicant.

Intervenors

14 The Shire (through its counsel, Mr D McLeod), the Avon Valley Residents Association Inc (AVRA) by its counsel, Mr P Pearlman (of the Environmental Defender's Office) and Ms Kay Davies and Ms Robyn Davies (jointly, and in person; both of whom reside in the Shire), all applied to participate in the proceedings. All of the proposed intervenors were opposed to the proposed development. All of these parties had participated in ***SITA***, opposing the application for leave to amend.

15 On 9 October 2015, pursuant to s 37(3) of *the State Administrative Tribunal Act 2004* (WA), AVRA was given conditional leave to intervene in the proceedings,

> … in relation to groundwater issues only, including hydrogeology and the potential impacts upon water quality, on the condition that AVRA is not permitted to cross-examine any witnesses at the hearing other than any expert environmental witnesses in respect of groundwater issues only, including hydrogeology and the potential impacts to water quality.

16 Pursuant to s 242 of the *Planning and Development Act 2005* (WA) (PD Act), Ms Kay Davies and Ms Robyn Davies were given leave to make a joint written submission (Davies Submission).

17 The Davies Submission is a lengthy, well researched, and comprehensive document covering a diverse range of amenity, local and environmental issues relevant to the proposed landfill. We acknowledge the careful work put into this submission by Ms Kay Davies and Ms Robyn Davies.

18 However, the Supreme Court of Western Australia, in ***Veterinary Surgeons Board of Western Australia v Alexander*** [2013] WASC 136 (Pritchard J), has reminded tribunals and other similar decision-makers, at [119], that:

> [w]here ... the expert witnesses agree, the Tribunal is ... bound to take that evidence into account, although it remains for the Tribunal to attribute to that evidence such weight as it considers appropriate, having regard to the other evidence before it.

Further, as has been long recognised, expert evidence will usually carry much greater weight than non-expert evidence. As Senior Member Todd, as he then was, in the Administrative Appeals Tribunal once observed (in ***Re Kevin and Minister for the Capital Territory*** (1979) 2 ALD 238, at [13]):

> The fact is that, properly understood, the rule of evidence in relation to opinion is not technical, and there is a principle of good sense underlying it that relates to the logically probative force of assertions of opinion made before any tribunal. If a question of opinion as to a medical condition arises, who can doubt but that an administrator, and on review, the Tribunal, must give weight to the opinion of a medical practitioner but not to that of a layman?

19 Unfortunately, given the agreed conclusions of the various experts (that is, the planners, the four environmental experts and the Department of Environment Regulation's experts, evidence considered at various points below) we are unable to give much weight to the Davies' contrary and non-expert opinions or assertions where they conflict with such expert opinion. This was the case on every material issue in the review.

20 AVRA's leave was revoked when its expert geologist (Mr Lindsay Stephens) revised his opinion on certain groundwater issues following a conferral with other relevant experts. Counsel for the applicant, Mr P McGowan, accurately summed up the course of events, as follows:

> … [the revised joint statement of hydrogeological and geological experts] involve[s] an unequivocal acceptance by all four who participated in [its] conclusions which should entirely satisfy the [T]ribunal that any question in relation to ground water, which was the primary driver of environmental concerns, has been comprehensively addressed. And what appeared to perhaps be at best an anomalous outcome in relation to certain bores and test pits that had been conducted has been completely and definitively explained away by Dr Appleyard [a hydrogeologist], who is supremely qualified to be able to express that view, a view with which his colleagues, Mr Waterhouse [a hydrogeologist], Ms [Du Preez, a landfill engineer] and Mr [Stephens] all agreed.
>
> (T:11; 18.11.15)

Consequently, we accept Mr McGowan's submission that the result of these processes of joint conferral is 'not that [the] environment in its broader sense is not an issue, but that it has comprehensively been addressed to the satisfaction of the experts'.

21 Pursuant to s 242 of the PD Act, the Shire was given leave to make a written submission in respect of the review 'only in relation to the conditions that should be imposed should the Tribunal approve the application subject to conditions'. Leave was so granted because the Tribunal accepted the thrust of Mr McLeod's submissions to the effect that:

1) given the Shire's statutory functions, and given that the Shire is a rural local government with limited resources and personnel; and

2) having regard to the 'significant nature' of the landfill development and its potential for detriment as regards the amenity of the Shire if not properly managed,

there would be 'a particular need for [any] conditions imposed on any approval to cover the full range of compliance possibilities'; and '[t]o be expressed in terms that are explicit and readily enforceable'.

22 The Shire's contribution to the issue of appropriate conditions is dealt with below.

Reasons for refusal

23 On 31 August 2015, following reconsideration of the revised proposal, the respondent refused the amended application for the following formal reasons:

(a) The proposed landfill is not permitted in the General Agricultural zone given that the proposal is not consistent with the objectives and purpose of the zone in accordance with [cl] 3.2.4(c) of the [*Shire of York Town Planning Scheme No 2* (TPS 2)].

(b) The proposed landfill presents potential for incremental, permanent loss of agricultural land, as a result of a temporary land use, in a district where expansion of agricultural land is already constrained by salinity and vegetation protection and is not consistent with [cl] 4.15.1(a) of [TPS 2].

(c) The applicant has failed to demonstrate that the proposed landfill will be of benefit to the district, which is inconsistent with [cl] 4.15.1(b) of [TPS 2].

(d) The application does not include sufficient information to demonstrate that visual impacts will not affect the amenity of the locality and residents, as required by Objective (b) ([cl] 1.7) and [cl] 8.5(i), (j) and (n) of [TPS 2].

(f) The proposed landfill is ad-hoc and is not consistent with the requirements of orderly and proper planning, as required by [cl] 8.5(b) of [TPS 2].

The Tribunal notes that these reasons for refusal refer only, it appears, to what the respondent considered were the alleged deficiencies of the amended proposal with regard to matters required to be considered

under particular provisions of the *Shire of York Town Planning Scheme No 2* (TPS 2).

24 After the filing of the application for review of the original proposal (in April 2014), the parties and the proposed intervenors (see above) each engaged, for the purposes of mediation and generally, environmental experts, as well as experts in other relevant fields, particularly planning.

25 The environmental experts participated in joint conferrals to address issues relevant to their expertise, particularly whether the proposed development, if approved, would have an impact upon groundwater. The outcome of these conferrals is discussed immediately below but, at this point, it is convenient to record that the respondent's reasons for refusal did not expressly refer to what might be generally described as 'environmental' concerns.

26 It is convenient to now turn to these matters relating to the environment.

Environmental issues

27 Of significant, particularly local, interest is the extent to which, if any, environmental concerns should play a role in this review. To this end, we will set out our understanding of the applicable environmental regulatory framework relevant to the proposed development.

28 We begin by noting that the Department of Environment Regulation (DER) regulates the licensing of landfills under Pt V of the *Environmental Protection Act 1986* (WA) (EP Act). In this State, the DER is the principal regulator as regards environmental matters.

29 In ***Opal Vale Pty Ltd and Shire of Toodyay*** [2013] WASAT 88 (***Opal Vale***) the Tribunal (constituted by Senior Member McNab and Sessional Member Hinwood) had to consider a proposed landfill development in an existing clay quarry. The environmental regulatory framework recorded in ***Opal Vale*** is essentially the same as that applicable here. That framework, at [6] - [9], was as follows:

> Apart from the planning regime, the proposed development is regulated under an instrument known as the *Landfill Waste Classification and Waste Definitions 1996*. This document (as at December 2009) is issued by the Chief Executive Officer of the [Department of Environment Regulation (DER)] 'to provide guidance and criteria to be applied in determining the classification of wastes for acceptance to landfills licensed or registered in Western Australia in accordance with Part V of the [*Environmental Protection Act 1986* (WA) (EP Act)]'.

It is common ground that the facility would be regulated as a 'Class II Landfill Facility' requiring a [DER] works approval and a licence issued under Pt V of the EP Act.

Table 1 of the *Landfill Waste Classification and Waste Definitions 1996* instrument provides, so far as is relevant, as follows:

Class II (Prescribed Premises Category 64 or 89	Putrescible Landfill	• Clean Fill • Type 1 Inert Waste • Putrescible Wastes • Contaminated solid waste meeting waste acceptance criteria specified for Class II landfills (possibly with specific licence conditions) • Type 2 Inert Wastes (with specific licence conditions) • Type 1 and Type 2 Special Wastes (for registered sites as approved under the Controlled Waste Regulations)

That table refers to 'Prescribed Premises Category 64'. This is a reference to 'Schedule 1 - Prescribed premises' in the *Environmental Protection Regulations 1987* (WA), as follows:

> '[Category number] 64 [Description of category] Class II ... putrescible landfill site: premises on which waste (as determined by reference to the waste type set out in the document entitled [*Landfill Waste Classification and Waste Definitions 1996*] published by the Chief Executive Officer and as amended from time to time) is accepted for burial. [Production or design capacity] 20 tonnes or more per year.'

30 The Shire advertised the amended application for public comment between 22 April and 25 May 2015. The Shire sought specific agency comment from the DER.

31 On 7 April 2015, the applicant submitted to the DER a works approval application (W538/2015/1) for the amended proposal. The works approval was advertised on the DER's website on 27 April 2015. The DER accepted public submissions on the application until 3 July 2015.

32 Importantly, on 13 August 2015, the DER sent a letter to the applicant identifying that its assessment of the company's works approval and application had *not identified any relevant flaws relating to the siting or design of the proposed landfill*. The DER advised the applicant that it

intended to grant a works approval for the proposed landfill, subject to certain conditions. The DER said:

> Based on the Department's assessment of the application and an absence of environmental[ly] fatal flaws, DER can advise that it intends to grant a works approval, subject to conditions for the proposed Allawuna Farm Class II landfill. A draft works approval and decision document are not yet available for your review [and] DER will not grant the works approval until planning approval for the proposal is in place.

33 The Shire, in its officers' report prepared for the respondent, did not outline any significant environmental issues as a reason for refusal.

34 We have already set out above the combined views of the hydrogeologists and related experts.

35 Accordingly, in the light of all of this, the respondent, properly, did not contend in this review that the proposal, if otherwise approved upon appropriate conditions, would be detrimental to the environment.

36 The conditions which we propose (designed with the Shire's input and which effectively reinforce or complement the DER's extensive regulation) are dealt with in these reasons below.

Defining the issues in contention

37 Notwithstanding the list of reasons for refusal (see above), in its SIFC, the respondent listed the following two matters as the principal issues to be determined by the Tribunal:

> Should the proposed development be approved, having regard to:
>
> (a) the scale and intensity of the proposed development; and
>
> (b) whether the proposed development is ad hoc and inconsistent with orderly and proper planning.

38 The applicant contended that these issues, as summarised by the respondent, only went to refusal reason (e) ('The proposed landfill is ad-hoc and is not consistent with the requirements of orderly and proper planning …') and it was therefore to be understood that the respondent was *not* pressing refusal reasons (a) to (d).

39 However, the evidence of the planning experts (see below), in part, included reference to all of the refusal reasons, and so our discussion of the planning issues (below) includes, where relevant, reference to reasons for refusal other than (e).

40 Also of present relevance is the contribution that the two planning experts made to defining the issues.

41 The applicant and the respondent called as expert planning witnesses, respectively, Mr Larry Smith and Mr David Maiorana. In a joint witness statement, Mr Smith and Mr Maiorana identified from the respondent's refinement of the issues what they described as the 'key drivers' relevant to determining the planning merits of the proposed development. These 'drivers' were listed by them, as follows:

(a) the need for landfills;

(b) the regional planning context and related matters;

(c) the local planning context and related matters;

(d) a model for a landfill strategic plan; and

(e) orderly and proper planning.

Mr Smith and Mr Maiorana said that, in their joint opinion, addressing these 'drivers' would assist in the 'distillation' of the 'core planning matters' that they believed needed to be considered.

42 The planners' key 'driver' (d) refers to a model for a 'landfill strategic plan' (LSP). The planning experts took it upon themselves to set out the features that they considered should be included in such an instrument.

43 The Tribunal notes that the process involved towards the development of a LSP would include steps common to most strategic plans, such as an analysis of need, consultation with relevant communities and authorities, a technical analysis of potential sites, and compliance with any statutory requirements for a strategy to be finalised and adopted.

44 Importantly, no planning or other regulatory authority, including either the Western Australia Planning Commission (WAPC) or the Western Australian Waste Authority (Waste Authority), have yet made a decision as to whether a LSP should be prepared and, if so, what form the LSP should take. Accordingly, there has been no consideration, as far as we are aware, as to what experts are to be engaged to prepare a LSP.

45 The planners' comments on this key 'driver' were seen by the Tribunal as mainly assisting their respective opinions on how long it might take for a LSP to be available to guide decision-makers. Generally speaking, Mr Maiorana had an optimistic view of this process and considered that an LSP ought to be 'seriously entertained' (that is,

approaching final promulgation) within about four years. Mr Smith, on the other hand, considered that at least seven years was a more realistic time frame.

46 As is noted above, commencing the preparation of a LSP is not yet within the contemplation of any relevant planning or regulatory body. We will return to the significance of this matter, if any, below.

47 We turn to examine the planning issues, commencing with a review of the relevant planning instruments.

Planning framework

Town planning scheme

48 The site is zoned General Agriculture under TPS 2. The relevant objectives of the General Agriculture zone are as follows (emphasis added):

> **4.15.1 Objectives:**
>
> (a) To ensure the continuation of broad-hectare agriculture as the principal land use in the district encouraging where appropriate the retention and expansion of agricultural activities.
>
> (b) To consider non-rural uses *where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.*
>
> …

49 The Zoning Table of TPS 2 (Table 1) lists a range of both rural and non-rural uses in the General Agriculture zone that may be considered for planning approval, including the following (emphasis added):

- Club Premises;
- Educational Establishment;
- Industry - Extractive;
- *Industry - Noxious*;
- Intensive Agriculture;
- Piggery;

- Poultry Farm;
- Public Recreation; and
- Service Station.

50 A 'landfill' land use is a use neither listed nor defined under TPS 2. In respect of uses that are not listed in the Zoning Table, TPS 2 includes the following provisions:

> 3.2.3 Where a specific use is mentioned in the Zoning Table, it is deemed to be excluded from the general terms used to describe any other use.
>
> 3.2.4 If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type or class of activity of any other use the local government may:
>
> (a) determine that the use is consistent with the objectives and purposes of the particular zone and is therefore permitted; or
>
> (b) determine that the use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of [cl] 7.2 in considering an application for planning consent; or
>
> (c) determine that the use is not consistent with the objectives and purposes of the particular zone and is therefore not permitted.

Accordingly, the Shire, in effect acting for the respondent, advertised the proposed development as provided for under cl 7.2 of TPS 2.

51 TPS 2 includes the following definitions in Sch 1 ('Interpretations'):

> ***industry***: means the carrying out of any process in the course of trade or business for gain, for and incidental to one or more of the following:
>
> a) the winning, processing or treatment of minerals;
>
> b) the making, altering, repairing, or ornamentation, painting, finishing, cleaning, packing, or canning or adapting for sale, or the breaking up or demolition of any article or part of an article;
>
> c) the generation of electricity or the production of gas;
>
> d) the manufacture of edible goods,

> and includes, when carried out on land upon which the process is carried out and in connection with that process, the storage of goods, any work of administration or accounting, or the wholesaling of, or the incidental sale of goods resulting from the process, and the use of land for the amenity of persons engaged in the process; but does not include:
>
> (i) the carrying out of agriculture,
>
> (ii) on-site work on buildings or land,
>
> (iii) in the case of edible goods the preparation of food for retail sale from the premises.
>
> …
>
> ***Industry – noxious***: means an industry which is subject to licensing as 'Prescribed Premises' under the [*Environmental Protection Act 1986* (WA)].

52 As we have seen above, the proposed landfill facility will be subject to licensing as 'Prescribed Premises' under the EP Act. On the face of it, the proposed land use would be best classified in land use terms as 'industry - noxious'. We will return to this issue of the proper characterisation of land use, below.

53 Clause 8.5 of TPS 2 listed the matters to be considered by the respondent when considering a development application, and it was to this list of matters that the parties first had regard.

54 However, on 19 October 2015, cl 8.5 of TPS 2 was, in effect, replaced by cl 67 of the deemed provisions for local planning schemes (such as TPS 2) in Sch 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (2015 Regulations).

55 It was common ground that the items now to be considered are in substance essentially the same as those that were listed in cl 8.5 of TPS 2.

56 Clause 67 of the 2015 Regulations, so far as is relevant, states:

> **67. Matters to be considered by local government**
>
> In considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application -
>
> (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;

(b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015* or any other proposed planning instrument that the local government is seriously considering adopting or approving;

(c) any approved State planning policy;

(d) any environmental protection policy approved under the *Environmental Protection Act 1986* section 31(d);

(e) any policy of the Commission;

(f) any policy of the State;

(g) any local planning policy for the Scheme area;

(h) any structure plan, activity centre plan or local development plan that relates to the development;

…

(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;

(n) the amenity of the locality including the following -

(i) environmental impacts of the development;

(ii) the character of the locality;

(iii) social impacts of the development;

(o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;

(p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;

(q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation,

subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;

(r) the suitability of the land for the development taking into account the possible risk to human health or safety;

(s) the adequacy of -

(i) the proposed means of access to and egress from the site; and

(ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;

(t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;

…

(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;

(y) any submissions received on the application;

(za) the comments or submissions received from any authority consulted under [the Scheme];

(zb) any other planning consideration the local government considers appropriate.

57 The Shire has also advertised Amendment 50 to TPS 2. Amendment 50 was an 'omnibus' amendment that included definitions for the uses 'Waste Disposal Facility', 'Waste or Resource Transfer Station' and 'Resource Recovery Facility'. Under Amendment 50, 'Waste Disposal Facility' and 'Waste or Resource Transfer Station' were shown as 'not permitted' in all zones except for the General Agriculture zone where they were shown as 'SA' (that is, discretionary after advertising). 'Resource Recovery Facility' was listed as a discretionary use in the Industrial and General Agriculture zones.

58 Following advertising, the Shire recommended to the WAPC that the waste-related definitions and provisions be deleted from Amendment 50. The respondent said that this was as a result of community concern surrounding the proposed development.

59 Amendment 50 is presently with the Minister for Planning. The respondent advised the Tribunal that the Minister had deferred a final decision on Amendment 50 until this SAT review is determined.

Local planning policies

60 The Shire has adopted the *Shire of York Local Planning Strategy* (Shire's LPS) that has been endorsed by the WAPC. The Shire's LPS's first listed economic objective (paragraph 2.1) is as follows:

> [To encourage] the development and diversification of businesses that will strengthen and broaden the economic base of the Shire and provide employment opportunities for the community.

61 The Shire's LPS identifies the site as in the Darling Plateau Rural Precinct (1a) and the Western Slopes Precinct (Conservation) (2b). The site is predominantly in the Western Slopes (Conservation) (2b) Precinct. The objectives of the Western Slopes Precinct (Conservation) (2b) are as follows:

- [To preserve] and enhance the environment and natural resources.
- [To support] continued sustainable agricultural production.
- [To promote] farm diversification.
- [To recognise] the likelihood that existing lots may be developed.

A relevant strategy of the Western Slopes (Conservation) (2b) Precinct is to:

> Encourage tourism, cottage industries, perennial horticulture and farmstay accommodation.

62 The Shire has also adopted the *Shire of York Strategic Community Plan* (Community Plan), which is described as a 'visionary document'. At page 8 of the Community Plan the following objective is noted: 'Support Sustainable and Renewable Resource Management'. A priority in respect of that objective is to 'Participate in a Regional Waste Management Strategy Plan'.

63 The Community Plan identifies three main goals of the whole plan as follows:

> **Social**
>
> - Manage population growth, through planned provision of services and infrastructure.

- Strengthen community interactions and a sense of a united, cohesive and safe community.

- Build and strengthen community, culture, vibrancy and energy.

Environmental

- Maintain and preserve the natural environment during growth, enhancing the 'rural' nature of York, and ensuring a sustainable environment for the future.

- Support sustainable energy and renewable resource choices.

Economic

- Build population base through economic prosperity.

- Value, protect and preserve our heritage and past.

- Grow the economic base and actively support local businesses and service provision.

64 A further relevant objective of the Community Plan is to 'Develop Commercial and Economic Viability to Support Growth Capacity'. A priority in respect of that objective is to '[a]lign identified commercial and appropriate service industry opportunities to land use availability, whilst protecting rural and heritage significance' (page 9).

65 A stated 'vision' of the Community Plan in relation to economic development is to 'diversify economically through commercial growth, providing jobs and services to support [York's] growing population'. An objective in this regard is to '[f]acilitate commercial and service industry growth', with a stated priority to '[s]upport industry growth through the provision of land use and encourage value add[ed] tertiary industries to support primary industry' (page 10).

WAPC policies

66 Also relevant to this matter are certain planning documents prepared by the WAPC.

67 The *State Planning Strategy 2050* (June 2014) is a strategic WAPC document which sets out a framework of planning principles, strategic goals and State strategic directions.

68 Figure 32 - 'Planning for Waste' found in the *State Planning Strategy 2050* identifies on a map a landfill site within the Shire, but does

not identify it specifically on the subject land, particularly because of the scale of Figure 32.

69 Clause 2.4 of the *State Planning Strategy 2050* relevantly provides:

> **Objective[s]**
>
> …
>
> A network of strategically located waste management facilities and infrastructure will assist in increasing recycling and stimulate further innovation in reprocessing.
>
> **Overview**
>
> …
>
> [W]aste management facilities must be sited, designed and operated to meet environmental criteria and prevent pollution. Land identified for waste management should be developed and used in such a way that the activities of users do not impose an unacceptable risk to other persons, property or the environment.
>
> The development of waste and recycling infrastructure will better connect and integrate resource recovery sites with existing and new waste processing infrastructure.
>
> There is now a presumption against siting putrescible landfills on the coastal plain or other environmentally sensitive areas. This will require any future landfills to be located outside the Perth metropolitan area, which will increase the need for waste processing facilities within the city.
>
> A risk assessment of new development proposals will be dealt with by the WAPC (on the advice of the Environmental Protection Authority and the Department of Environmental Regulation) as a matter for consideration in land-use planning and development decisions.
>
> …
>
> **State Challenges**
>
> The quantity of waste generated in Western Australia is steadily growing, a trend that is likely to continue unless action is taken to reduce generation rates.
>
> …
>
> [I]ncreasing waste processing and recycling capacity across the State requires appropriate and suitable land to be secured as long-term waste sites and/or precincts.

…

> The siting, design, operation, and ongoing funding and management of waste management facilities are often complex. Planning for the transference of materials from their sources to their recovery facilities involves securing strategic sites and infrastructure corridors.
>
> Planning for strategic waste sites involves the assessment of buffers, transport access, relationships to existing waste facilities and producers, and the degree of risk of air, soil, groundwater and surface water pollution.

70 It is common ground that the reference, above, to '… a presumption against siting putrescible landfills on the coastal plain' originates from the policy position of the DER.

71 The *State Planning Strategy 2050* also includes 'A strategic approach to planning for waste' found in Table 12 as follows (excerpt from Table 12):

Element	**2050 Outcomes**	**Measurement**	**Aspirations**
Strategic sites	A network of strategically located waste management, disposal and recovery facilities	Number of strategically located sites secured for waste management	Strategic sites, buffers and corridors for waste management facilities continue to be identified and secured Waste facilities have the capacity to service long term waste processing and recycling needs of a growing population and economy Environmentally sensitive sites and precincts as well as sites with a higher long-term use are excluded from being used for waste disposal purposes

72 The WAPC has also adopted the *Draft Wheatbelt Regional Planning and Infrastructure Framework* (March 2014) (DWBF). It was proposed that the DWBF be finalised and published in October 2015 but, at the date of the hearing, this had not yet occurred. The DWBF provides a regional context for land use planning in the Wheatbelt region.

73 The 'Waste management' section of the DWBF relevantly provides, at page 37 (emphasis added):

> **Waste management**

> The Draft *State Planning Strategy 2012* identifies waste disposal, treatment and recycling facilities as an essential infrastructure item related to Western Australia's growth. The Strategy identifies that a network of strategically located waste management facilities and infrastructure sites are required to cater for this growth.
>
> Similarly, the Western Australian Waste Strategy's (Waste Authority 2012) vision is to reduce the proportion of waste disposed to landfill and a key strategic objective is to initiate and maintain long term planning for waste and recycling processing and to ensure access to suitably located land with buffers sufficient to cater for the State's waste management needs. The Waste Authority is supporting regional groups of local governments in the implementation of their strategic waste management plans through the Regional Funding Program.
>
> Local governments in the Wheatbelt are working together to develop and implement best practice approaches to meet localised waste management needs. The focus is on avoidance, reuse, recycling, recovery and disposal.
>
> In addition to servicing their own community needs, there is potential for Wheatbelt local governments to establish facilities that accept and manage waste from the Metropolitan area or to develop specialist waste treatment operations that service a much wider geographic area. The Class II landfill and gas collection plant planned for in the Shire of Gingin is an example of such an enterprise. *There are also current proposals for landfill facilities in the Shires of York and Toodyay*.
>
> The planning arrangements for regional waste management vary between local governments. Generally the WAPC favours the identification and zoning of sites through a scheme amendment process, as this requires a local government to agree to initiate a scheme amendment in the first instance, early referral to the Environmental Protection Authority, opportunities for public submissions and the ability to establish special conditions for the sites prior to development. Subject to environmental and land use suitability, sites adjacent to the major transport routes of the Great Eastern Highway, Great Northern Highway and Brand Highway are considered most suitable for regional landfill.

74 The DWBF also provides, under the heading 'Planning approach for Vibrant Economy' (page 39), that the Commission will aim in its decision-making to:

> 1) Facilitate project-ready commercial and industrial land supply to support growth across the region and respond to State demand;
>
> 2) Promote rural-zoned land as highly flexible areas that can accommodate a wide variety of enterprises[.]

75 Importantly, the 'Strengths, Weaknesses, Opportunities and Threats' analysis set out in the DWBF (Appendix 5) recognises the opportunity for the 'Development of strategic infrastructure to service Perth', including a 'regional waste facility'.

76 An initiative of the DWBF (Appendix 1) is the development of:

> An economic strategy to bring about sustainable long-term growth in communities and to achieve industry and employment growth. This will address:
>
> • diversification of industries including alternative and niche industries …

77 Appendix 3 of the DWBF deals with the 'Anticipated direction for regional infrastructure'. Item 19 thereof deals with a 'Strategic Waste Project' and states the following objective:

> Establish regional waste management facilities and construct additional transfer stations to service all communities in the Wheatbelt in accordance with the principles of best practice waste management and environmental protection.

Waste Authority

78 One of the Waste Authority's functions under the *Waste Avoidance and Resource Recovery Act 2007* (WA) is to prepare a waste strategy 'for the whole of the State for [the] continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice, and targets for waste reduction, resource recovery and the diversion of waste from landfill disposal'.

79 The Waste Authority has published the *Western Australian Waste Strategy: 'Creating the Right Environment'* (2012) (Waste Strategy 2012).

80 The Waste Strategy 2012 has the following relevant 'strategic objective' (page 15):

> **Strategic objective 1.**
>
> Initiate and maintain long-term planning for waste and recycling processing, and enable access to suitably located land with buffers sufficient to cater for the State's waste management needs.
>
> Enabling access to sufficient land for waste management facilities, in the right place by the right time, including appropriate buffers and access to transport networks, to meet industry needs is critical to the success of this Strategy. In order to cater for this need a long-term plan outlining

> the number and types of facilities that are likely to be required, their optimum location and access to transport networks along with trends in the generation of waste and the change in waste stream composition is required[.]

81 Under the heading 'Major Challenges facing Western Australia' (page 11), the Waste Strategy 2012 provides:

> **Planning challenges**
>
> It is critical to ensure that there are appropriate waste and recyclables processing facilities available across Western Australia. With Western Australia's predicted continued economic growth and population increases, it is important that planning and development of waste and recycling processing facilities in the metropolitan region and other regions is undertaken early and is considered as critical infrastructure like other important infrastructure such as water, sewerage and power.
>
> Access to land with appropriate buffers and transport links to allow the efficient and effective processing of waste is difficult to secure on a reliable basis and, as development across the State increases, this task will only become more difficult …
>
> The Waste Authority is working to identify future land, buffer and transport requirements for waste and recycling processing so that these can be incorporated into the State planning framework[.]

82 The Waste Authority prepared a *State Waste Infrastructure Plan* 2013-2015 (SWIP), to determine the longer term waste management infrastructure requirements for the Perth and Peel regions.

83 The SWIP process dealt with 'lower level infrastructure', such as intermediary waste transfer and sorting situations. The SWIP noted that 'sites for future development of landfills [were] not assessed as part of the project and that landfills would continue to play an important role in waste management in Perth and Peel into the future, however the issue of new landfills would be addressed separately to the current planning process'. Since that time, as far as we are aware, there has been no SWIP related work identifying new landfill sites.

Industry-noxious?

84 As foreshadowed, there is a preliminary issue as to the proper land use category applicable in respect of the proposed development.

85 Counsel for the respondent, Ms C Ide, supported by Mr Maiorana's opinion, contended that one must commence with the definition of 'Industry' in TPS 2, wherever it leads. If the proposed development fails

to meet the elements of that definition (which appears to be the case here) then classification as 'Industry-noxious' was not available and the proposed land use might then become a 'Use Not Listed'. Mr McGowan submitted that the definition of 'Industry' is, in effect, 'narrowed for the purpose of understanding the precise statutory definition [of 'Industry-noxious'] by an express pathway directed to, limited to, and further defined by, prescribed premises under the [EP Act]'.

86 In ***Ransberg Pty Ltd and City of Bayswater*** [2014] WASAT 12, the respondent City characterised the proposed development considered there (a concrete batching plant, which were 'prescribed premises') as a noxious industry. ***Westmore Corporation Pty Ltd and Shire of Chittering*** [2008] WASAT 290 refers to a local Shire policy that included the following guidance: 'Waste processing and disposal would be classed within the definition of 'Industry - Noxious', which is a use that is not permitted by the Scheme in all zones'. ***GMF Contractors Pty Ltd and Shire of Serpentine-Jarrahdale*** [2006] WASAT 353; (2006) 151 LGERA 74; (2006) 48 SR (WA) 1 (***GMF***), considered, at [2]:

> … a development application for a waste transfer and recycling station on a rural property to enable [the applicant] to crush approximately half of the non-organic waste it remove[d] from sites and to mulch all of the organic waste it removes. The [applicant] intended to use all the product of the crushing process for road base in its business and to give away or landfill the mulch.

The Tribunal accepted the argument of the Shire, at [30] (emphasis added):

> [T]hat the proposed use is properly classified as 'Industry General' under the Scheme, because it is an industry *other than a cottage, extractive, hazardous, light, noxious, rural or service industry*. Consequently, the proposed use is not permitted under … the Scheme and must be refused approval.

87 ***GMF*** was recently considered in ***Terra Spei Pty Ltd and Shire of Kalamunda*** [2015] WASAT 134 (***Terra Spei***) which also dealt with reconciling definitions of 'Industry' and 'Industry light' in a town planning scheme.

88 In ***Chiefari v Brisbane City Council*** [2005] QPEC 9; [2005] QPELR 500, Wilson SC DCJ (as his Honour then was) said, at 502:

> [The definitions under review] are included in [sic] to provide an explanation of the meaning of terms used in the Scheme. They are

> obviously of general application and intended to cover a variety of circumstances. They will ordinarily be construed in a manner which acknowledges that planning schemes are largely the work of town planners, not parliamentary counsel; ergo, they should be read as a whole and applied in a practical and commonsense, and not an overly technical way, and in a fashion which will best achieve their evident purpose.

That dictum has been frequently applied in this Tribunal: see, for example, ***Marshall and City of Rockingham*** [2006] WASAT 249 and, most recently, in ***Terra Spei***.

89 We are satisfied that the applicant's construction on this point as regards TPS 2 is to be preferred. It seems to us that the drafter intended to precisely link or create a new use class by reference to the EP Act licensing of certain activities, including 'Putrescible Landfill'. We can see no obvious reason to muddy those clear waters by reading down the definition to accommodate a precise but unhelpful (in the circumstances) definition of 'Industry', particularly as the other authorities cited above suggest that town planning practice easily recognises regulated landfill operations' land use as noxious industry. This is also, therefore, a 'practical and commonsense' way of reading TPS 2.

90 We turn to the planning and related evidence.

Planning evidence

91 The planning witnesses, in their joint statement, set out their conclusions drawing upon their expertise and the voluminous material filed in the review by the parties. In summary, the planners agreed between them as follows:

1) There is a clear, continuing, and long term need for additional waste disposal facilities to accommodate up to 1.85 million tonnes per annum of unrecoverable metropolitan waste. These landfill sites need to be 'identified and secured'. Such additional landfill sites will need to be located east of the Darling Scarp - including the Wheatbelt Shires - and within reasonable and economical travel distances of metropolitan waste transfer stations.

2) Apart from the absence of an approved landfill strategic plan (LSP), the proposed landfill site is otherwise consistent with the *State Planning Strategy 2050* (June 2014).

3) The proposed landfill is of a scale and intensity that sits 'in the middle range' of current and approved new landfills. The scale of new, additional landfills will ultimately also be informed by a LSP and may result in requirements for smaller, similar sized or larger landfills.

4) The proposed landfill is substantially consistent with the relevant objectives of the General Agriculture zone of TPS 2 in that it will have no impact on the continuation or expansion of broad hectare agriculture, and the benefits are both significant and tangible and have the potential to be substantially delivered.

5) To the extent that the Shire's Local Planning Strategy (LPS) is relevant, the proposed landfill is consistent with the Shire's LPS.

6) Apart from the absence of a 'landfill strategic plan', the proposed landfill is consistent with the Shire's Community Plan.

7) The proposed landfill will have little or no impact on the amenity of the locality or the district.

92 These conclusions are a mix of what might be considered as local planning issues (that is, conclusions 4, 5 and 7) and broader strategic issues (conclusions 1, 2, 3 and 6).

93 It is convenient to note here the evidence of Mr Nial Stock, employed by SITA as its State General Manager (Western Australia).

94 Mr Stock told the Tribunal that the applicant had examined in detail other potential landfill sites in local government areas east of the Darling Scarp. He said that other sites had been rejected by the company, mostly because of commercial considerations such as transport distance, development costs relative to site characteristics, and land availability, when compared to the current site.

95 Although Mr Stock has had considerable experience in such matters (which we accept), no independent evidence was produced in support of Mr Stock's assertions. Thus, there may well be other sites east of the Darling Scarp that would satisfy planning and environmental requirements for a landfill site, but they have not yet been identified.

96 In any case, the Tribunal has before it an application for approval of the landfill on this site in the Shire. This leads to the examination of the proposed development in light of the issues agreed upon by the parties.

Issue 1: Whether the proposed development should be approved, having regard to the scale and intensity of the proposed development

97 In this section of our reasons, we are only dealing with planning matters. As appears above, the environmental experts, in an agreed statement, said that the proposed development would not have an impact on groundwater.

98 The first planning issue to be considered then (Issue 1) is the overall impact of the proposed development on the locality from a planning point of view.

99 As appears above, the planning experts have jointly reached the position that the proposed landfill should *not be refused on the basis of the local planning context* and related matters. We accept this general position as soundly based.

100 Further, the planners jointly reached the position that the proposal *was generally in conformity with TPS 2*. We see no reason to dispute this conclusion, and we accept their expert opinion. We note, in particular, that the relative area of the proposed landfill, when compared to the agricultural area of the farm site and to the areas of general agricultural land in the surrounding district, also supports this conclusion.

101 It is plain that a *general need* for such a site (whether here or elsewhere) emerges from the planning framework itself. More specifically, the Tribunal does not doubt, having regard to the evidence, that there is a need for future landfill sites to be identified and developed east of the Darling Scarp for the disposal of waste from the metropolitan area. That is the view of the experts.

102 Putting to one side, for the moment, the issue of orderly and proper planning, this particular site, on the material before us, seems to meet that established need. Further, as we have seen, no planning rule or policy (see above) stands in the way of conditional approval being given to achieve that goal.

103 Additionally, having regard to the main instruments making up the planning framework, we think that it is fairly self-evident that some *social and economic benefits* would flow to the local and wider community

from the proposed development. In particular, it is likely that limited employment opportunities would be generated in the Shire.

104 In respect of the planners' conclusion that the proposed landfill would have little or no impact on the *amenity* of the locality or the district, we note that evidence was produced as to how the area would be eventually screened from roads, neighbours' houses and the lookout (at the adjacent Mount Observation National Park) by topography, vegetation and distance. Expert reports were also produced to show that noise, dust and litter could all be regulated as part of the operation and management of the landfill. The applicant has agreed on draft conditions related to such matters as traffic and operating hours.

105 The Tribunal accepts that the proposed use, if granted on appropriate conditions, need not have an adverse impact on the amenity of the locality or the district.

106 We thus turn to the wider question of whether, even if the proposal might be approved, it should nevertheless be refused, given the alleged absence of proper planning for the event.

Issue 2 Whether the proposed development is ad hoc and inconsistent with orderly and proper planning

107 As we have seen, the planning framework expressly requires that regard is to be had to the requirements of orderly and proper planning. Thus, in her opening submissions, counsel for the respondent, Ms Ide, included the comment that orderly and proper planning was the basis for the refusal of the proposed development.

108 The respondent's case was that approving a landfill on the site, which was clearly a regional facility, at the scale proposed would be ad hoc development, and would be in conflict with this central requirement of the planning framework. That is, development at this scale, in effect, *required a strategy*, such as an LSP, that identified the appropriate locations for regional facilities in the local government areas east of the Darling Scarp.

109 In ***Marshall v Metropolitan Redevelopment Authority*** [2015] WASC 226 (***Marshall***), Pritchard J, at [179] - [183], said (certain footnotes omitted, emphasis added):

> The starting point for determining the meaning of the phrase 'orderly and proper planning' … is the ordinary and natural meaning of those words. The ordinary meaning of the word 'proper' includes 'suitable for a specified

or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right'. The ordinary meaning of the word 'orderly' includes 'characterised by or observant of order, rule, or discipline'. *In other words, to be orderly and proper, the exercise of a discretion within the planning context should be conducted in an orderly way - that is, in a way which is disciplined, methodical, logical and systematic, and which is not haphazard or capricious.*

The planning discretion should be directed to identifying the 'proper' use of land – that is, the suitable, appropriate, or apt or correct use of land. In order to do so, the exercise of discretion would clearly need to have regard to any applicable legislation, subsidiary legislation and planning schemes (such as region schemes, town planning schemes, local planning schemes) and policy instruments. The State Administrative Tribunal has observed that 'at the heart of orderly and proper planning' is a public planning process which permits the assessment of individual development applications against existing planning policies 'so that the legitimate aspirations found in the planning framework may be translated into reality' [citing with approval *Atlas Point Pty Ltd and Western Australian Planning Commission* [2013] WASAT 33 at [87] (Senior Member McNab and Senior Sessional Member P De Villiers)].

However, there is no reason in principle why planning legislation and instruments will be the only matters warranting consideration in determining what is a 'proper' planning decision. The matters which warrant consideration will be a question of fact to be determined having regard to the circumstances of each case [citations include *Housing Authority of Western Australia and Western Australian Planning Commission* [2010] WASAT 66 [30] (Senior Member Parry, as he then was)].

While the exercise of discretion will involve a judgment about what is suitable, appropriate, or apt or correct in a particular case, that judgment must (if it is to be 'orderly') be an objective one. If the exercise of discretion is to be an orderly one, the planning principles identified as relevant to an application should not be lightly departed from without the demonstration of a sound basis for doing so, which basis is itself grounded in planning law or principle [citing *Charkey-Papp and Town of Cottesloe* [2007] WASAT 319 [61] (Member McNab, as he then was)]. A broad range of considerations may be relevant in that context.

An issue which arose in the present case was whether the principles of orderly and proper planning would include considerations not solely referable to the land in question … Nothing in the [relevant legislation] suggests that such a constraint is intended to apply to the [respondent's] identification of the sources and principles of orderly and proper planning. As a matter of principle it is difficult to see why the Parliament would have intended that the inquiry be limited in that way. *The application of the principles of orderly and proper planning must of course be by*

> *reference to the land in question but the source and content of those principles need not be so limited*. That conclusion finds some support in the authorities in which the application of the principles of ordinary and proper planning in similar contexts has been discussed. *Those authorities suggest that regard may be had to a broad range of matters* ranging from appropriateness of the site for the proposed use, the location of the land in question, access to public transport and commercial and other facilities of relevance to the use of the land, and (in the case of a proposed development by a government authority) the policy rationale behind the proposed development, and may thus include matters which are not solely referable to the land in question.

110 We will return to ***Marshall*** below.

111 The Waste Authority's Waste Strategy 2012 contemplates, amongst other matters, '[identifying] future land, buffer and transport requirements for waste and recycling processing so that these can be incorporated into the State planning framework'. Similar objectives exist with respect to the 2014 *State Planning Strategy 2050*. The short point is that all of this overarching planning is in its initial stages, whereas the evidence in this case suggests that there is a current, perhaps soon to be pressing, need for a landfill site east of the Darling Scarp.

112 In respect of the DWBF, reference is made therein to the objective of establishing facilities to accept waste from the metropolitan area, and Appendix 3 thereof (see above) specifically refers to establishing regional facilities to serve 'all communities' in the Wheatbelt. The applicant contended, in effect, that this instrument, on a fair reading, did not prevent a private operator from applying for planning approval for a landfill site to meet these objectives. We are inclined to agree.

113 The applicant emphasised that in pursuit of that aim, it was proposing to follow 'best practice waste management and environmental protection', to the standards indicated by the environmental experts.

114 The DWBF also refers to the potential for a local government itself to establish such facilities for a wider geographical area, but it does not mandate them to do so. The WAPC also comments that it generally favours the identification and zoning of such sites as part of a local planning scheme process to be initiated by the local government. However, reference is also made specifically to the 'current proposal for landfill facilities in the Shire[s] of York and Toodyay'. The applicant submitted that there was nothing in the instrument that suggested that the WAPC did not want these landfill proposals to proceed, notwithstanding

its preferred position on prior identification and rezoning. Again, that appears to be a fair reading of the DWBF.

115 In any case, it was not apparent to the Tribunal why the WAPC would advocate a preference for a local government to commence and carry out, under a local planning scheme, what is essentially the regional objective of identifying regional landfill sites where it appears that this goal, arguably, would be better carried out by the WAPC or some other body with wide strategic planning objectives. The circumstances of the Shire's TPS 2 Amendment 50 (see above) suggest that, with respect, parochial interests, rather than a broad regional perspective, may be the determining factor whether a local government proceeds with a scheme amendment to allow development of a landfill.

116 It is true that Appendix 3 of the DWBF, under the reference to the anticipated direction for regional infrastructure, refers to a 'Strategic Waste Project': see Item 19 of Appendix 3, set out above. In the applicant's submission, Mr Maiorana (the planner engaged by the respondent) was interpreting the document as if it *required* the preparation of a strategy when it did not actually state that such a strategy must be prepared to identify regional locations for landfill. We agree with the applicant that the language used in Appendix 3 is not couched in such mandatory terms. And, in any case it would be, in our experience, unusual for an instrument of this nature to be read or interpreted in such an absolutist manner.

117 The Tribunal considers that whilst the DWBF expresses laudable planning aspirations for waste management, it does not provide a basis for determining that a landfill of the type proposed would be inconsistent with 'orderly and proper planning'. This is particularly so in circumstances where the landfill would be located on a major transport route and 'best practice' waste management and environmental protection are effectively incorporated into the proposed development. A similar conclusion may be reached with respect to the aspirations expressed in the *State Planning Strategy 2050*.

118 We should add that, to the extent that it is relevant, we are unable to conclude that the siting of this particular landfill would somehow be either unfair or inequitable as regards the Shire of York, or, for that matter, any other similarly affected Shire. The fact is that comprehensive and sufficient (for present purposes) studies have led to the rational selection of the current site, a selection that could not be said to be ill-considered or inconsistent with the planning framework.

119 ***Marshall*** suggests that a decision-maker might have regard to a wide variety of relevant sources and material in order to discharge the duty of exercising a discretion 'within the planning context [which is to be] conducted in an orderly way – that is, in a way which is disciplined, methodical, logical and systematic, and which is not haphazard or capricious'.

120 We have had careful regard to both the expert evidence before us and the instruments making up the planning framework. It is plain that a landfill site is more or less required in the immediate future and that the final strategic planning for this event is many years away. Whether there are grounds for a moratorium on development in such circumstances must of course be decided upon a case by case basis. However, generally speaking, planning principle would suggest caution in this area. Hence, Member Jordan could observe in ***Nightview Pty Ltd and City of Cockburn*** [2005] WASAT 275, at [63], (emphasis added) that:

> While it is a sound planning objective to continue with [a process of implementing a structure plan for a designated precinct] the Tribunal is concerned that because of the uncertainty with timing *there should not in the meantime be what amounts to a moratorium of unknown length* on the use of premises in the town centre.

See also ***Waddell and Western Australian Planning Commission*** [2007] WASAT 82 at [79] where a moratorium *was* justified as 'a whole raft of applicable policies and instruments [were] already in place and one strategy only [was] in draft form'.

121 We do not think that the respondent has provided sufficient justification to warrant what would be an effective moratorium on this type of development.

122 We conclude that the proposed site is, on the evidence, a 'proper' land use. Moreover, a conditional approval of the proposal would not, in our view, so confound, prejudice, or obstruct strategic planning so as to warrant refusal. It could not be said, in our view, that an approval would not be relevantly 'orderly' in the planning context that we are looking at.

123 The amended proposal ought to be approved upon conditions, a topic to which we now turn our attention.

Conditions

124 Originally, the Shire's officers, in their report prepared for the respondent, recommended some 61 conditions if planning approval were to be given. These conditions covered such matters as:

- Time limited approval
- 'Substantial commencement' period
- The relocation of a stormwater dam
- Various reporting requirements
- Consultation and reporting strategy
- Fire management
- Water management
- Landfill construction management plan
- Landfill operations management plan
- Waste haulage vehicle management plan
- Amenity
- Landscaping
- Revegetation plan
- Lighting
- Signage
- Access
- Gates and fencing
- Fill and stockpiling
- Installation of liner
- Operation of facility
- Access to information

- Public liability
- Cash performance bond.

125 The DER had previously been consulted by the respondent regarding which, if any, of the respondent's proposed conditions possibly duplicated or overlapped with any conditions that were likely to be imposed by the DER. Accordingly, comment was made by the DER on 27 of the original 61 conditions. That position was reiterated before the Tribunal by both parties, and the draft agreed conditions as finally produced - nine of them - here seek to avoid such alleged duplication or overlap.

126 Thus, the position adopted by the parties (but rejected by the Shire) was to leave the detailed regulation of environmental matters to the DER (which was also the DER's view). The Shire's view, expressed through its counsel, Mr D McLeod, was that there was no guarantee as to what form the final DER conditions would take, and that, in any event, the Shire had the principal role of regulating (through monitoring and enforcement) any amenity impact. The Shire also submitted, in effect, that the alleged duplication or overlap missed the point as to the different aim or nature of the DER's regulation when compared with that of the Shire.

127 However, the starting point must be, we think, that where it is likely that a DER condition will operate in parallel with a Shire condition, 'it is unnecessary to duplicate such requirements in the [Shire's] conditions': ***Keysbrook Leucoxene Pty Ltd and Shire of Serpentine-Jarrahdale*** [2012] WASAT 212 (***Keysbrook Leucoxene***) at [30]. In ***Carey Baptist College Inc and Western Australian Planning Commission*** [2014] WASAT 113, Member Jordan, after citing ***Keysbrook Leucoxene***, said, at [114]:

> The Tribunal is of the opinion that it would not be sound planning practice to have a situation where the applicant was required to get clearances on essentially the same conditions from two different authorities which may result in contradictory determinations on whether a condition had been satisfied.

128 This whole topic was considered, at length, by our Victorian counterpart (VCAT) in ***SITA Australia Pty Ltd v Greater Dandenong City Council*** [2007] VCAT 156; (2007) 150 LGERA 266 (***SITA v Greater Dandenong***). The Tribunal there exhaustively canvassed the issue, at [24] - [33], as follows (footnotes omitted, emphasis added):

> The issue of which statutory regime should be responsible for regulating the detail of measures intended to control pollution, protect the

environment or promote sustainability has been the subject of recent Tribunal comment in *Hasan v Moreland City Council* [2005] VCAT 1931 and *Jolin Nominees Pty Ltd v Moreland City Council* [2006] VCAT 467; (2006) 145 LGERA 357.

In *Hasan* the Tribunal (consisting of the [then] President, Justice Morris, and Member Rae) struck out conditions in a planning permit for two dwellings which required energy efficiency measures in relation to a hot water system and a rainwater tank. The Tribunal found that it was less efficient to impose the conditions at the planning stage when such matters could be left to the building regulations, which contain detailed provisions in relation to energy efficiency in new dwellings.

The Tribunal acknowledged [at [16]] that: 'The *Planning and Environment Act* has a broad sweep. Although planning schemes made under [that] Act can regulate the fine details of a use or development of land, the Parliament has also passed other legislation addressed at matters within the sweep of *Planning and Environment Act*.' The Tribunal then went on to say [at [17]]:

> 'The existence of a power does not provide a justification to use it. Thought must always be given, not just to whether an outcome is desirable, but what is the best method to achieve that outcome. The journey can be as important as the destination. *When more than one method is available to achieve an outcome, it will be necessary to consider which is the best or better method, having regard to questions of efficiency, equity, certainty and freedom, as well as the extent to which the substantive objective will be achieved*.'

These principles were endorsed by the Tribunal (consisting of Deputy President Gibson and Member Keaney) in [*Jolin Nominees* where] the Tribunal discussed when it would be appropriate to include conditions on planning permits relating to the achievement of ESD [Environmentally sustainable development] principles. One of the principles identified by the Tribunal is that: *'There is no need to apply conditions which are comprehensively dealt with by other legislation or regulation*'.[at [54]] *The Tribunal held the council should not impose conditions that were covered by other legislation or regulations unless there was a highly developed statutory or strategic base for doing so*. Without this, there was a real risk that different standards would be imposed that involved unwarranted additional costs without corresponding net community benefit.

The sentiments expressed by the Tribunal in *Hasan* and *Jolin Nominees* reflect earlier views expressed by the Tribunal …

We consider that as a general principle, where specific aspects of the use or development of land are controlled by an EPA [Environment Protection Authority] licence or works approval, conditions in a planning permit for

> the use or development should not attempt to control the same thing. We consider it may be appropriate for a planning permit condition to state that the use or development (or specific aspects thereof) must be in accordance with a licence or works approval issued by the EPA (as amended from time to time) but the condition should refrain from referring to specific details or plans as these may change from time to time as the licence or works approval is upgraded. Reasons for supporting this general principle include the following.
>
> Planning permit conditions tend to be fixed in time whereas EPA licence conditions are continually upgraded to reflect improvements to environmental best practice and changes in government policy.
>
> EPA licences are subject to ongoing revision on a continuous improvement basis. By contrast, once a planning permit is issued, conditions are not reviewed unless an amendment to the permit is sought. Even then, any changes to conditions will be restricted to the amendments in question. It is difficult to draft planning permit conditions in a way that will ensure they keep pace with changes in technology and practice, improved standards and higher community expectations. What might be considered cutting edge standards and stringent conditions at the time a planning permit is granted, and which are quite appropriate at that time, may fail to meet required standards many years later. Responsible authorities are rarely in a position to closely monitor the details of planning permit conditions or make application to upgrade them on a regular basis.
>
> In many situations this does not matter, but when dealing with potentially polluting uses it is in the community's best interests that current best practice is observed in connection with all aspects of such a use, including handling, storage, transport and disposal of materials used as well as processes employed. This is what EPA licences ensure. They are not fixed in time and conditions are often changed either at the time licenses are renewed or at other times. They therefore provide a far more flexible mechanism for controlling the detailed technical aspects of a use or development than planning permit conditions.
>
> A further difficulty associated with planning permit conditions attempting to address technical aspects of a use or development is the risk of inconsistencies arising between the way in which language is used or understood in a planning or plain English context and the way in which it is used or understood in a technical context or within the environmental regime operating under the *Environment Protection Act 1970* [Vic].

129 VCAT's views, which are persuasive, refer to a system of regulation that broadly reflects the legislative regimes in this State. We generally agree (and for the reasons they gave) with VCAT's views on this matter, views that have been applied or followed many times in that State.

130 The parties engaged in extensive discussions during the course of the hearing regarding which planning conditions ought to be imposed, if approval were to be given to the development. The Tribunal thus received a final document summarising the parties' positions on the respondent's nine originally proposed conditions. That document also took into account the Shire's views.

131 The applicant, the respondent, and the Shire agreed upon the following conditions:

1) Preparation of a Fire Management Plan (condition 1).

2) Preparation of a Revegetation Plan for Thirteen Mile Brook (condition 2).

3) External/outdoor lighting to comply with Australian Standards (condition 3).

4) Construction of internal roads (condition 5).

5) Confining operation to part of subject land indicated (condition 6).

6) No general public access to landfill (condition 7).

7) Effluent systems on site (condition 8).

8) Substantial commencement of the project within two years (condition 9).

132 The Shire proposed one very minor alteration to condition 3 (dealing with lighting) which the parties have accepted.

133 Condition 4 dealt with the extent of the obligation imposed upon the applicant to upgrade the site access road junction with the Great Southern Highway. The respondent accepted the applicant's arguments that an additional obligation to thereafter maintain the junction would be inconsistent with the arrangements reached between the applicant and Main Roads Western Australia (MRWA). The Shire sought to maintain the condition in its original form submitting that although the Great Southern Highway is the responsibility of MRWA, it provides the principal access to the Shire and the townsite. The access point, according to the Shire, must be maintained to a good standard for the length of the project. The Shire submitted that it was necessary for the Shire to be able to ensure that this private road intersection on the site

and the crossover did not deteriorate and result in, for example, the drift of soil and gravel across the highway, or dust movement caused by vehicles crossing from the site to the highway.

134 We agree with both the applicant's arguments and the respondent's corresponding concession agreeing with the applicant (which was properly made). The negotiated arrangements reached with MRWA, which is the principal regulator in this area, should stand unaffected by any condition that we impose.

135 We turn to the Shire's additional suggested conditions (draft conditions 10 - 23), most of which both the applicant and the respondent did not support.

136 Draft condition 10 proposed a 20 year lifespan for the project. The respondent did not support the proposal. The applicant argued that, directly contrary to the submission made by the Shire, this period had *never* formed part of its application or the advertised proposal. Further, such a period would be 'arbitrary and inappropriate' and did not bear on the actual life of the project (which was a commercial operation related to permissible volume) and might adversely affect the applicant's rehabilitation obligations. Finally, it was submitted that such a condition would be inconsistent with the conditions imposed in ***Opal Vale*** where no term was imposed. We agree with the applicant. There is no compelling planning reason to time limit this particular proposal. In addition, the Shire has not produced any evidence to support its contention that a 20 year period ever formed part of the original proposal.

137 Draft conditions 11(a) - 11(d) seek an Environmental Management Plan and related steps to ensure compliance with the reports made thereunder. The Shire's motivation was to further protect 'environmental and amenity matters'. Draft condition 12 is to mandate the supply to the Shire of returns and other documents made to the DER, which are, as we understand it, otherwise readily available. Draft condition 13 refers to regulating a stormwater dam on a waterway, which is the province of the Department of Water.

138 By reason of the Tribunal's acceptance above of the general principle in ***SITA v Greater Dandenong***, which extends to any specialist government regulatory agency (see at [27]), subject to what follows, we decline to impose these 'parallel' conditions. Moreover, so far as any alleged impact on amenity is concerned, there is much force in the applicant's reminder that the joint view of the planners was that there will

be, both in construction and operation, 'little or no impact on amenity'. However, as the applicant has now agreed to the supply to the Shire of its various DER returns and documents, it is appropriate for a condition to this effect to be imposed (see final condition 10).

139 Draft condition 14 seeks to heavily regulate and manage haulage vehicle operations, notwithstanding that no Shire roads will be used. MRWA will be the principal regulator and, otherwise, the evidence in the Tribunal indicated satisfactory outcomes, as far as traffic generation, noise and the general impact on amenity were concerned. Again, we decline to impose this condition. However, as the applicant has agreed to 'include the details of the haulage contractor' on waste haulage vehicle markings and to cover vehicle loads, it is appropriate for conditions to this effect to be imposed (see final conditions 11 and 12).

140 Draft condition 15 proposes a Site Rehabilitation Plan, a proposition with which, in principle, both the applicant and the respondent agreed. The final form suggested by the applicant is reasonable, with the DER replacing the Shire as the, in effect, clearing authority. This is appropriate, having regard to the DER's functions generally, and specifically in relation to this proposal. We will attach this condition to the approval.

141 The Shire also sought the creation of a Community Reference Group (draft condition 16). It is plain that conditions of this nature are lawful and sometimes appropriate, especially in respect of activities that are, whether justified or not, seen as 'often controversial or unpopular with nearby residents and ratepayers': Cf ***Hanson Construction Materials Pty Ltd and Shire of Serpentine-Jarrahdale*** [2012] WASAT 140 at [15]:

> In my view, conditions … providing for stakeholder engagement, are for a planning purpose, namely the preservation of the amenity of the locality and orderly and proper planning. (per Parry DCJ).

The applicant did not consider that such a condition was necessary 'but accept[ed] this condition which has minor amendments from the [form of] the condition proposed by the Shire'. A condition will be imposed to this effect.

142 Draft conditions 17 and 18 regulate hours for both the construction works and then for the operation of the facility. The applicant submitted that it did not:

> … consider [that] an operating hours condition [was] necessary, but would accept such a condition, provided [that] it [did] not restrict haulage vehicle

> movements and timing … The condition as proposed by the Shire has been amended for this [reason] and to reflect the proposed operating hours as applied for by [the applicant].
>
> [The applicant] considers [that] no construction hours condition is necessary, as amenity issues for construction hours will be primarily regulated by the *Noise Regulations*.

The respondent agreed with the applicant that such conditions were, in the circumstances, unnecessary.

143 We accept the submission of the applicant, and an appropriate condition restricting only the hours of operation will be imposed.

144 Draft conditions 19 and 20 deal with the construction and maintenance of internal access roads. Both parties accept, in substance, that this issue is already regulated by agreed (final) condition 5 dealing with such matters, which condition also gives an appropriate monitoring role to the Shire. Proposed conditions 19 and 20 are therefore unnecessary.

145 Draft condition 21 expressly links the waste to be received, apparently for all time, to 'Category 64 landfill' putrescible wastes under the *Landfill Waste Classification and Waste Definitions 1996*. The parties see this as unnecessary, and the applicant further submitted that such a condition might cause problems if, in the future, that instrument were ever to be wholly replaced by the DER. We agree that, in the circumstances of ongoing DER licensing and regulation, such a restriction is unnecessary.

146 Draft conditions 22 and 23 call for landscaping and revegetation screening plans. Draft condition 22 provides as follows (emphasis added):

> The operator and the owners of the property on which the landfill is situated are to ensure that landscaping and revegetation screens the operational parts of the landfill from neighbouring properties, from Mount Observation National Park, and from the Great Southern Highway at all times, *as much as is practicable*, and to the satisfaction of the Shire. Any landscape planting must utilise species indigenous to the area.

147 The respondent submitted that it was desirable that landfill 'not be visible from an existing occupied dwelling'. The Shire submitted as follows:

> The Shire's recommended conditions [deal] with the requirement for landscaping of the site to ensure that landscaping and vegetation screens the operational parts of the landfill from neighbouring properties,

> from [Mt] Observation National Park and from the Great Southern Highway at all times. Although there may be no potential for overlooking from Mt Observation National Park and the Great Southern Highway, at least the possibility of overlooking from neighbouring properties should be dealt with by an appropriate landscaping requirement along the lines of the Shire's recommended conditions … Robyn Davies [an objector, referred to above] for instance is able to confirm that from parts of her property the operational parts of the landfill site will be visible, and it is reasonable, considering the established general agriculture nature of the locality, that landscape screening should be provided to preserve amenity. The fact that some aspects of the use may impact on the amenity of only a small number of neighbours is not a justification for ignoring it as a proper planning concern.

148 The applicant submitted:

> The landfill will not be visible from Mount Observation National Park, Great Southern Highway or neighbouring residences, due to the existing landform and vegetation. It would not be practical to screen the facility entirely from neighbouring properties and not necessary when not visible at neighbouring residences. The planning experts agree there will be little or no impact on amenity … Such a condition is therefore unnecessary and inappropriate.

We accept the submission of the applicant. In the circumstances, particularly where it would be clear that it would be mostly impracticable to screen the facility 'entirely from neighbouring properties' (something the draft condition appears to contemplate: 'as much as is practicable'), there is little utility in imposing such a condition.

149 Finally, the applicant noted that although the text of any draft condition, in this round, had not been submitted by the Shire as regards the provision by the applicant of a cash performance bond, the Shire had made a submission as follows:

> If the Tribunal does not consider that a cash bond to guarantee performance is justified, there should at least be a condition requiring the operator and the owner of the landfill site to rehabilitate the site within two years of completion of works. The conditions as proposed by [the respondent] do not impose any time limit on the obligation to rehabilitate the site.

The applicant submitted that such conditions would be unnecessary and that the applicant had, in any event, already agreed to a rehabilitation condition (see draft condition 15, above). It is unnecessary therefore to pursue this matter any further.

Final form of conditions

150 Thus, for the reasons given above, the Tribunal has decided to attach the following conditions to the approval, renumbered as follows for consistency of reference:

1) Prior to commencement of any filling activities, a Fire Management Plan shall be prepared and approved by the local government with advice from the Department of Fire and Emergency Services. The Fire Management Plan shall be implemented in full and maintained in implementation until closure and during rehabilitation of the facility.

2) A Revegetation Plan for the Thirteen Mile Brook within the boundary of the subject land shall be prepared to the satisfaction of the local government prior to commencement of landfill. The Revegetation Plan is to address the revegetation of disturbed areas of the brook with native species, and is to be implemented in full and maintained in implementation until completion of rehabilitation of the facility.

3) Outdoor lighting associated with the project shall comply with AS 4282-1997 dealing with the control of the obtrusive effects of outdoor lighting.

4) Prior to the commencement of landfill operations, the site access road junction onto Great Southern Highway shall be upgraded in accordance with plans approved by Main Roads Western Australia to the satisfaction of the local government with advice from Main Roads Western Australia.

5) The internal access roads shall be constructed prior to commencement of landfill operations and maintained to a standard to ensure safety and minimise dust emissions and erosion from machinery and traffic to the satisfaction of the local government.

6) The facility shall be confined to that part of the subject property as identified in the approved plans.

7) The facility shall not be accessible to the general public for the disposal of domestic waste. No public access is permitted to the landfill.

8) Approval of the development does not extend to any approval of any effluent disposal systems.

9) The development approved is to be substantially commenced within two years after the date of the approval, and the approval will lapse if the development is not substantially commenced before the expiration of that period.

10) The operator of the facility is to provide to the Shire for its records and publication a copy of all management plans, compliance reports, and annual monitoring reports prepared for any works approval and/or license, pursuant to the *Environmental Protection Act 198*6 (WA) within two weeks of the submission of the reports to the Department of Environmental Regulation.

11) Waste haulage vehicle markings may (and shall, if the Shire requests the same in writing) include the details of the haulage contractor, but are not to include the source or nature of the materials being hauled.

12) All waste haulage vehicle loads are to be covered during transport.

13) The facility must be rehabilitated in accordance with a Rehabilitation Management Plan to be prepared and approved by the Department of Environment Regulation:

a) In a draft outline form prior to the completion of the first cell; and

b) In final form not less than two years before completion of landfill operations.

Rehabilitation is to be completed within three years after the landfill operation is complete.

14) Prior to the commencement of any filling activities, the operator of the facility is to convene a Community Reference Group (CRG) comprising representatives of the operator, the local government, and the community. The CRG should meet quarterly for the duration of the operation as a principal point of contact and dialogue between the community, the operator, and the local government, unless all parties do not require any further meetings.

15) The hours of operation for entry to the facility for the purposes of disposing waste shall be Monday to Friday 6 am to 5 pm and Saturdays 6 am to 4 pm (excluding New Year's Day, Good Friday, and Christmas Day).

Final orders

151 For the reasons given above, the review will be allowed and planning approval will be given for the proposed facility in its amended form. The Tribunal's formal orders are as follows:

1. The review is allowed.

2. The decision under review is set aside and in lieu thereof there will be a grant of planning approval for the

Allawuna Farm Landfill site on the amended plans filed in the Tribunal (and considered by the respondent at its meeting on 31 August 2015) on the conditions in the Schedule below.

Schedule of Conditions

1) Prior to commencement of any filling activities, a Fire Management Plan shall be prepared and approved by the local government with advice from the Department of Fire and Emergency Services. The Fire Management Plan shall be implemented in full and maintained in implementation until closure and during rehabilitation of the facility.

2) A Revegetation Plan for the Thirteen Mile Brook within the boundary of the subject land shall be prepared to the satisfaction of the local government prior to commencement of landfill. The Revegetation Plan is to address the revegetation of disturbed areas of the brook with native species, and is to be implemented in full and maintained in implementation until completion of rehabilitation of the facility.

3) Outdoor lighting associated with the project shall comply with AS 4282-1997 dealing with the control of the obtrusive effects of outdoor lighting.

4) Prior to the commencement of landfill operations, the site access road junction onto Great Southern Highway shall be upgraded in accordance with plans approved by Main Roads Western Australia to the satisfaction of the local government with advice from Main Roads Western Australia.

5) The internal access roads shall be constructed prior to commencement of landfill operations and maintained to a standard to ensure safety and minimise dust emissions and erosion from machinery and traffic to the satisfaction of the local government.

6) The facility shall be confined to that part of the subject property as identified in the approved plans.

7) The facility shall not be accessible to the general public for the disposal of domestic waste. No public access is permitted to the landfill.

8) Approval of the development does not extend to any approval of any effluent disposal systems.

9) The development approved is to be substantially commenced within two years after the date of the approval, and the approval will lapse if the development is not substantially commenced before the expiration of that period.

10) The operator of the facility is to provide to the Shire for its records and publication a copy of all management plans, compliance reports, and annual monitoring reports prepared for any works approval and/or license, pursuant to the *Environmental Protection Act 198*6 (WA) within two weeks of the submission of the reports to the Department of Environmental Regulation.

11) Waste haulage vehicle markings may (and shall, if the Shire requests the same in writing) include the details of the haulage contractor, but are not to include the source or nature of the materials being hauled.

12) All waste haulage vehicle loads are to be covered during transport.

13) The facility must be rehabilitated in accordance with a Rehabilitation Management Plan to be prepared and approved by the Department of Environment Regulation:

    a) In a draft outline form prior to the completion of the first cell; and

    b) In final form not less than two years before completion of landfill operations.

    Rehabilitation is to be completed within three years after the landfill operation is complete.

14) Prior to the commencement of any filling activities, the operator of the facility is to convene a Community Reference Group (CRG) comprising representatives

of the operator, the local government, and the community. The CRG should meet quarterly for the duration of the operation as a principal point of contact and dialogue between the community, the operator, and the local government, unless all parties do not require any further meetings.

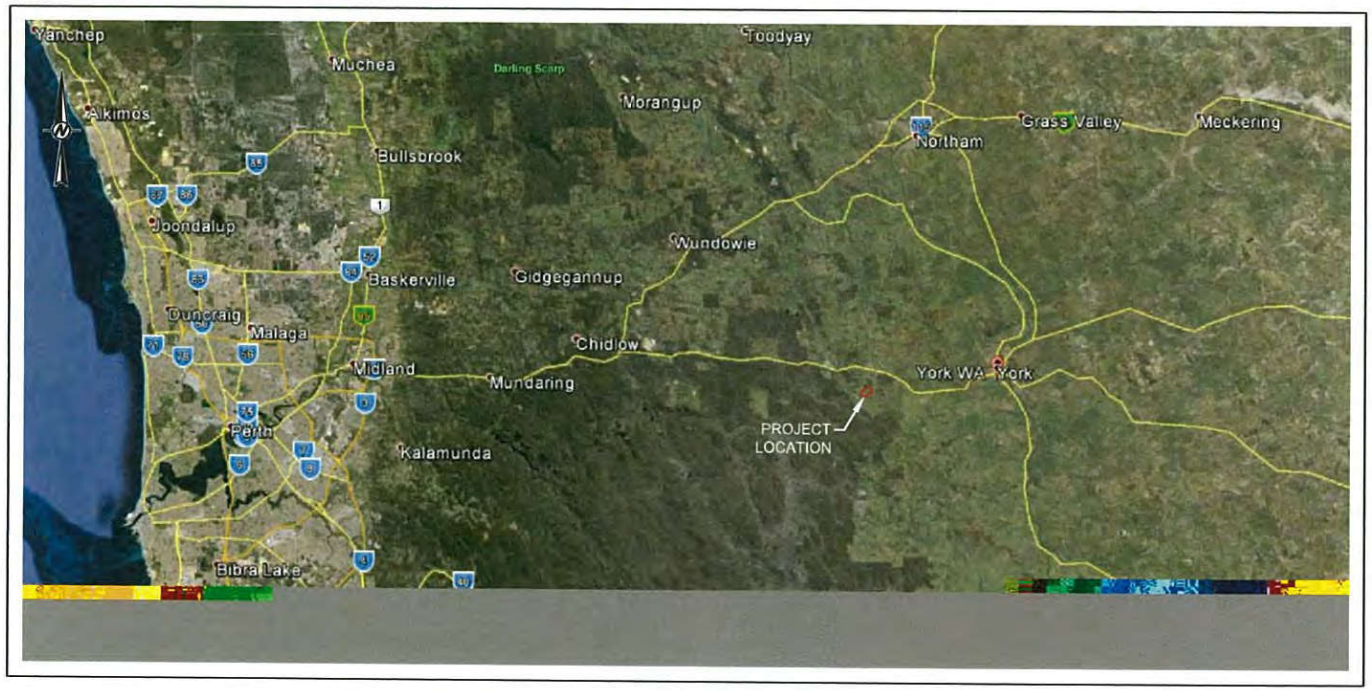
15) The hours of operation for entry to the facility for the purposes of disposing waste shall be Monday to Friday 6 am to 5 pm and Saturdays 6 am to 4 pm (excluding New Year's Day, Good Friday, and Christmas Day).

I certify that this and the preceding [151] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

_____

MR P McNAB, SENIOR MEMBER

SITA AUSTRALIA ALLUWUNA FARM LANDFILL
LOTS 4869, 5931, 9926 & 26934
GREAT SOUTHERN HIGHWAY, SAINT RONANS
APPLICATION FOR PLANNING CONSENT
SHIRE OF YORK TPS No.2



PROJECT LOCALITY PLAN
NOT TO SCALE

DRAWING SCHEDULE		
DRAWING No.	DESCRIPTION	REVISION
D001	COVER SHEET	A
D002	SITE PLAN	A
D003	LANDFILL CELL LAYOUT PLAN	A
D004	LANDFILL ULTIMATE TOP OF WASTE	A
D005	LANDFILL CELL 1 AND 2 LAYOUT PLAN	A
D006	LANDFILL INFRASTRUCTURE LAYOUT PLAN	A
D007	TYPICAL SECTIONS	A
D008	TYPICAL SECTION AND DETAILS	A
D009	LANDFILL DETAILS	A
D010	BORROW AREA LOCATIONS PLAN	A
D011	WEIGHBRIDGE DETAILS	A
D012	SITE BUILDING CONCEPTS	A

NOTES:

1. THESE NOTES APPLY TO ALL PROJECT DRAWINGS IN THE SET UNLESS NOTED OTHERWISE AND SHALL BE READ IN CONJUNCTION WITH THE SPECIFICATION.
2. ALL LEVELS ARE IN METRES TO AUSTRALIAN HEIGHT DATUM (AHD).
3. ALL CO-ORDINATES ARE IN METRES TO MAP GRID AUSTRALIA (MGA 94, ZONE 55).
4. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS NOTED OTHERWISE.
5. DIMENSIONS AND LOCATION OF EXISTING STRUCTURES SHALL BE CONFIRMED ON SITE BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORKS.
6. LOCATION AND DEPTH OF ALL SERVICES TO BE VERIFIED BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF WORKS.
7. DIMENSIONS SHALL NOT BE SCALED OFF DRAWINGS.
8. DRAWING MUST BE PRINTED IN COLOUR TO CORRECTLY IDENTIFY ALL DESIGN ELEMENTS.

REFERENCE:

BASE MAP SOURCED FROM NEARMAP WEB SITE http://maps.au.nearmap.com, ACCESSED 27.01.2015

NOT FOR CONSTRUCTION

RAR - ATTACHMENT 1

Rev	YYYY-MM-DD	DESCRIPTION	PREPARED	DESIGN	REVIEW	APPROVED
A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuPREEZ

CLIENT: SITA AUSTRALIA

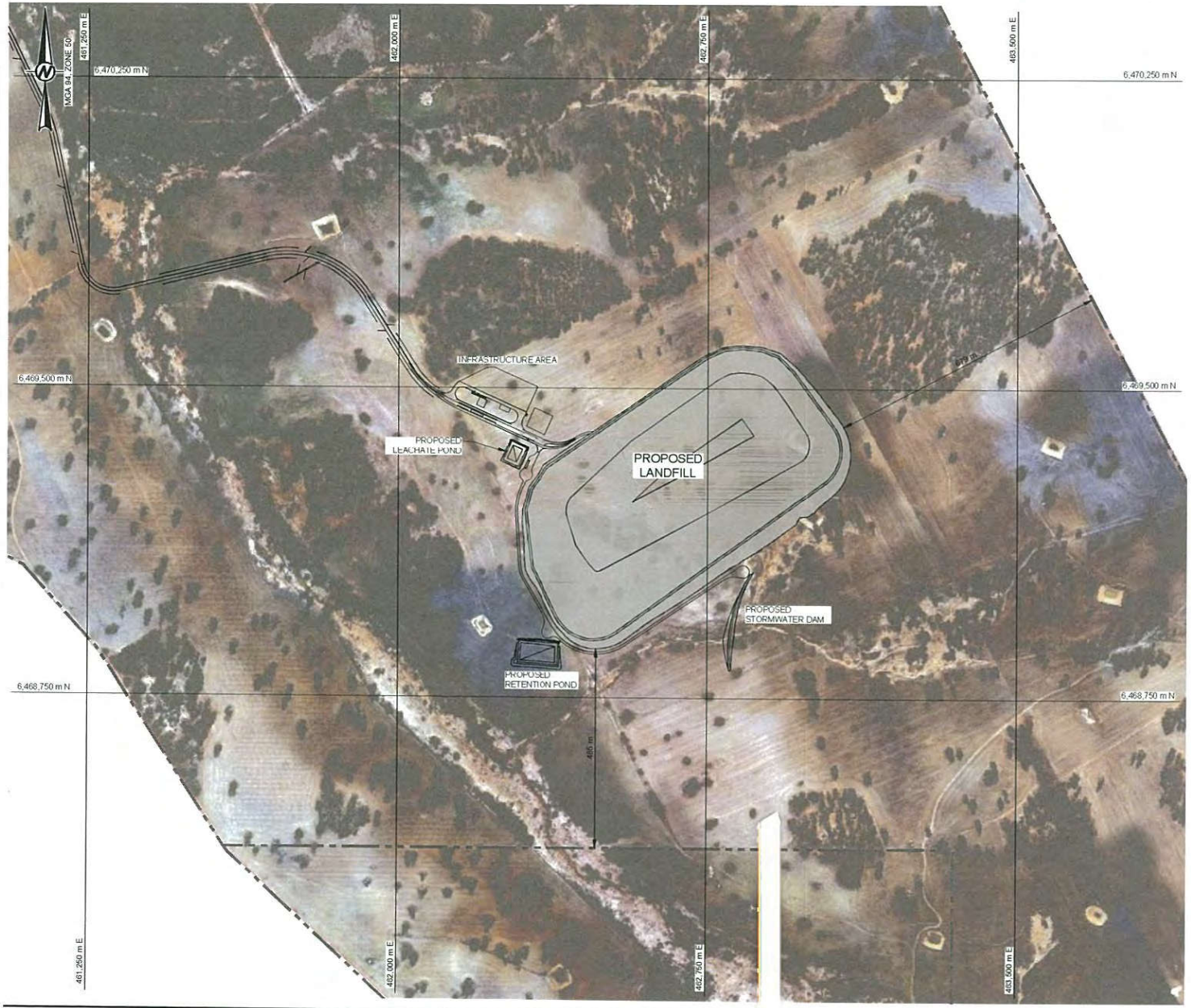
PROJECT: ALLAWUNA FARM LANDFILL

CONSULTANT:

Golder Associates
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

TITLE: **COVER SHEET**

PROJECT No.	DOCUMENT NO.	Rev.	Sht	FIGURE
147645033	PLANNING - FEB 2015	A	1 of 12	D001



LEGEND:

CADASTRAL BOUNDARY

NOTE:

1 REFER TO D001 FOR GENERAL NOTES

REFERENCE:

BASE MAP SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD DRG FILE "FULL SIZED AERIAL PHOTO.jpg"

NOT FOR CONSTRUCTION

0 250 500
1:10,000 METRES

A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuP

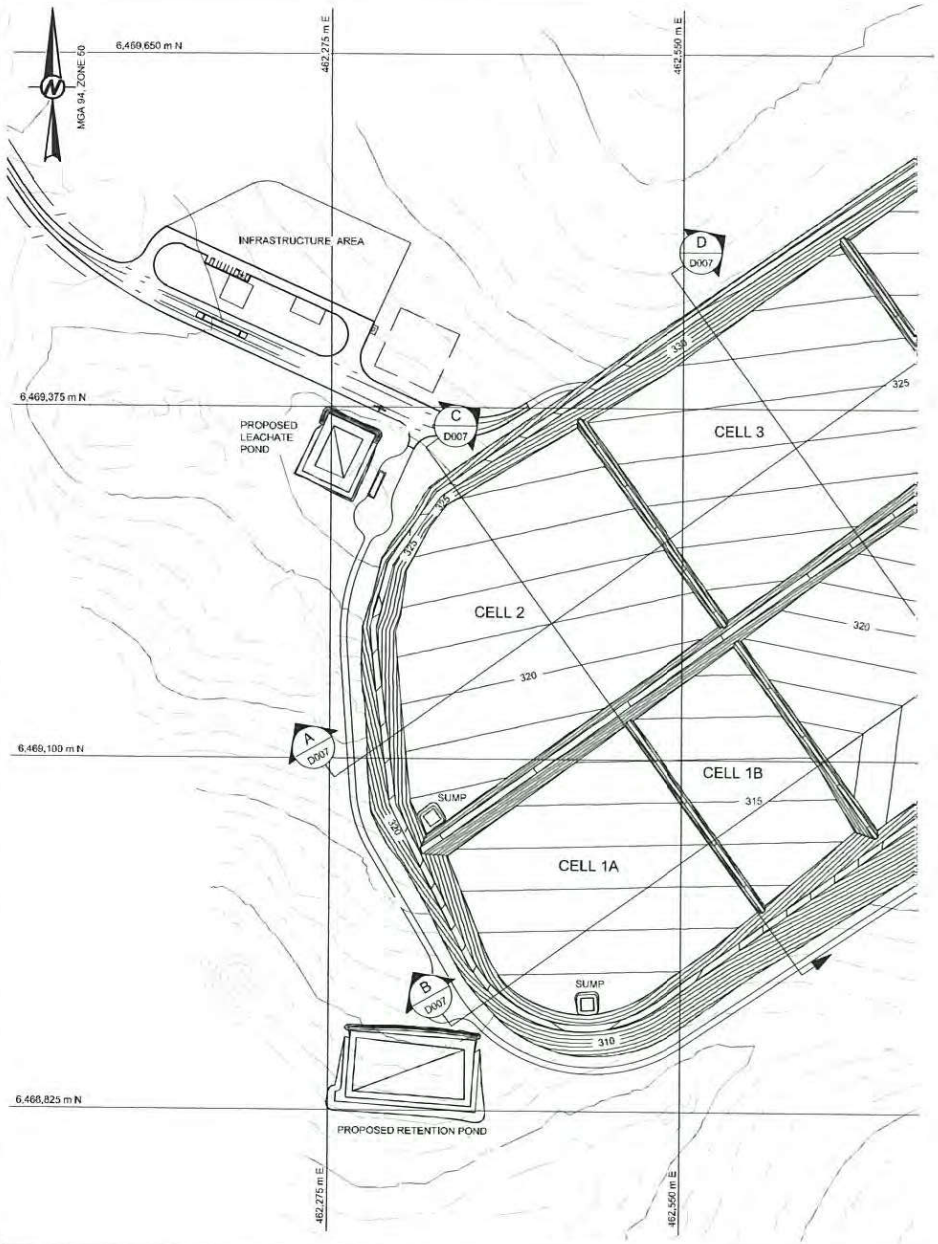
CLIENT
SITA AUSTRALIA

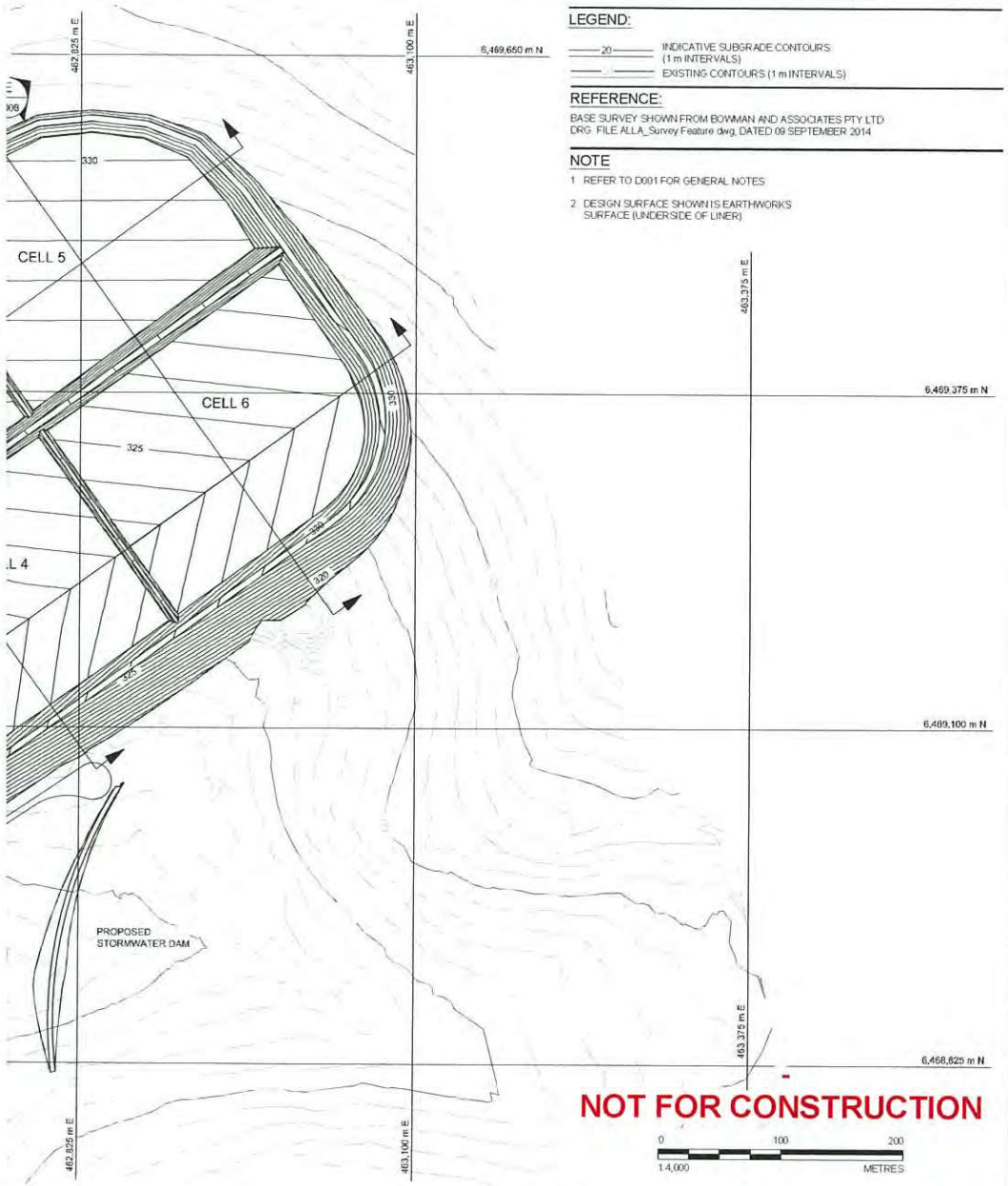
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
SITE PLAN

PROJECT No.	DOCUMENT No.	Rev.	Sheet	Drawing No.
147645033	PLANNING - FEB 2015	A	2 / 12	D002





LEGEND:

20 — INDICATIVE SUBGRADE CONTOURS (1 m INTERVALS)

EXISTING CONTOURS (1 m INTERVALS)

REFERENCE:

BASE SURVEY SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD
DRG FILE ALLA_Survey Feature.dwg, DATED 09 SEPTEMBER 2014

NOTE

1 REFER TO D001 FOR GENERAL NOTES

2 DESIGN SURFACE SHOWN IS EARTHWORKS SURFACE (UNDERSIDE OF LINER)

NOT FOR CONSTRUCTION

0 100 200
1:4,000 METRES

A	2014-02-1	ISSUE FOR COMMENT	E KING	L DuPREEZ	L SMITH	L

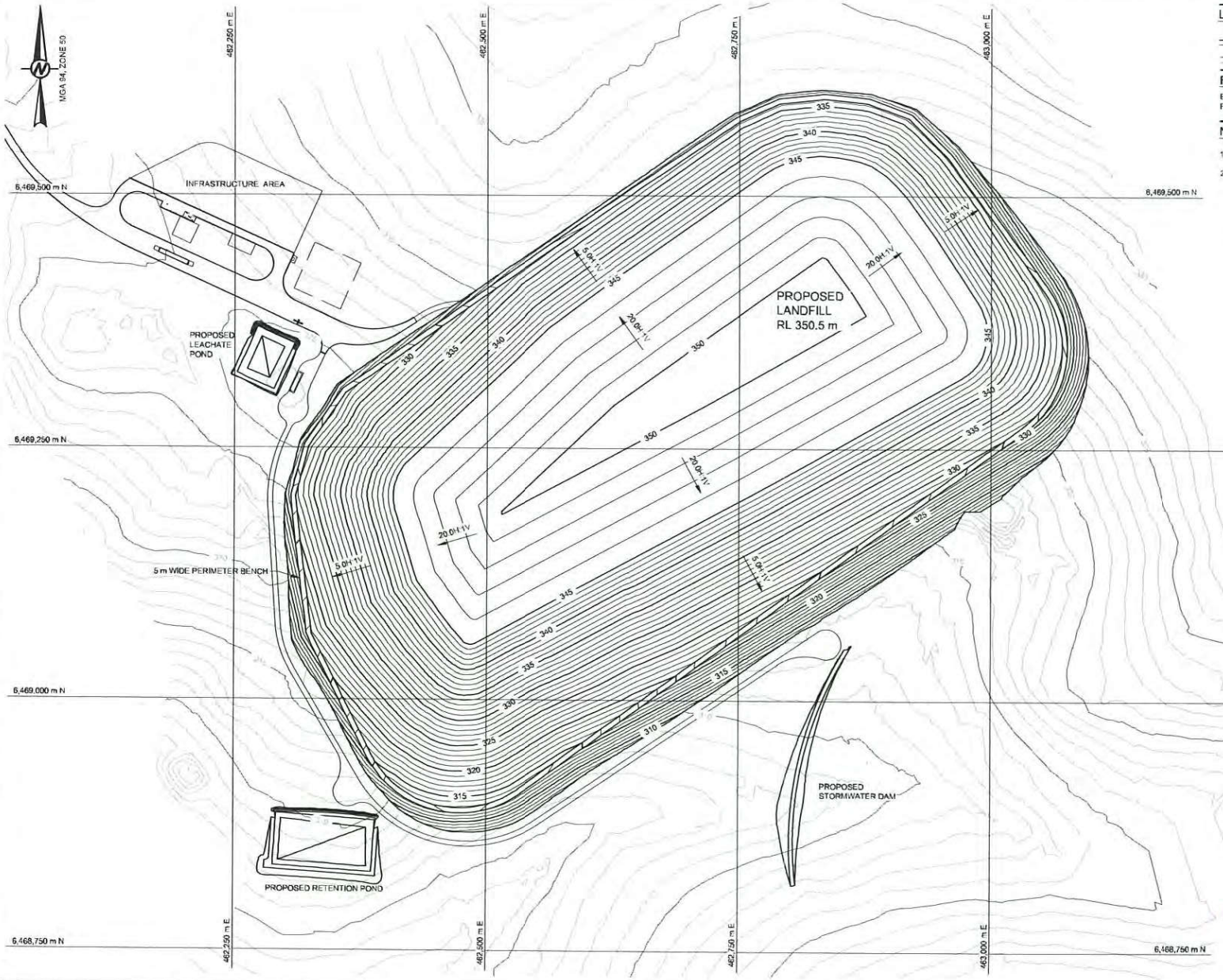
CLIENT
SITA AUSTRALIA

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
LANDFILL CELL LAYOUT PLAN

Golder Associates
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6005
AUSTRALIA
(+61) (8) 9213 7600
www.golder.com

PROJECT NO. 147645033 | PHASE/REVISION PLANNING - FEB 2015 A | SHEET 3 OF 12 | DRAWING NO. D003



LEGEND:

20 INDICATIVE SUBGRADE CONTOURS (1 m INTERVALS)

20 EXISTING CONTOURS (1 m INTERVALS)

REFERENCE:

BASE SURVEY SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD DRG. FILE ALLA_Survey Feature.dwg, DATED 09 SEPTEMBER 2014.

NOTE

1. REFER TO D001 FOR GENERAL NOTES
2. DESIGN SURFACE SHOWN IS TOP OF WASTE. LANDFILL CAP IS TO BE PLACED ON TOP OF SURFACE

NOT FOR CONSTRUCTION

0 100 200

1:5,000 METRES

Rev	YYYY-MM-DD	DESCRIPTION	PREPARED	DESIGN	REVIEW	APPROVED
A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuPREEZ

CLIENT
SITA AUSTRALIA

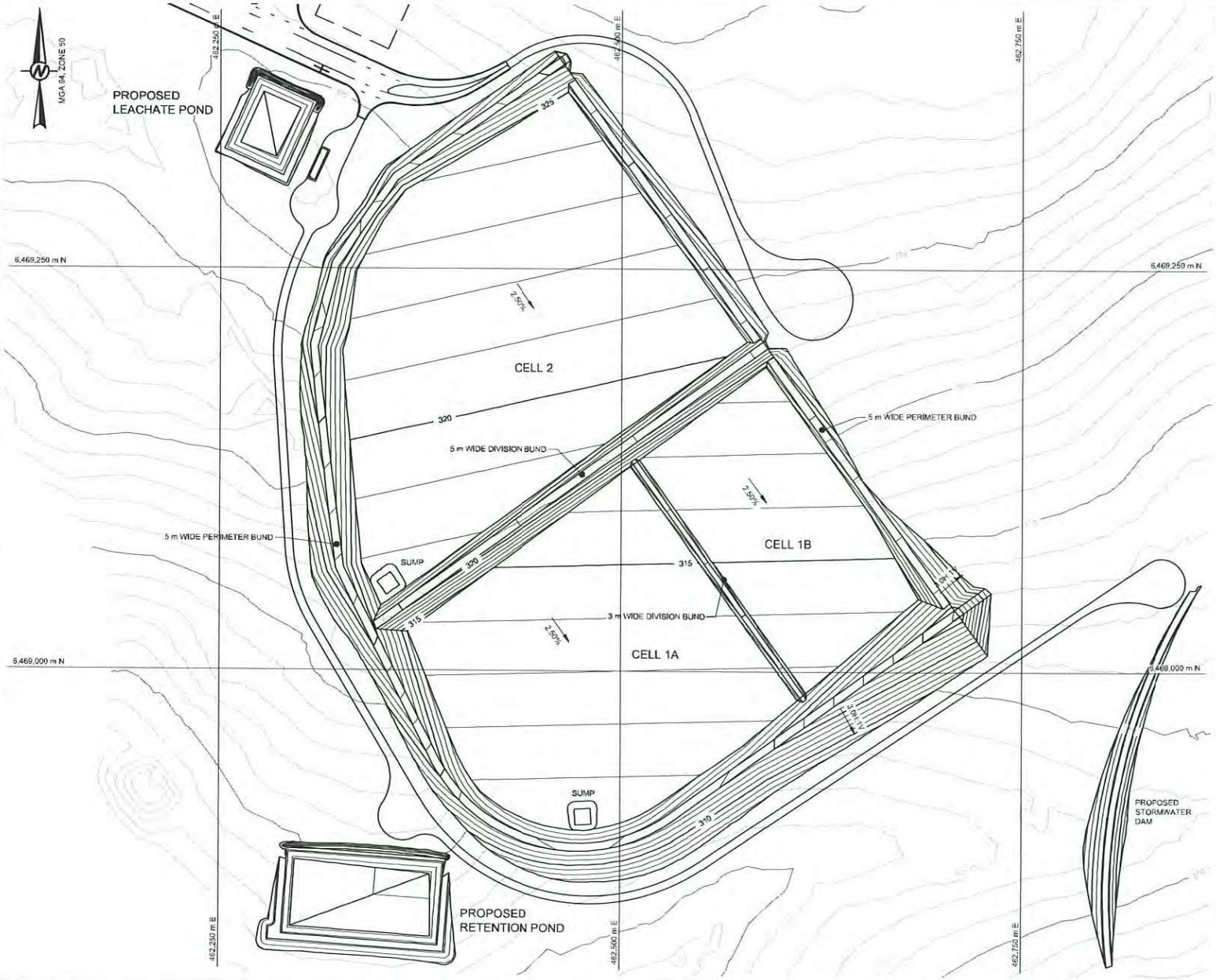
CONSULTANT
Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
(+61) (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
LANDFILL ULTIMATE TOP OF WASTE

PROJECT No.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	4 of 12	D004



LEGEND:

DESIGN BREAKLINES

20 TOPOGRAPHICAL CONTOUR AND ELEVATION (mAHD)

NOTE:

1. REFER TO D001 FOR GENERAL NOTES

REFERENCE:

BASE SURVEY SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD DRG. FILE ALLA_Survey Feature.dwg, DATED 09 SEPTEMBER 2014.

NOT FOR CONSTRUCTION

0 100 200
1:5,000 METRES

Rev	YYYY-MM-DD	DESCRIPTION	PREPARED	DESIGN	REVIEW	APPROVED
A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuPREEZ

CLIENT
SITA AUSTRALIA

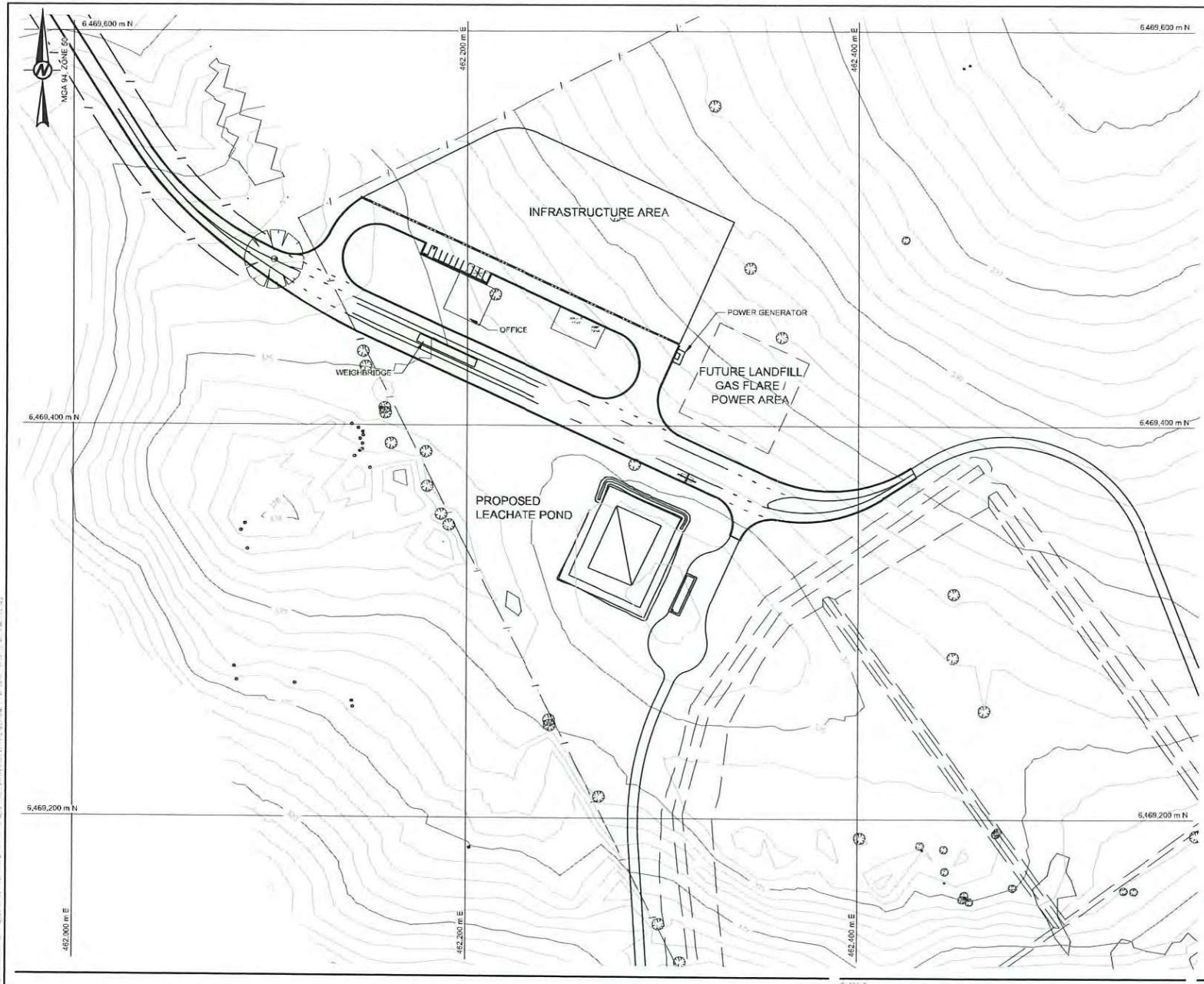
CONSULTANT
Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
LANDFILL CELL 1 AND 2
LAYOUT PLAN

PROJECT No.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	5 of 12	D005



LEGEND:

EXISTING CONTOURS (1 m INTERVALS)

NOTE:

1. REFER TO D001 FOR GENERAL NOTES.

REFERENCE:

BASE SURVEY SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD DRG. FILE ALLA_Survey Feature.dwg, DATED 09 SEPTEMBER 2014.

NOT FOR CONSTRUCTION

0 50 100
1:2,000 METRES

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A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuPREEZ

CLIENT
SITA AUSTRALIA

PROJECT
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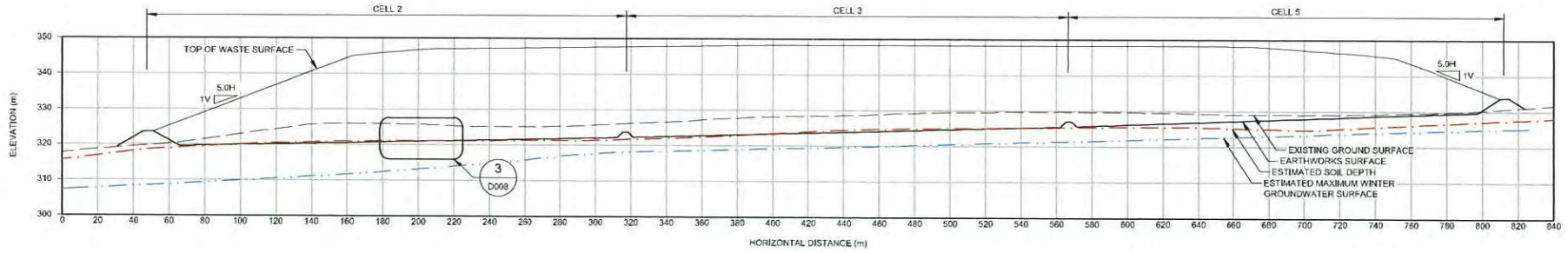
CONSULTANT
Golder Associates

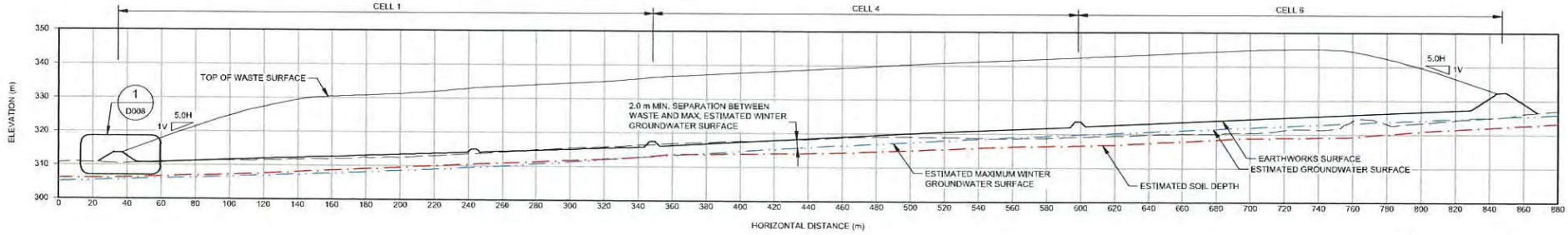
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

TITLE
LANDFILL INFRASTRUCTURE LAYOUT PLAN

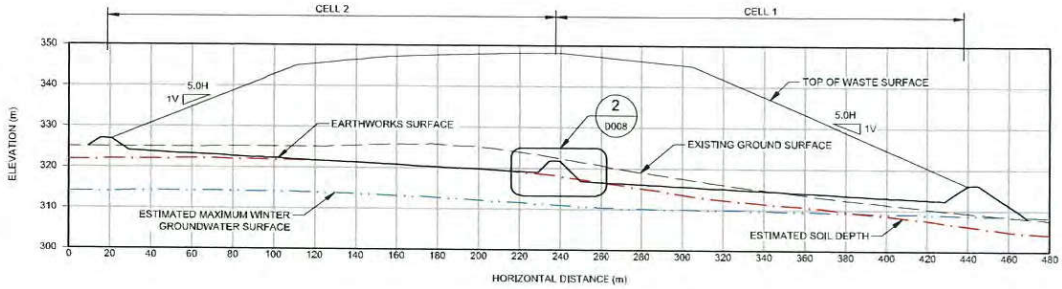
PROJECT No.	DOCUMENT NO.	Rev.	SIZE	FIGURE
147645033	PLANNING - FEB 2015	A	6 of 12	D006



HOR. SCALE 1:2,500 / VERT. SCALE 1:1,250 — A (D003) SECTION



HOR. SCALE 1:2,500 / VERT. SCALE 1:1,250 — B (D003) SECTION



HOR. SCALE 1:2,500 / VERT. SCALE 1:1,250 — C (D003) SECTION

NOT FOR CONSTRUCTION

0 25 50
1:1,250 METRES

0 50 100
1:2,500 METRES

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CLIENT
SITA AUSTRALIA

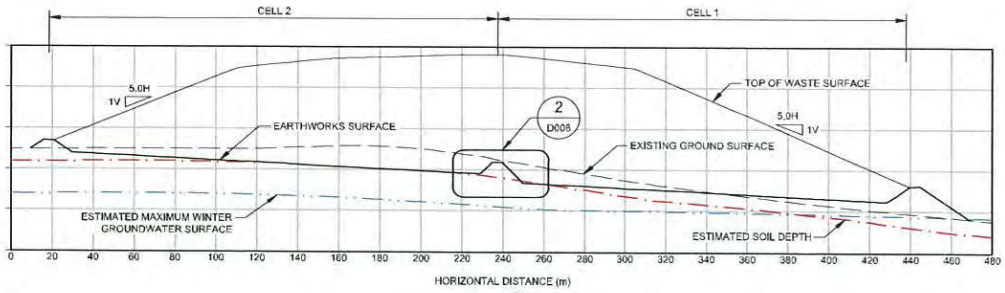
CONSULTANT
Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
TYPICAL SECTIONS

PROJECT No.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	7 OF 12	D007



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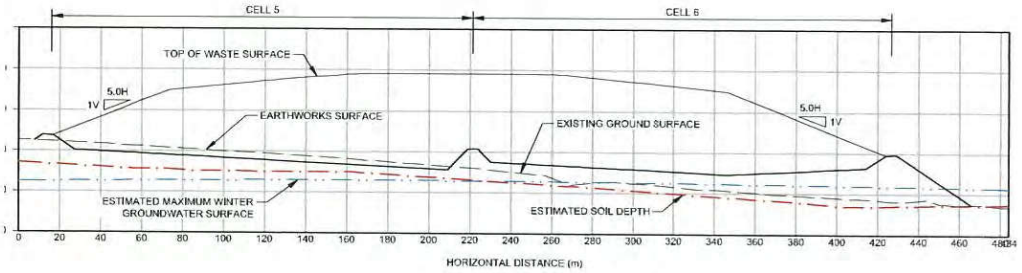
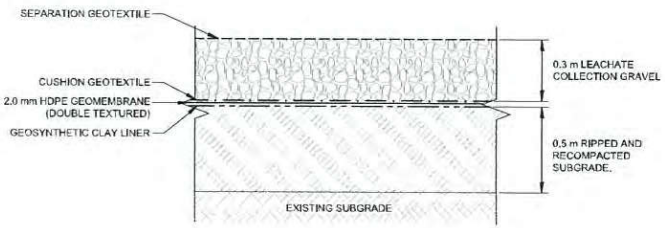
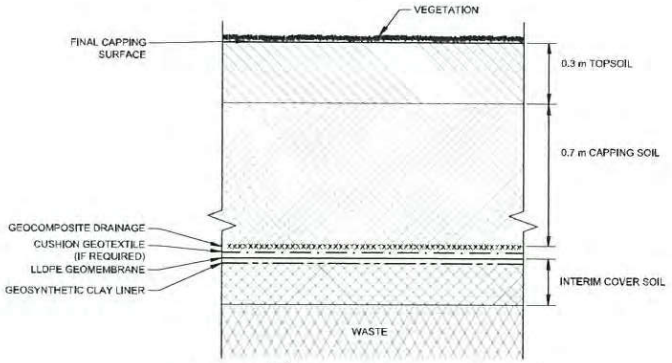


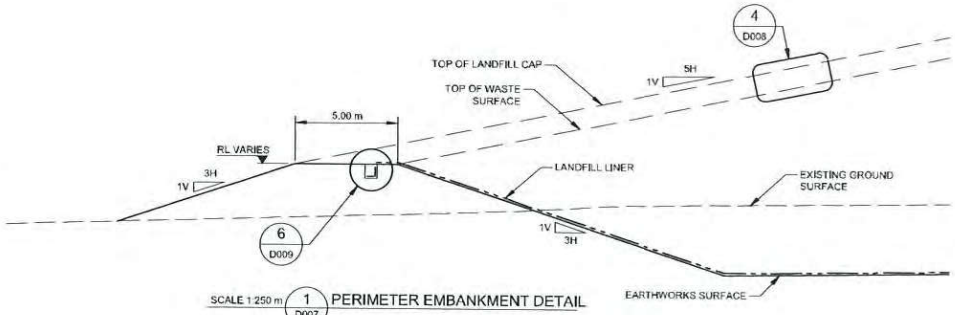
HOR. SCALE 1:2,500 / VERT. SCALE 1:1,250 — E / D003 — SECTION



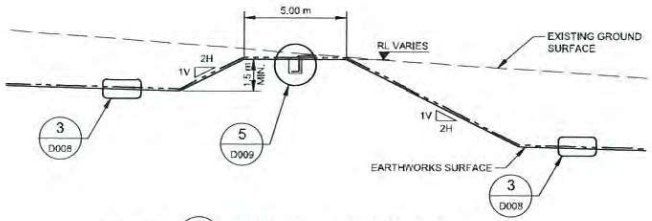
SCALE 1:25 — 3 / D008 — LINER DETAIL



SCALE 1:25 m — 4 / D008 — INDICATIVE LANDFILL CAP DETAIL



SCALE 1:250 m — 1 / D007 — PERIMETER EMBANKMENT DETAIL



SCALE 1:250 m — 2 / D007 — DIVISION EMBANKMENT DETAIL

0 0.5 1 — 1:25 METRES
0 25 50 — 1:1,250 METRES
0 5 10 — 1:250 METRES
0 50 100 — 1:2,500 METRES

NOT FOR CONSTRUCTION

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CLIENT: SITA AUSTRALIA

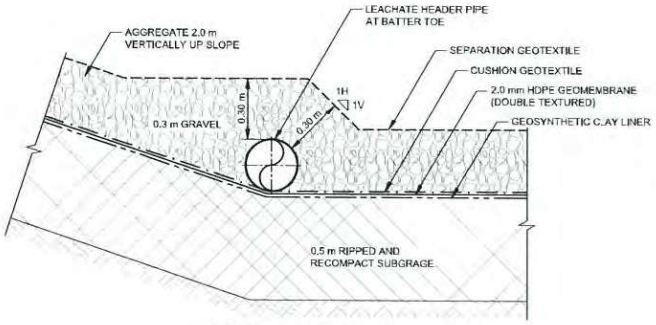
PROJECT: ALLAWUNA FARM LANDFILL

CONSULTANT: Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6005
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

TITLE: **TYPICAL SECTION AND DETAILS**

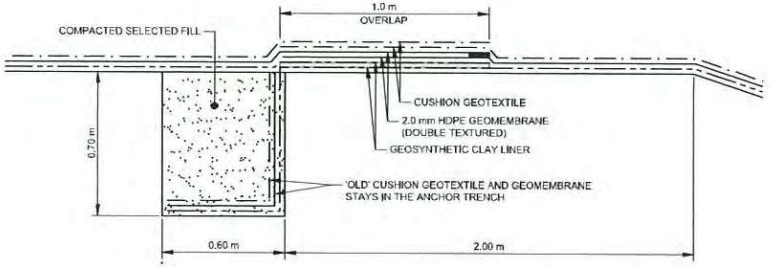
PROJECT No.	DOCUMENT NO.	Rev.	SIZE	FIGURE
147645033	PLANNING - FEB 2015	A	A1 12	D008



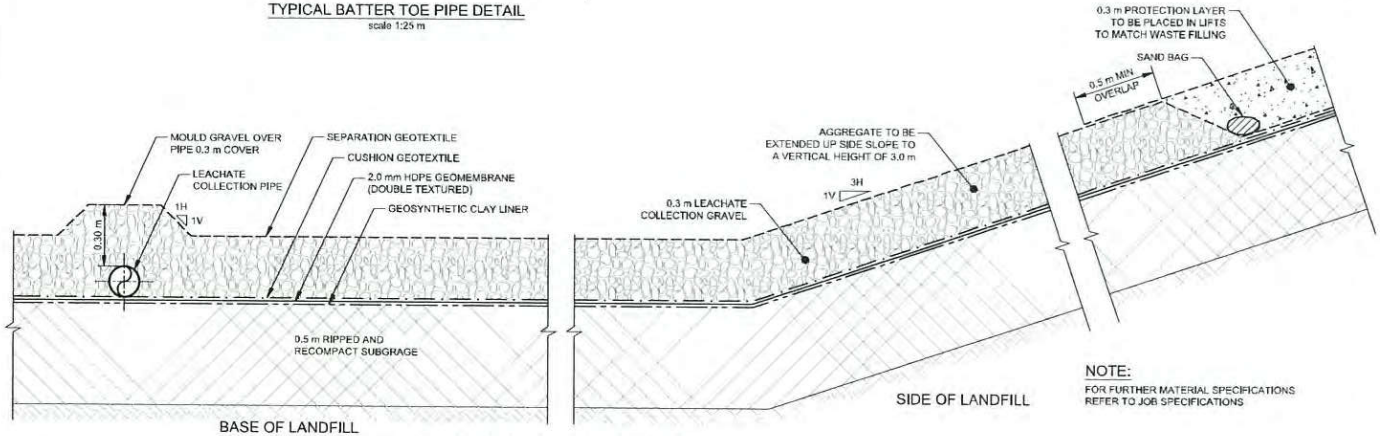
TYPICAL BATTER TOE PIPE DETAIL
scale 1:25 m

NOTES:

1. CUT CUSHION GEOTEXTILE AND GEOMEMBRANE AT ANCHOR TRENCH CREST
2. FOLD BACK CUSHION GEOTEXTILE AND GEOMEMBRANE
3. OVERLAP NEW GCL WITH EXISTING GCL USING BENTONITE PASTE
4. FOLD BACK GEOMEMBRANE AND OVERLAP WITH NEW GEOMEMBRANE LAYE. EXTRUSION WELD TOGETHER.
5. FOLD BACK CUSHION GEOTEXTILE AND OVERLAP WITH NEW CUSHION GEOTEXTILE. STITCH OR HEAT TACK THE OVERLAP.

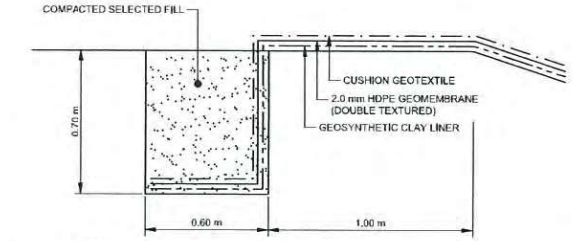


SCALE 1:25 m (5 / D008) TYPICAL ANCHOR TRENCH DETAIL ON DIVISION EMBANKMENT

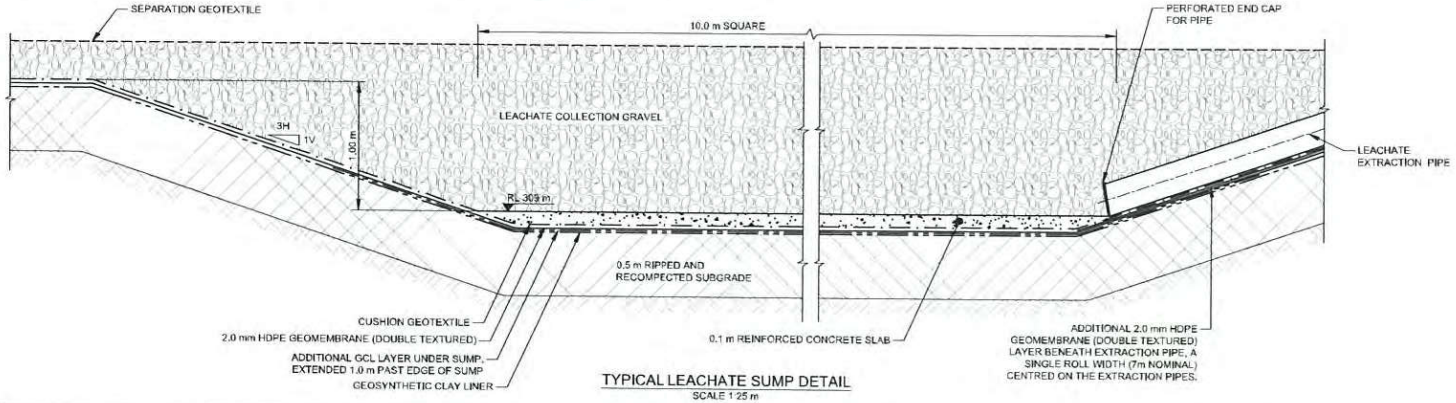


TYPICAL BASE AND SIDE LINER DETAIL
SCALE 1:25 m

NOTE:
FOR FURTHER MATERIAL SPECIFICATIONS
REFER TO JOB SPECIFICATIONS



SCALE 1:25 m (6 / D008) TYPICAL ANCHOR TRENCH DETAIL ON PERIMETER EMBANKMENT



TYPICAL LEACHATE SUMP DETAIL
SCALE 1:25 m

NOT FOR CONSTRUCTION

0 0.5 1
1:25 METRES

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CLIENT
SITA AUSTRALIA

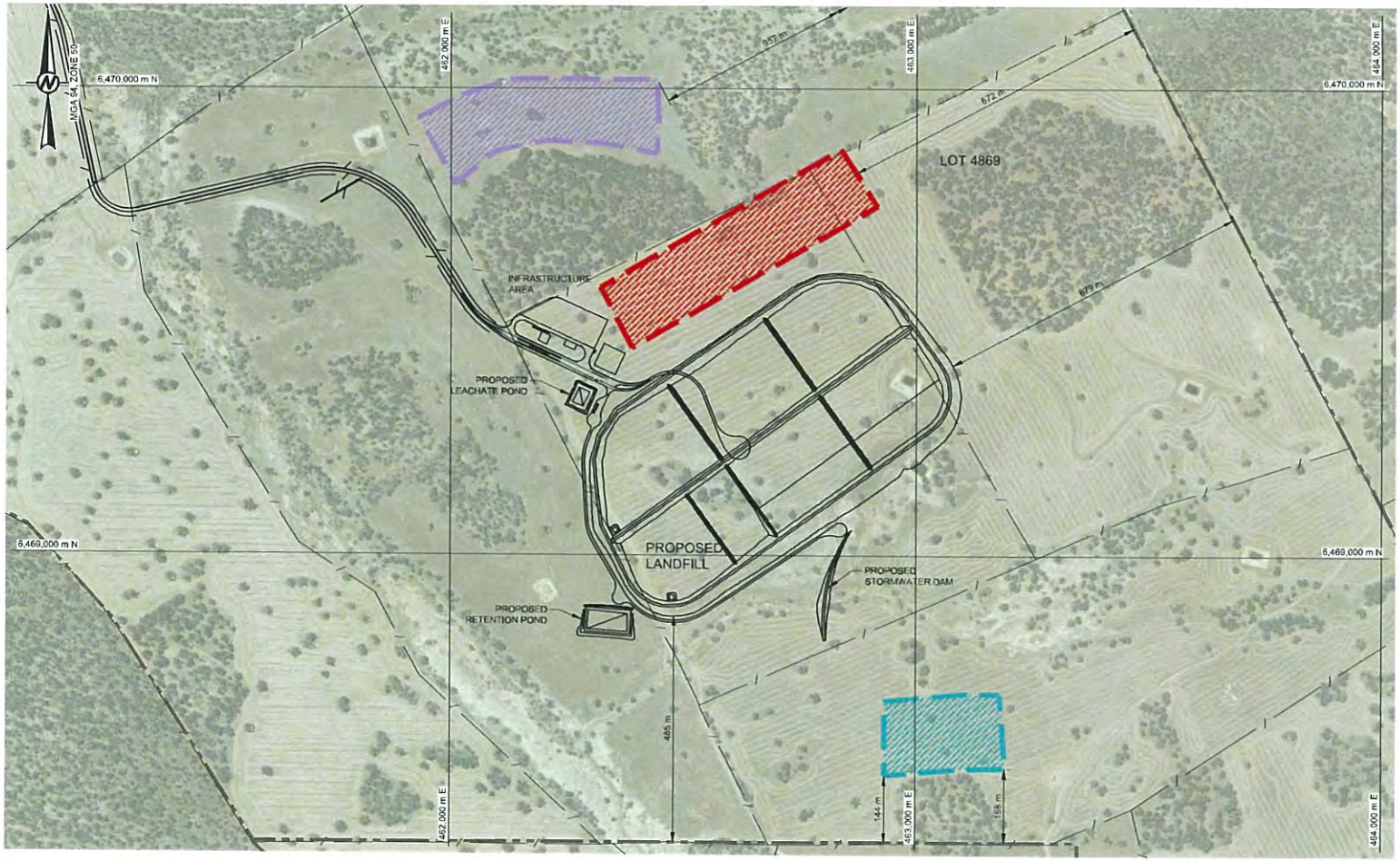
PROJECT
ALLAWUNA FARM LANDFILL

CONSULTANT
Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6005
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

TITLE
LANDFILL DETAILS

PROJECT NO.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	9 of 12	D009



LAYOUT PLAN
SCALE 1:10,000 m

LEGEND:

- BORROW AREA 1
- BORROW AREA 2
- BORROW AREA 3
- CADASTRAL BOUNDARY
- EXISTING FENCE

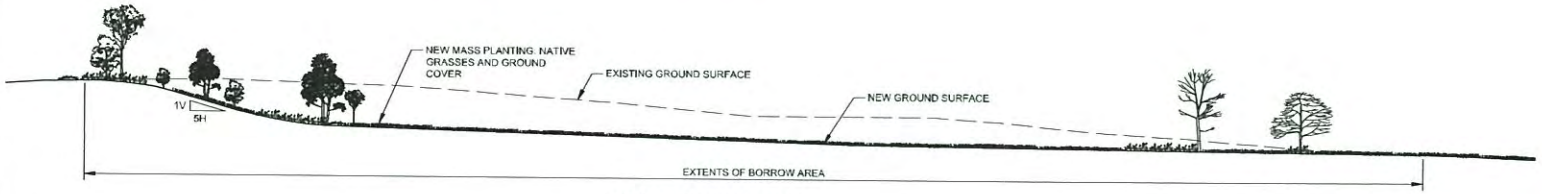
NOTE:

1. REFER TO D001 FOR GENERAL NOTES.

REFERENCE:

BASE MAP SHOWN FROM BOWMAN AND ASSOCIATES PTY LTD DRG. FILE "FULL SIZED AERIAL PHOTO.jpg"

BORROW AREAS			
DESCRIPTION	VOLUMES (m^3)	AREA (ha)	AVERAGE DEPTH (m)
AREA 1	420000	8.8	4.75
AREA 2	320000	7.2	4.31
AREA 3	180000	4.0	4.20



TYPICAL BORROW SECTION
SCALE 1:1,250 m

NOT FOR CONSTRUCTION

0 250 500
1:10,000 METRES

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CLIENT
SITA AUSTRALIA

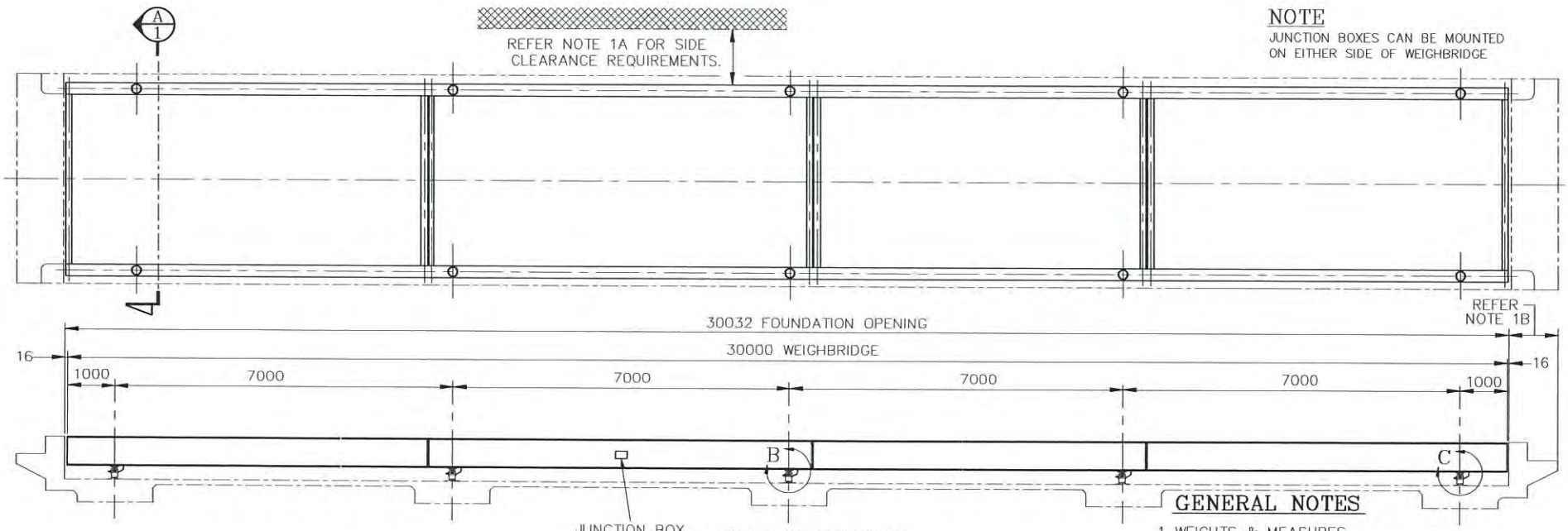
CONSULTANT
Golder Associates

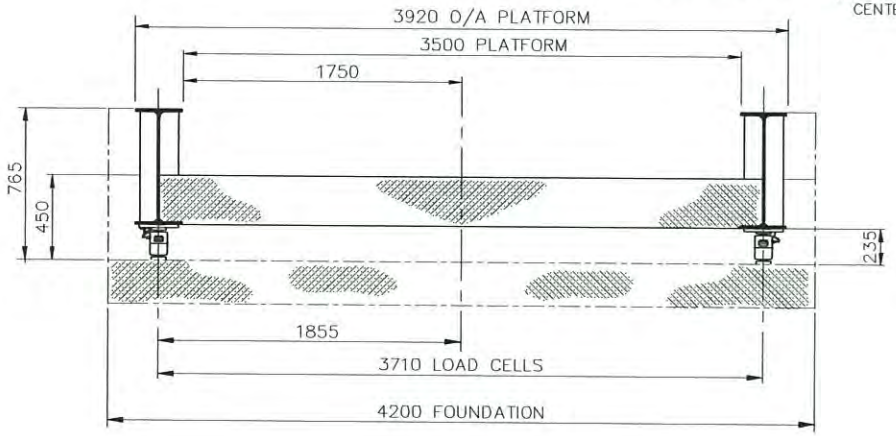
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

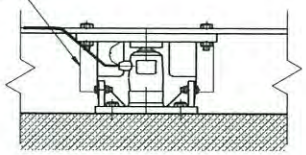
TITLE
BORROW AREA LOCATIONS PLAN

PROJECT No.	DOCUMENT NO.	Rev.	FIGURE
147645033	PLANNING - FEB 2015	A	D010

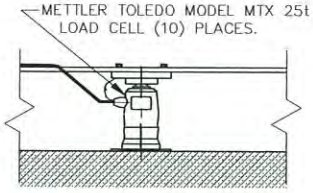




SECTION AA



DETAIL B



DETAIL C

GENERAL NOTES

1 WEIGHTS & MEASURES

STATE WEIGHTS & MEASURES AUTHORITIES REQUIRE CERTAIN MINIMUM REQUIREMENTS ,IE CLEARANCE AT SIDE OF SCALE, LENGTH OF APPROACH, POSITION OF INDICATOR ETC. THESE REQUIREMENTS SHOULD BE CLARIFIED WITH LOCAL AUTHORITIES WHEN PLANNING WEIGHBRIDGE LOCATION.

(A) CLEAR SPACE REQUIRED AT BOTH SIDES OF SCALE IN SOME STATES IS (1) METRE. CHECK WITH LOCAL AUTHORITIES FOR MINIMUM REQUIREMENTS FOR EACH INSTALLATION.

(B) LENGTH OF LEVEL APPROACH DEPENDS ON USE OF SCALE, IE PUBLIC OR PRIVATE WEIGHBRIDGE. THEREFOR THE STATE WEIGHTS & MEASURES AUTHORITY SHOULD BE CONTACTED FOR A FIRM DECISION APPLICABLE FOR EACH INSTALLATION.

(C) LOCATION OF INDICATOR/WEIGHHOUSE DEPENDS ON STATE REQUIREMENTS. THIS MATTER SHOULD BE RESOLVED WITH THE STATE WEIGHTS AND MEASURES DEPARTMENT.

(D) DIGITAL INDICATOR READOUT TO BE LOCATED NOT MORE TAN 6 METRES FROM THE PLATFORM EDGE, AND THE OPERATOR IS PROVIDED WITH A CLEAR VIEW OF THE ENTIRE PLATFORM.

2 WEIGHBRIDGE CLEARANCE

A 16mm CLEARANCE BETWEEN WEIGHBRIDGE AND FOUNDATION CURB CHANNELS (BOTH ENDS) WHICH MUST BE HELD, AND HAS BEEN ALLOWED FOR.

3 LOAD RATING

THE MAXIMUM ALLOWABLE LOADS ARE:
9000kg PER SINGLE AXLE, 16500kg PER TANDEM AXLE WITH AXLE SPACING BETWEEN 1.3m AND 2.8m AND NO LESS THAN 3m BETWEEN INSIDE AXLES OF ADJACENT TANDEMS.
23500kg PER TRI-AXLE BOGIE WITH AXLE CENTRES OF 1.3m.

THE MAXIMUM ALLOWABLE TOTAL WEIGHT ON WEIGHBRIDGE AT ONE TIME TO BE NO MORE THAN 100000kg.

INFORMATION PROVIDED BY BOWMAN AND ASSOCIATES, 06/02/2015

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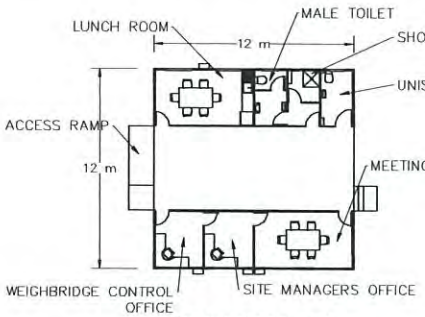
CONSULTANT: Golder Associates

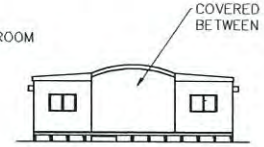
PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6055
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

TITLE: **WEIGHBRIDGE DETAILS**

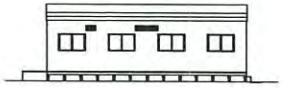
PROJECT No.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	11 of 12	D011



WEIGHBRIDGE AND ADMINISTRATION OFFICE PLAN

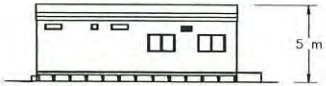


EAST ELEVATION

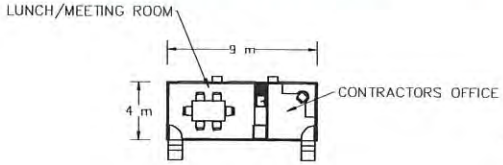


SOUTH ELEVATION

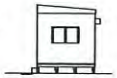
WEST ELEVATION



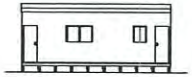
NORTH ELEVATION



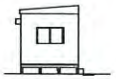
CONTRACTORS OFFICE PLAN



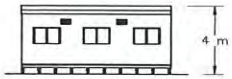
EAST ELEVATION



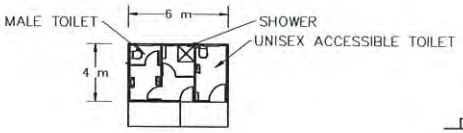
SOUTH ELEVATION



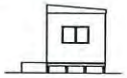
WEST ELEVATION



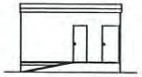
NORTH ELEVATION



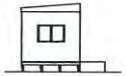
CONTRACTORS ABLUTIONS PLAN



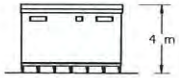
EAST ELEVATION



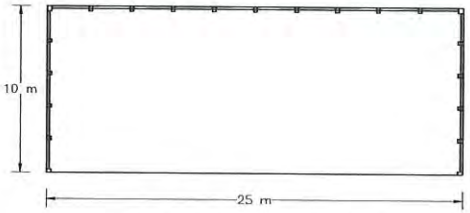
SOUTH ELEVATION



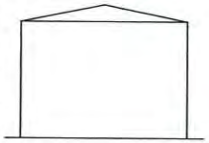
WEST ELEVATION



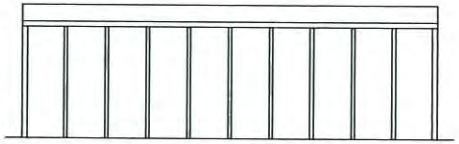
NORTH ELEVATION



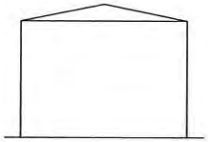
CONTRACTORS SHED PLAN



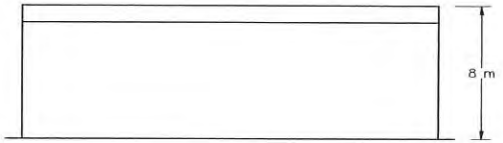
EAST ELEVATION



SOUTH ELEVATION



WEST ELEVATION



NORTH ELEVATION

NOTES:

1. Drawings are indicative of proposed structure form only, detailed design by others.
2. Details may vary prior to application for licence approvals.

NOT FOR CONSTRUCTION

Rev	YYYY-MM-DD	DESCRIPTION	PREPARED	DESIGN	REVIEW	APPROVED
A	2014-02-1	ISSUE FOR COMMENT	E.KING	L.DuPREEZ	L.SMITH	L.DuPREEZ

CLIENT
SITA AUSTRALIA

CONSULTANT
Golder Associates

PERTH OFFICE
LEVEL 3, HAVELOCK STREET
WEST PERTH, WA 6005
AUSTRALIA
[+61] (8) 9213 7600
www.golder.com

PROJECT
ALLAWUNA FARM LANDFILL

TITLE
SITE BUILDING CONCEPTS

PROJECT No.	DOCUMENT NO.	Rev.	SHEET	FIGURE
147645033	PLANNING - FEB 2015	A	12 of 12	D012