

TENDER CONSIDERATION PLAN – COLLECTION, TRANSPORT AND PROCESSING OF GREENWASTE AND TIMBER FROM REDLAND CITY COUNCIL WASTE TRANSFER STATIONS

Objective Reference:	(A2289999) Reports and Attachments (Archives)
Attachments:	<u>Tender consideration plan – risk analysis</u> <u>Tender consideration plan – proposed contract terms</u>
Authorising Officer:	Peter Best General Manager Infrastructure & Operations
Responsible Officer:	Kevin McGuire Group Manager Water & Waste Operations
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PURPOSE

This report seeks Council resolution to:

- prepare a tender consideration plan under section 230(1) of the *Local Government Regulation 2012* for the temporary collection, transport and processing of greenwaste and timber from Redland City Council (RCC) waste transfer stations;
- adopt said plan; and
- delegate authority to the Chief Executive Officer (CEO), under section 257(1)(b) of the *Local Government Act 2009* to make, vary and discharge the resulting contract, and sign all relevant documentation.

BACKGROUND

On 15 September 2016, Redland City Council (Council) entered into a contract with Aegina Pty Ltd ATF Galbraith Family Trust T/A ARG Trees (ARG) for the Collection, Transport and Processing of Greenwaste and Untreated Timber, and Collection and Transport of Treated Timber from Redland City Council Waste Transfer Stations (T-1782-15/16-WST).

Greenwaste, untreated timber and treated timber are currently deposited at all Council waste transfer stations and are regularly removed by the contractor for beneficial reuse elsewhere.

Due to significant, ongoing contractual and safety issues with ARG regarding this contract, RedWaste has recommended that the arrangement be terminated in accordance with clause 14.1(d) of the service agreement. This termination is subject to approval by the CEO as the delegated authority.

In the event that Council terminates the contract a new temporary arrangement will be required to ensure the regular removal of greenwaste from all waste transfer

stations while a long-term arrangement is procured through the establishment of a tender process.

It is proposed that a tender consideration plan to enter into a contract with a known supplier of greenwaste collection, transport and processing, Wood Mulching Industries Pty Ltd (WMI), is the most efficient and effective process to achieve this. The reasons for choosing this service provider are addressed below. It is expected that the term of the contract would be for an initial period of 6 months with the option to extend for a further 2 periods of 3 months each and may commence as early as mid-June 2017. The maximum term of this interim contract would be no longer than 12 months or until 30 June 2018, to allow for tendering and award of a long-term arrangement.

Should approval not be given by the delegated authority to terminate the current contractual arrangement with ARG, Council will cease the process detailed by the tender consideration plan.

ISSUES – TENDER CONSIDERATION PLAN

The objective of the tender consideration plan is to ensure the removal of greenwaste and timber from Council's waste transfer stations with minimal interruption whilst a procurement process is undertaken.

The objective of this plan will be achieved by:

- entering into negotiations with WMI to provide services for the collection, transport and processing of greenwaste and timber; and
- subject to successful negotiations, entering into a contract with WMI for the above services for a period of 6 to 12 months or until award of a new, long-term arrangement but no later than 30 June 2018.

Achievement of the objective will be measured through RedWaste's contract management processes and to ensure that the contract is adequately enforced.

Alternative ways of achieving the objectives would be to conduct a quotation or tender process to engage a provider for greenwaste services. However, these options were deemed to be unsuitable for the following reasons:

- the high cost of greenwaste removal is prohibitive for a quotation process as Council requires 6 to 12 months with which to conduct a formal tender process to establish a long-term contractual arrangement;
- due to the cost, machinery and logistics required by a service provider, it was deemed that 3 months was the minimum length of time that a provider would be agreeable to providing the services required;
- due to the financial thresholds for medium and large sized contractual arrangements set out in section 224 of the *Local Government Regulation 2012*, a tender process would be required for Council to secure the services for a period of 6 months or more which would result in significant environmental and other risks to Council; and
- a competitive process would largely be unnecessary as only one supplier has the required capability, experience and ability to mobilise quickly in order to ensure the service is not interrupted.

The proposed terms of the contract including the specification for the required services (subject to negotiation with the service provider) are attached to this report as Attachment 1.

Once the contract has been established under the tender consideration plan, Council will undertake a formal tender process to cover Council's long-term need for the services.

STRATEGIC IMPLICATIONS

Legislative Requirements

In accordance with section 230(1) of the *Local Government Regulation 2012*, Council may enter into a large sized contract without first inviting written tenders if the local government:

- (a) decides, by resolution, to prepare a quote or tender consideration plan; and
- (b) prepares and adopts the plan.

Therefore Council is able to adopt a tender consideration plan in accordance with legislative requirements.

Risk Management

A risk analysis of the market from which the services are to be obtained is attached to this report as Attachment 2.

Financial

It is expected that the cost of the services over a 12 month period would be \$1,932,517. There is provision in Council's current contract with ARG to recover some or all of Council's costs incurred in engaging another supplier due to a breach of contract by ARG, however it must be noted that legal action may be required to enforce this provision.

People

Suitably qualified and experienced staff is available to ensure the contract process is delivered internally. The negotiation, implementation and management of the contract resulting from the tender consideration plan will be provided by the RedWaste Business Unit with current staffing levels.

Environmental

Should Council be required to enter into a lengthy procurement process, there would be the possibility of negative environmental impacts due to greenwaste having to be stockpiled at the sites. These risks are detailed in the attached risk analysis referred to above.

Social

There are no negative social impacts identified. Social benefits include being able to meet community expectations with minimal service disruption.

Alignment with Council's Policy and Plans

This report supports Council's vision of forward thinking and strategic procurement to strengthen customer service and deliver better value for money. The tender consideration plan also aligns to Council's Corporate Plan 2015-2020 outcome of green living through implementation of Council's waste management strategy by applying best practice principles in pricing, public awareness, resource management, recycling and recovery.

CONSULTATION

In developing this tender consideration plan for the collection, transport and processing of greenwaste and timber from Council's waste transfer stations, consultation has included the following:

- RedWaste Business Unit;
- Legal Services Unit;
- Procurement Services Unit;
- Group Manager Water & Waste Operations;
- General Manager Infrastructure & Operations; and
- Business Partnering Unit – Financial Services.

OPTIONS

Option 1

That Council resolves, subject to termination of the current arrangement with ARG, to:

1. Prepare a tender consideration plan under section 230(1) of the *Local Government Regulation 2012* for the temporary collection, transport and processing of greenwaste and timber from Redland City Council waste transfer stations;
2. Adopt the tender consideration plan detailed in this report for the temporary collection, transport and processing of greenwaste and timber from Redland City Council waste transfer stations; and
3. Delegate authority to the Chief Executive Officer, under section 257(1)(b) of the *Local Government Act 2009* to make, vary and discharge the resulting contract, and sign all relevant documentation.

Option 2

That Council resolve not to adopt a tender consideration plan for the temporary collection, transport and processing of greenwaste and timber from Redland City Council waste transfer stations.

OFFICER'S RECOMMENDATION

That Council resolves:

- 1. To adopt the actions set out in Option 1 of this report; and**
- 2. That this report remains confidential until the contract is finalised.**

Risk Analysis
Interim Green Waste Contract

Observations under the below headings are of relevance to this risk analysis.

Operational Objectives

In order to ensure the uninterrupted removal of green waste from Council's waste transfer stations, Council require the following from a contractor:

- A short term contract;
- Ability to remove green waste must from all sites, including the islands, (which creates additional logistical and financial issues);
- Ability to mobilise quickly; and
- Adequate means to meet the requirements of the contract.

Recent Previous Procurement

The Invitation to Tender for the Collection, Transport and Processing of Greenwaste and Untreated Timber and Collection and Transport of Treated Timber (T-1782-15/16WST) closed on 13 July 2016 and commenced on 15 September 2016. Given that the tender process was concluded less than one year ago the following observations are relevant to assessing risk of the market:

- Only six responses in total were received from the market; and
- Two of those six responses identified as weak/unacceptable submissions due to operational capabilities and safety concerns.

The tender required tenderers to submit relevant environmental authorities relating to provision of the services, including the grinding of green waste at the proposed facility. The majority of tenderers held mobile and temporary licences for the grinding of green waste but proposed to grind greenwaste at only one or two processing facilities. Recent advice from the Environmental Health Unit has been that such licences may not be suitable regarding the quantity of green waste that is removed from Council's waste transfer stations. WMI hold a static licence for the grinding of green waste and are such the only company of those that previously tendered that have appropriate environmental licencing and capability to undertake the services.

In December 2016, due to the need for operational contingencies, RedWaste requested quotes from the three remaining unsuccessful tenderers to provide Green waste services for a period of up to 3 months if required. The results of this quotation were as follows:

- One of the companies requested to quote failed to respond at all;
- One of the companies stated they would only apply for the two mainland sites. This was deemed to be unacceptable as green waste collection, transport and processing is required for NSI, Coochiemuldo and SMBI as well; and
- Wood Mulching Industries (WMI) provided the only acceptable quote. WMI was the second highest scoring tenderer from the process conducted in July 2016 (with the highest scoring tenderer being the successful tenderer).

Therefore the procurement risks from the market are conceivably low, particularly when viewed alongside the operational and environmental risks detailed below.

Operational and Environmental Risks

If collection, transport and processing of green waste and treated timber does not occur on a weekly basis the following risks apply due to increased stockpiles or inability to accept green waste:

- Inability for RCC waste transfer stations to meet the needs and demands of the community;
- Onsite safety at RCC waste transfer stations with possible impacts on onsite employees, contractors and members of the public;
- Reduced;
 - operational areas of RCC waste transfer stations
 - capacity for RCC waste transfer stations to operate effectively and the capacity to process other waste streams within these sites; and
 - capacity to meet resource recovery targets and planning outcomes;
- Increased;
 - potential for vermin proliferation;
 - potential of air quality or odour complaints from sensitive receivers;
 - level of contamination of stormwater runoff;
 - impact to receiving waters, including onsite surface water ponds requiring management;
 - internal stockpile temperatures raising the risk of spontaneous combustion;
 - onsite breakdown of organic material decreasing ease of loading of material and reduced integrity of the hardstand pads at all sites; and
 - financial cost from allowing green waste to accumulate and breakdown onsite.

Conclusions

The operational and environmental risk from failure in weekly collection, transport and processing of green waste and untreated timber from Council waste transfer stations are significant. The service offered to the residents and these facilities will also be impacted if this does not occur. While cost is initially avoided, the overall financial cost incurred by Council would likely increase substantially the longer regular service of green waste and untreated timber does not occur.

Failure in meeting recycling targets must also be considered given that untreated timber would likely need to be directed to waste disposal if service did not occur. Unnecessary volumes of waste being sent to landfill should be avoided.

WMI is also identified as the only viable service provider from the December quote process. WMI can mobilise quickly across all RCC waste transfer stations (including the island sites). WMI have a previously had a positive working relationship with RedWaste and are experienced providers of the service requested.

DRAFT SERVICE AGREEMENT

FOR

**COLLECTION, TRANSPORT AND PROCESSING OF
GREENWASTE AND TIMBER FROM REDLAND CITY
COUNCIL WASTE TRANSFER STATIONS**

AGREEMENT dated [TBA]

BETWEEN

REDLAND CITY COUNCIL a body corporate pursuant to the *Local Government Act 2009* and whose principal offices are situated at Cnr Bloomfield & Middle Streets, Cleveland 4163 (the “**Council**”)

AND

[TBA]
(the “**Service Provider**”)

RECITALS:

The Council requires the provision of the Services through a contractual arrangement entered into within this Agreement.

The Service Provider has offered to provide the Services to the Council. The Council has accepted the Service Provider offer in strict accordance with the terms and conditions described of the Agreement.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION OF AGREEMENT

1.1 Definitions

In this Agreement, except where the context otherwise requires:

“**Agreement**” means this Agreement, the Schedules and all other documents as expressly prescribed herein;

“**Agreement Commencement Date**” means the date the Services are to commence as shown in Item 1(a) of Schedule A;

“**Agreement Prices**” means in relation to the prices, rates, charges and expenses for the provision of the Services – such prices, rates, charges and expenses to be calculated in accordance with the applicable Schedule of Rates;

“**Business Day**” means Monday to Friday inclusive excluding days which are public holidays in Redland City;

“**City**” means the local government area of Redland City Council as declared under the *Local Government Act 2009*;

“**Claim**” means any:

- (i) costs, losses, damages or any liability of any kind directly or indirectly suffered or incurred by the Council or its employees, agents, service providers or subcontractors; and
- (ii) any claim, demand, action, suit or proceeding that may be made or brought by any person against the Council, its employees, agents, service providers or subcontractors;

“**Complaint**” means a complaint concerning any part of the Services received from any source;

“**Council Premises**” means any buildings, land structural assets or other facility which is owned, occupied or controlled by or on behalf of the Council and includes all locations or sites

which are owned, occupied or controlled by or on behalf of the Council at which the Services are supplied, delivered or provided pursuant to the Agreement;

“Council’s Representative” means the person who from time to time occupies or acts in the position as stated within Item 2 of Schedule A and who is authorised to administer the Agreement pursuant to clause 19.1;

“Default” means the omission, non-performance, non-delivery or like of the Services under the Agreement;

“Deliverable” means each and every outcome or deliverable of the Services (including all Documentation) which the Service Provider is required to produce or contribute to as part of the provision of the Services under the Agreement which is more particularly described in the Specifications;

“Direction” means any direction, permission, decision, certification, demand, notice, approval, refusal, requirement or authorisation given by Council’s Representative, whether given orally or in writing and “Directed” and “Direct” have corresponding meanings;

“Disputed Services” is as defined in clause 11;

“Documentation” means any document, record, system, program or other material (irrespective of the form in which such information is written, embodied, stored and/or reproduced whether by electronic means (including encryption or encoding) or in any handwritten form (including notes and drafts)) which the Service Provider is required by the Specifications, the Agreement and/or any Direction to produce or contribute to as a result of the provision of the Services;

“Drop-off Areas” means the areas designated by Council where the public may deposit material to be sold at RecycleWorld;

“Encumbrance” means;

- (i) any mortgage, pledge, charge, lien, assignment, security interest, title retention, preferential right or trust arrangement and any other security agreement or other arrangement of any kind given, arising or created (whether fixed, floating or otherwise); and
- (ii) any possessory lien in the ordinary course of business whether arising by operation of Law or by contract;

and the expression **“Encumbrancer”** shall be construed accordingly;

“Expiry Date” means the date the Agreement will end as specified in Item 1(b) of Schedule A or, if an option is exercised pursuant to Clause 2.2, the date specified in an Extension Notice;

“Fit For Purpose” means the Services, vehicles and equipment are at all times delivered in a *‘fit for its intended purpose’* manner meeting the full requirements of the Agreement;

“Force Majeure” means, war, hostilities, invasion, armed conflict, act of foreign enemies, rebellion, revolution, insurrection, civil war, civil commotion, act of terrorism, ionising radiations or contamination by radioactivity from nuclear waste, combustion of nuclear fuel, aviation disasters, or natural catastrophe, including without limitation to earthquake, major flood, major cyclone, subterranean spontaneous combustion and any other operation of the forces of nature of such catastrophic proportions, the occurrence of which could not have been reasonably foreseen by the party seeking to rely on such occurrence;

“Greenwaste” means biodegradable waste including grass clippings, tree and shrub trimmings, branches and other similar material resulting from gardening, landscaping or

maintenance activities and includes tree stumps, logs and palm fronds and potentially minor amounts of cardboard.

“GST” means the tax on the provision or supply of goods and services imposed under the GST Laws;

“GST Laws” means the GST law ‘*A New Tax System (Goods and Services Tax) Act 1999*’ of the Commonwealth together with all associated legislation and any additional or substituted legislation:

- (i) providing for any value added tax, consumption tax, retail sales tax or other goods or services tax; or
- (ii) dealing with price exploitation and excessive profit taking prohibited by such laws;

“Insolvency Event” means all or any of the following events:

- (i) a receiver, a receiver and manager, an administrator or other controller is appointed in respect of the Service Provider or the Service Provider’s estate or interest under the Agreement and such appointment has not been revoked, discharged, stayed, enjoined or withdrawn within fourteen (14) days of the appointment;
- (ii) any Encumbrancer takes possession of the assets and undertaking of the Service Provider and does not relinquish possession within fourteen (14) days thereof;
- (iii) after all final appeal rights have been exhausted, any execution or other like process of law in respect of an amount exceeding \$10,000.00 is issued against or levied upon the Service Provider’s estate or interest under the Agreement and is not paid out, satisfied or withdrawn within fourteen (14) days of the date of issue against or levy upon such estate or interest;
- (iv) a liquidator or provisional liquidator is appointed or an order is made or an effective resolution is passed for the liquidation of the Service Provider and such appointment, order or resolution is not revoked, discharged, stayed, enjoined or withdrawn within fourteen (14) days;
- (v) the Service Provider enters into an arrangement or composition with its creditors within the meaning of the ‘*Corporations Act 2001*’;
- (vi) the Service Provider fails to satisfy a statutory demand under section 459F of the ‘*Corporations Act 2001*’;
- (vii) the Service Provider (in the case of an individual) commits any act of bankruptcy or files or fails to contest and have withdrawn or dismissed within ten (10) days of receipt any petition in bankrupt; or
- (viii) the Service Provider informs the Council or any third party that the Service Provider is insolvent or unable to pay its debts.

“Intellectual Property Rights” means all forms of patent, copyright, trade mark, trade name, trade secret, know-how, discovery, invention, secret process, design, improvement in procedure, innovation and any rights to register or claim any type of intellectual property right;

“Island Sites” includes the following waste transfer stations:

- (i) North Stradbroke Island Waste Transfer Station

- (ii) Russell Island Waste Transfer Station
- (iii) Macleay Island Waste Transfer Station
- (iv) Coochiemudlo Island Waste Transfer Station
- (v) Lamb Island Waste Transfer Station
- (vi) Karragarra Island Waste Transfer Station

“Law” means any legally binding law, legislation, statute, act, rule, order or regulation which is enacted, issued or promulgated by the State of Queensland, the Commonwealth of Australia or any relevant Local Government, as amended from time to time;

“Legislative Requirements” means all commonwealth laws, state laws, local laws, by-laws, licences, industrial awards, permits and all other lawful requirements that from time to time are applicable to the proper provision of the Services by the Service Provider or the Service Provider’s Staff (including, but not limited to, the *‘Environment Protection Act 1994’* (Qld) and the *‘Workplace Health and Safety Act 2011’* (Qld));

“Mainland Sites” includes Birkdale Waste Transfer Station and Redland Bay Waste Transfer Station.

“Other Service Providers” means any persons (other than the Service Provider) that provide any services for or on behalf of Council;

“Quality Assurance System” means the Service Provider’s QA system which establishes the qualities and performance of the Services (including without limiting the generality of this term, all quality manuals, plans and all other quality documentation such as inspection and test plans, management structures and responsibility statements, techniques for identification and management of non-conforming Services or Disputed Services, audit and other critical issues relating to quality assurance);

“Schedule of Rates” means the schedule of rates which are Schedule B of the Agreement, as adjusted in accordance with the Agreement;

“Service Provider’s GST Liability” means the GST the Service Provider is required by the GST Laws to pay or remit in relation to the supply of the Services (including Disputed Services) to the Council under the Agreement;

“Service Provider’s Representative” means the person who from time to time occupies or acts in the position as specified in Item 3 of Schedule A and who is authorised to represent the Service Provider pursuant to clause 19.2;

“Service Provider’s Staff” means each and every employee, agent, contractor, or subcontractor of the Service Provider who is used by the Service Provider to supply, provide or deliver the Services;

“Services” means the services to be provided by the Service Provider under the Agreement inclusive of the applicable Specification (including any Variation to such services), and includes any deliverables, methodology, equipment and documentation required to be created, provided or produced (either in whole or in part) by the Service Provider as part of the provision of the services;

“Specification” means the specified requirements as contained within Schedule C;

“Storage Container” includes Bins, Cages, Bunded and Roofed storage containers, and any other container designed for the storage of Waste or recyclable material;

“**Term**” means the period determined by clause 2;

“**Time of the Essence**” means the time and dates prescribed within the Agreement are vital and any unreasonable delay in delivery of the Services shall constitute default;

“**Timber**” includes Treated Timber and Untreated Timber;

“**Treated Timber**” means that timber that has been treated, chemically or otherwise, to preserve its durability or prevent fungi or insect infestation;

“**Untreated Timber**” means timber which has not been treated, chemically or otherwise, to preserve its durability or prevent fungi or insect infestation;

“**Variation**” is as defined by clause 9;

“**Waste Transfer Station**” or “**WTS**” refers to those facilities for the receipt and collection of waste.

1.2 Interpretation

In this Agreement:

- (a) Unless the context otherwise requires, the singular includes the plural and vice versa. The clause headings of the Agreement shall not in any way affect their interpretation. Any one gender includes all genders;
- (b) All references to “dollars” and “\$” or the like are reference to Australian dollars;
- (c) All references to “Service Provider” shall also include the Service Provider’s successors and assigns and all references to “the Council” shall also include the Council’s successors and assigns;
- (d) References to a “document” includes but is not limited to, any drawing, specification, material, record or any other means in which information can be stored or reproduced;
- (e) Time is the local time in Redland City; and
- (f) All terms and expressions used in the Annexures have the same meaning as given to them within this Agreement.

1.3 Language of Agreement

All information delivered as part of the Services supplied under this Agreement shall be written in English. Where any such Documentation is a translation into English, such translation shall be accurate and must be agreed by Council for acceptance.

1.4 Measurement

Measurements of physical quantity shall be in Australian legal units of measurement as prescribed under the *National Measurement Act 1960*, or if any of the Services are imported and do not conform to such legal units, such other unit of measurement as is agreed by Council.

2. TERM

2.1 General

This Agreement shall commence on the Agreement Commencement Date and shall expire on the Expiry Date unless terminated earlier or extended pursuant to clause 2.2.

2.2 Extension of Term

2.2.1 The Council may, within a reasonable period prior to the Expiry Date, give the Service Provider an Extension Notice extending the Term of this Agreement by a maximum of [TBA].

2.2.2 The maximum duration of the Agreement including the exercise of any option under this clause shall not exceed [TBA] in total.

2.2.3 If Council issues the Extension Notice as described within this sub-clause 2.2:

- (a) the payments for the extended period shall be as specified in the Schedule of Rates; and
- (b) the terms and conditions of this Agreement shall apply during the extended period.

3. EFFECT OF THE SPECIFICATIONS

3.1 Obligations of the Service Provider

The Service Provider shall:

- (a) provide the Services in strict accordance with the Specifications;
- (b) provide the Services in strict accordance with this Agreement; and
- (c) where applicable, guarantee a seamless transition from the existing contract for the Services to this Agreement with minimal disruption to residents, customers and Council.

3.2 Order of Precedence

Should any ambiguity, discrepancy, inconsistency or the like become evident within the documentation of the Agreement, then the following highest order of precedence being item (a) shall apply then in descending precedence order:

- (a) Service Agreement;
- (b) Schedule A – General Requirements
- (c) Schedule B – Schedule of Rates; and
- (d) Schedule C – Specifications.

3.3 Applicable Specifications

The Specifications applicable to the Services are contained within Schedule C of this Agreement.

3.4 Effect of the Specifications

Where the Specifications:

- (a) require the Service Provider to perform its obligations under this Agreement – those requirements of the Specifications shall be deemed to be obligations of the Service Provider under this Agreement; and
- (b) provide the Council with any obligation, right or entitlement in respect of the provision of the Services by the Service Provider under this Agreement– those provisions of the

Specifications shall be deemed to be obligations, rights or entitlements of the Council under this Agreement;

provided always that in accordance with clause 3.2, where there is any conflict or inconsistency between the requirements of the Specifications and the provisions of this Agreement, then the provisions of this Agreement shall apply to the extent of the conflict or inconsistency.

4. PROVISION OF THE SERVICES

4.1 General Conditions in Relation to the Provision of Services

It is a condition of this Agreement that the Service Provider shall:

- (a) consult and meet with the Council's Representative as frequently as specified in the Specifications or, if no such requirement exists in the Specifications, at such times as determined from time to time by the Council's Representative;
- (b) provide the Council with such reports as prescribed by the Specifications (both in terms of content, format and frequency) or, if no such requirement exists in the Specifications, such reports as requested from time to time by the Council's Representative. Where the Specifications require the provision of reports by the Service Provider, the Council's Representative may from time to time change the details to be provided together with the format and frequency of such reports following consultation with the Service Provider. Any such changes shall only be effective as and from a written notice from the Council's Representative advising of such changes is deemed to have been served on the Service Provider;
- (c) not do or permit to be done (whether by deliberate act or omission or by negligence) any act or omission which may jeopardise the rights of and or place at risk the Council in relation to the provision of the Services;
- (d) not make any public statement relating to the Services or this Agreement without the prior written approval of Council;
- (e) seek and obtain prior written approval from Council for any stationary or signage used by the Service Provider in the provision of the Services and Council reserves the right to be acknowledged on any stationary or signage; and
- (f) do all things necessary to fulfil its obligations under this Agreement.

4.2 Specific Conditions in relation to the provision of Services

It is a condition of this Agreement that the Service Provider shall supply, provide and deliver the Services:

- (a) in a Fit for Purpose manner in strict accordance with the terms and conditions prescribed in this Agreement, including without limitation the Specifications and all other documentation and instructions;
- (b) in an efficient, timely, and cost effective manner;
- (c) to the highest professional standard and with the due skill, care and diligence that is reasonably expected given the purpose for which the Services are required by Council;
- (d) in a manner that ensures the Service Provider and the Service Provider's Staff at all times, conduct themselves with a high level of decorum and present themselves in a manner not to offend reasonable members of the public; and

- (e) in compliance with any and all reasonable directions from Council relating to the provision of the Services.

4.3 Compliance with Legislative Requirements

- 4.3.1 At all times during the Term of this Agreement the Service Provider shall comply with all Legislative Requirements.
- 4.3.2 The Service Provider shall notify the Council's Representative immediately in writing if any Legislative Requirement changes after the Agreement Commencement Date and such changes:
 - (a) could not have been anticipated by a competent Service Provider; and
 - (b) necessitates any increases or decreases in the Agreement Prices or any change to the Services;
- 4.3.3 Any necessary difference in the Agreement Prices shall be reasonably assessed by the Council and added to or deducted from the Agreement Prices. In all other respects, the Service Provider shall bear the cost of complying with any such changes to the Legislative Requirements.

4.4 Acceptance

The Service Provider acknowledges and agrees that any delivery, receipt or review of or the giving of any direction by the Council in respect of any Services does not:

- (a) derogate from or lessen the Service Provider's liability to the Council for failure to fully comply with the requirements of this Agreement (including, but not limited to, failure of any item of the Services to meet the requirements of the Specifications);
- (b) constitute acceptance by the Council that the Services meet the requirements of this Agreement; or
- (c) constitute either a waiver of the Service Provider's obligations under this Agreement or certification that the Service Provider has properly fulfilled its obligations to the Council or operate as any other form of estoppel or restriction of the Council's rights under this Agreement or at law.

4.5 Quality Assurance System ("QAS")

- 4.5.1 The Service Provider shall ensure that at all times during the Term of this Agreement it uses the Quality Assurance System ("QAS") as an aid to achieving compliance with its obligations under this Agreement and to document such compliance. The Service Provider acknowledges and agrees that its compliance with its QAS shall not release or discharge it from compliance with its obligations under this Agreement.
- 4.5.2 To enable the Council to monitor the Service Provider's compliance with its obligations under this Agreement, the Service Provider shall at all times during the Term, allow the Council reasonable access to the Service Provider's QAS as used by the Service Provider (including the Service Provider's Staff) in the provision of the Services.

4.6 Complaints

If a Complaint is made and its rectification is not completed in accordance with this Agreement, Council's Representative reserves the right, after giving a written Direction to the Service Provider, of his intention so to do, to rectify the Complaint. The direct and indirect costs to the

Council of rectifying the Complaint may be deducted from any sum due or to become due to the Service Provider.

5. QUALITY OF SERVICES

5.1 General

Council may at any time during the Term of this Agreement undertake an inspection or review of the Services undertaken by the Service Provider, for the purposes of monitoring performance in relation to the Agreement.

5.2 Work Order

5.2.1 In the event that Council undertakes an inspection or review pursuant to clause 5.1 of this Agreement and determines, in its sole discretion, that the Services or any part of the Services have not been performed to the standard required by this Agreement, including a failure to meet any applicable Key Performance Indicators, Council may issue the Service Provider with a Work Order specifying:

- (a) the nature of the work to be rectified;
- (b) whether corrective action, including a procedural change, is required to prevent a reoccurrence of the relevant issue; and
- (c) the timeframe for compliance.

5.2.2 The Service Provider must action the Work Order within the Specified timeframe and advise Council's Representative of the action taken together with corrective action to prevent the situation reoccurring.

5.3 Non-compliance with Work Order

Should the Service Provider fail to comply with the requirements of a Work Order to the satisfaction of Council within the specified timeframe or where there is continued unsatisfactory performance by the Service Provider, Council may issue a Default Notice pursuant to Clause 18.2.

5.4 No Prejudice to Right to Terminate

Nothing in this Clause 5 will prejudice or interfere with Council's right to terminate this Agreement pursuant to Clause 18.

6. SERVICE PROVIDER REQUIREMENTS

6.1 Skill of Service Provider's Staff

The Service Provider, in carrying out the Services, shall only employ, engage or subcontract such persons:

- (a) who have such skills and experience required to provide the Services in accordance with this Agreement;
- (b) who hold all necessary licences, permits, authorisations, certificates and accreditations as required by law in order to provide the Services; and
- (c) whose standards of experience, workmanship and behaviour are suitable for the provision and/or performance of the Services and the requirements of this Agreement.

6.2 Responsibility for Service Provider's Staff

- 6.2.1 At all times during the Term of this Agreement, the Service Provider shall remain fully responsible and liable for the provision of the Services irrespective of whether those Services are provided by the Service Provider's Staff or others, and the Service Provider shall ensure that all such persons fully comply with the Service Provider's obligations under this Agreement.
- 6.2.2 The Service Provider must:
- (a) ensure that all members of the Service Provider's Staff hold all relevant current licences, qualifications and certification required to perform the obligations specified by Council and produce evidence of these upon request;
 - (b) be responsible for and maintain the training, skills, knowledge and abilities of themselves and the Service Provider's Staff and ensure that all qualifications relevant to the Services be in accordance with the relevant Australian, Industry, or International Standards;
 - (c) formally document all training programs developed and implemented to ensure that the Service Provider's Staff are compliant with their obligations pursuant to this Agreement and produce evidence of these upon request;
 - (d) adequately monitor and supervise the Service Provider's Staff to ensure that they comply with the requirements of their training and all relevant standards and do not undertake any activity which is beyond the scope of such training..
- 6.2.3 Where there is a change in legislation resulting in any changes of licencing requirements the Service Provider shall, at its own expense, take all necessary steps to comply with any legislation at all times.
- 6.2.4 The Service Provider must supply and maintain sufficient numbers of employees to effectively and efficiently carry out the Services, including backfill of all relevant positions to cover circumstances including leave, planned or unplanned vacancy, and on-call arrangements for afterhours emergencies.

6.3 Prohibited Behaviour

The Service Provider must ensure that while engaged in the performance of the Services or any related activities no member of the Service Provider's Staff:

- (a) consumes any alcoholic beverage or is intoxicated;
- (b) is under the influence of any drug that could impede his or her ability;
- (c) performs the Services in an unsafe manner;
- (d) acts in an unethical manner;
- (e) collects, removes or sells any materials from any Council Waste Transfer Station unless such activity is in accordance with this Agreement or is approved in writing by Council's Representative; or
- (f) smokes or otherwise consumes any tobacco product on the Waste Transfer Station site except where a site is specifically allocated for such activities.

6.4 Customer Service

- 6.4.1 The Service Provider must promote and maintain a positive image and good community relations and must ensure that all members of the Service Provider's Staff conduct themselves towards Council employees and Councillors, Other Service Providers, and all members of the

public in a civil, courteous and inoffensive manner and comply with the current Council Employee Code of Conduct provided by Council at all times.

- 6.4.2 Upon request by Council's Representative, the Service Provider shall convey information related to Waste Transfer Station operations to users of the facility. Such information may include but is not limited to educating users regarding the facilities available on site and their proper method of use of such facilities.

6.5 BNG Conserve and Service Provider Induction

It is a condition precedent of this Agreement that the Service Provider must:

- (a) achieve and maintain accreditation with BNG Conserve (www.bngconserve.com.au) in accordance with this Agreement including payment by the Service Provider for the associated costs for obtaining and maintaining the accreditation;
- (b) for the roles assigned and as agreed by Council, undertake a Contractor induction with BNG Conserve for all members of the Service Provider's Staff engaged to perform the Services and sign and carry the RCC Contractor Card produced; and
- (c) undertake a Site Specific Induction at all Council nominated sites for all members of the Service Provider's Staff engaged to perform the Services prior to entering the site.

6.6 Termination of Service Provider's Staff

- 6.6.1 Where the Council's Representative is of the opinion that a member or members of the Service Provider's Staff repeatedly or persistently fails to meet the requirements of this Agreement, the Council's Representative may, by notice in writing to the Service Provider, request the removal of that person or persons from performing any Services within this Agreement.
- 6.6.2 Upon receipt of this request, the Service Provider shall immediately remove that person or persons and replace such person with a suitably qualified person or persons at nil cost to the Council either in terms of extension of time or any other additional costs or charges howsoever understood.

7. CO-OPERATION WITH OTHER SERVICE PROVIDERS

- 7.1.1 The Service Provider must cooperate with all Other Service Providers engaged in the performance of works on behalf of or for Council to ensure that the Council is able to provide efficient and effective service with minimal disruption. The cooperation extends to cooperation with Other Service Providers performing like or other services during or after the Term.

7.1.2 This includes without limitation:

- (a) The Service Provider must endeavour to establish a cooperative working relationship with all Other Service Providers;
- (b) The Service Provider must promptly give written notice to the Council's Representative of any dispute between the Service Provider and any Other Service Provider that directly or indirectly affects the Council's or the Service Provider's ability to provide efficient and effective waste management services with minimal disruption;
- (c) Council's Representative may, from time to time, give a direction to the Service Provider convening a meeting between the Service Provider and any Other Service Provider; and
- (d) Council's Representative may, from time to time, give a written direction to the Service Provider requiring that the Services be performed in a particular manner for the purpose of ensuring that the Council is able to provide efficient and effective waste management services with minimal disruption.

8. ENVIRONMENTAL MANAGEMENT

8.1 General

- 8.1.1 The Service Provider must take all reasonable steps to protect the environment and to avoid injury, nuisance or damage to persons or to property of the public or other resulting from pollution, noise or other causes arising from performance of the Services.
- 8.1.2 The Service Provider must provide, if applicable, the Environmental Authorities issued by the Department of Environment and Heritage Protection to the Service Provider for both the on-site grinding of Greenwaste and Untreated Timber and the beneficial reuse site.
- 8.1.3 All plant and machinery operated by the Service Provider in the provision of the Services, and on Council's premises, must be fitted with reverse squawkers. No plant and machinery are to be operated on Council's premises that are fitted with reverse beepers.

8.2 Fire Ants

- 8.2.1 The Redland Bay Waste Transfer Station is located within the Fire Ant Biosecurity Zone 2. All Greenwaste and Timber must be removed from this site and dealt with in a lawful manner as required by the Department of Agriculture, Fisheries and Forestry.
- 8.2.2 While not located in the Fire Ant Biosecurity Zone 2, the Birkdale Waste Transfer Station is required to accept High Risk material from residential and commercial sources. As such, all Greenwaste and Timber must be removed from this site and dealt with in a lawful manner as required by the Department of Agriculture, Fisheries and Forestry.
- 8.2.3 The Service Provider must report the presence or suspicion of Fire Ants to the Queensland Department of Agriculture, Fisheries and Forestry and Council's Representative within 24 hours of becoming aware of the presence or suspicion of Fire Ants at any of Council's Waste Transfer Stations or the disposal location having received material in the performance of the Services. The Director General of the Department of Agriculture, Fisheries and Forestry must also be notified in writing within seven days of the Service Provider becoming aware of the presence or suspicion of Fire Ants.
- 8.2.4 Where the Services involve the movement of restricted materials, including soils, from or within a Fire Ant Biosecurity Zone, the Contractor shall undertake all management measures and processes required by the Queensland Department of Agriculture, Fisheries and Forestry, including establishing and operating under an Approved Risk Management Plan for Fire Ants.
- 8.2.5 In addition to requirements as stated above, the Service Provider will implement the following precautionary measures:
- (a) check for Fire Ants at all times;
 - (b) check all soils, gravel, fill and waste material, (Greenwaste and Untreated Timber and Treated Timber) for fire ants. Nonetheless, no such material will be removed from a restricted area without the implementation of an Approved Risk Management Plan or the prior approval of a Fire Ant Inspector and compliance with all conditions;
 - (c) provide details on all such materials to Council's Representative;
 - (d) keep records of all movements of soil, fill and waste material (Greenwaste and Untreated Timber and Treated Timber);
 - (e) provide details on all such material and movements to the Council's Representative;

- (f) clean all earthmoving equipment/machinery or other solid vehicles prior to exiting from the site;
- (g) equipment is not to be moved on or off site unless it has been cleared of loose soil that may harbour Fire Ants; and
- (h) inform staff, sub-contractors and visitors about required precautions and their obligations.

8.2.6 Any costs incurred by the Service Provider in relation to with the implementation, performance and management of operational and compliance requirements associated with Fire Ants shall be included with the Agreement rates. Council will not be liable for any costs incurred by the Service Provider in complying with this clause.

9. VARIATION TO THE SPECIFICATIONS OR SERVICES

9.1 General

The Council may seek to vary the Services required in any manner (such as, but not limited to, variations to the Specifications, delivery times, the quantity of the Services) by the provision of written notice to the Service Provider (“the **Variation**”).

9.2 Notification

As soon as practicable after receipt of any such Variation referred to in clause 9.1, the Service Provider shall notify the Council whether it agrees to the variations proposed by the Council and if so, shall also provide the Council with an estimate of:

- (a) any additional cost to the Agreement Prices that will occur as a result of the Variation. If directed by the Council, the Service Provider shall provide a detailed quotation for the Variation together with documented evidence of such costs; and
- (b) the effect such Variation will have on the provision and/or delivery of the Services.

9.3 Binding

9.3.1 Unless expressly provided for in the Specifications, the Variation shall not constitute a legally binding variation unless the parties have agreed in writing to such Variation (whether by formal instrument or by other written means). In the absence of such written agreement, the Agreement shall remain binding on the parties.

9.3.2 If the Council and the Service Provider are unable to agree on the change to payments as a result of the Variation, the provisions of clause 17 shall apply.

10. ACCESS TO COUNCIL PREMISES AND SYSTEMS

10.1.1 The Service Provider shall fully comply with (and ensure the Service Provider’s Staff and others fully comply with) all requirements or directions of the Council relating to:

- (a) access to, behaviour on or access from any Council Premises (including, but not limited to, security and Work Health and Safety requirements in relation to such premises); and
- (b) where arranged and permitted by the Council – access to and use of the Council’s computer systems, programs and/or any arrangement Council has in place to access the Internet. Further, the Service Provider shall advise the Council’s Representative of any such unauthorised access and/or use.

10.1.2 These requirements or directions shall be as provided from time to time in writing by the Council’s Representative to the Service Provider.

11. PRICE AND PAYMENT

11.1 Agreement Prices

- 11.1.1 The Service Provider shall not, in respect of the provision of any Services (or any Variation), attempt or seek to impose any costs, expenses or charges that are calculated other than in accordance with this clause 11.
- 11.1.2 The Agreement Prices in respect of any Services (or items which are used in the provision of Services which are charged separately) or a Variation shall be determined by calculating the amount payable for the performance of the Services during the relevant month in accordance with the applicable Schedule of Rates.
- 11.1.3 The parties further agree that The Service Provider shall not charge the Council and the Council is under no obligation (whether legal or equitable) to pay any prices, charges, additional fees or charges or be subject to any variation formulae/indices that are not specified in the applicable Schedule of Rates unless the Service Provider has obtained the Council's written consent to such fees and done so prior to the Service Provider providing the Services (or causing such Services to be provided) that would otherwise incur such additional fees or charges.
- 11.1.4 The Service Provider shall pay Council the rates set out in the applicable Schedule of Rates in accordance with clause 11.2. Any adjustments to the rates shall be in accordance with the relevant formulae as specified in the Schedule of Rates.
- 11.1.5 The Service Provider shall be entitled to claim payment from the last day of every month during the Term for the Services provided in that month calculated in accordance with clause 11.1.

11.2 Invoices

- 11.2.1 Notwithstanding any other provision of the Agreement or any other provision, Council shall pay all properly rendered approved invoices that:
- (a) are submitted by or on behalf of the Service Provider for the provision of the Services;
 - (b) comply with the requirements of clause 11.2.2;
 - (c) claim the payments to which the Service Provider is entitled under clause 11.1; and
 - (d) shall do so in accordance with clause 11.2.3 save and except where the Council's Representative has certified pursuant to clause 11.3 that the provision of the Services (or part thereof) in question are Disputed Services.
- 11.2.2 The requirements for the Service Provider's invoices are as follows:
- (a) the invoices must specify the title of this Agreement, the agreement number of this Agreement (or any other number as the Council's Representative may, from time to time, specify in writing to the Service Provider as being required to be inserted on any invoice), the name of the relevant business unit of Council and the name and address of the Council's Representative;
 - (b) the invoices must provide such details of the Services for which payment is sought and the Agreement Prices sought for the Services (by reference to the rates set out in the applicable Schedule of Rates), and any other details the Council's Representative may from time to time require (which may include the attachment of receipts, the number of hours involved and the amounts of GST (if any) that are applicable to the invoiced Services (or part thereof));

- (c) the Services claimed by the Service Provider in an invoice must be the same as the Services approved by the Council's representative for that month;
- (d) the invoices must contain sufficient detail to enable the Council to assess progress against targets (if any) as required;
- (e) where Services are charged on a time basis – the invoices must record the number of hours and days spent by individual persons on the Services. Such records must be verified by a competent officer of the Service Provider; and
- (f) the invoices must be tax invoices as may be required under the GST Laws to allow the Council to obtain an input tax credit in respect of any amount of GST payable by the Council for those Services and the invoice clearly specifies (in dollars) the amount of GST payable by Council under that invoice.

11.2.3 The Council shall pay the Agreement Prices for all or part of the Services that are not Disputed Services (including the Service Provider's GST Liability in relation to such Services) within thirty (30) days of receipt of a properly rendered and approved invoice.

11.3 Disputed Services

11.3.1 If at any time before payment in relation to the Services is received by Council or within twenty one (21) days of the completion of the Services for the relevant month the Council's Representative provides the Service Provider with written advice indicating that all or part of the Services in question have not been satisfactorily provided or performed in accordance with this Agreement ("the **Disputed Services**"), then:

- (a) the Service Provider shall promptly re-deliver or re-perform any Services which are the subject of the Disputed Services until such time as the Council's Representative is satisfied that they have been satisfactorily provided or performed in accordance with this Agreement in question; and
- (b) re-delivery or re-performance of the Services which are the subject of the Disputed Services shall be at no extra cost to Council.

11.3.2 If the Service Provider fails to perform as required by clause 11.3.1(a), the Council shall be entitled to terminate this Agreement in question pursuant to clause 18 and/or exercise its rights under clause 18.1 and other provisions of this Agreement.

11.3.3 The Service Provider shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Agreement Price (including the Service Provider's GST Liability in relation to such Services) unless otherwise provided in the Agreement.

11.4 Goods and Services Tax and Other Taxes

11.4.1 Where the Council is legally obliged to pay an invoice in relation to the provision of the Services (including Disputed Services), the Service Provider shall be also entitled to claim from the Council the amount of the Service Provider's GST Liability for the Services to which the invoice relates provided that GST is applicable to those Services and the invoice is a properly rendered invoice that complies with the requirements of a Tax Invoice under the GST Laws.

11.4.2 Except as expressly provided by this clause:

- (a) the Service Provider shall have no other Claim arising from or in connection with any GST payable in respect of the Services;
- (b) no other provision of this Agreement shall operate to provide for any adjustment of the Agreement Prices or give rise to any other claim by the Service Provider in connection with any GST payable in respect of the Services; and

- (c) where any payment by the Council under this Agreement is determined by reference to costs, expenses, liability or damages incurred by the Service Provider, the payment shall exclude any amount for which the Service Provider is entitled to claim an input tax credit under the GST Laws.

11.4.3 Where there are circumstances or events which, under the GST Laws, require the Council to deduct Pay As You Go withholding tax (“**PAYG**”) from the Agreement Prices otherwise payable to the Service Provider, then the Council shall deduct PAYG from any such Agreement Prices and shall not be liable to the Service Provider, its staff, Service Providers, sub-Service Providers or assignees for doing so.

11.4.4 In the event that:

- (a) the provision of any Services or the payment of any moneys (or other form of consideration) under this Agreement becomes a Taxable Supply under the GST Laws; and
- (b) the recipient of such Services or such moneys or other form of consideration is liable to pay GST in relation to that supply;

each party will do all things (including the provision of properly rendered tax invoices or other documentation) in such form and detail as may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to the payment of that amount of GST.

11.4.5 Unless otherwise required by law, the parties agree that the Council shall not be liable to compensate the Service Provider in respect of any other taxes or charges levied in connection with either the provision of Services under this Agreement or any payment by the Council pursuant to this Agreement.

11.5 Recovery of Amounts due to Council

11.5.1 The Council may set off against any amount owed by the Council to the Service Provider:

- (a) any sum payable under this Agreement by the Service Provider to the Council; or
- (b) any costs or expenses incurred or expected to be incurred by the Council as a result of or arising from any breach of this Agreement by the Service Provider or the Service Provider’s Staff.

11.5.2 Further, such amounts shall be a debt due and payable to the Council and may be recovered in any Court of competent jurisdiction.

11.6 Statutory Declaration

Council’s Representative may from time to time at its discretion require the Service Provider to give to the Council a statutory declaration that all Service Providers Staff who have performed work or provided plant or equipment as part of the Services have at the date of the claim been paid all moneys due and payable to them in respect of their contribution to the performance of the Services.

11.7 Failure to Provide Declaration

If the Service Provider fails to comply with clause 11.6, Council may withhold payment of moneys due to the Service Provider until the statutory declaration is received by the Council.

12. NEGATION OF EMPLOYMENT AND AGENCY

The Service Provider:

- (a) shall not represent itself as being an employee or agent of the Council;
- (b) acknowledges that it is an independent contractor and that nothing in the Agreement constitutes any relationship of employer and employee, principal or agent or partnership between the two parties or between the Council and any member of the Service Provider's Staff (or the Service Provider's assignees); and
- (c) agrees that it is solely liable for all remuneration, claims and other entitlements payable to the Service Provider's Staff as well as complying with the requirements of the Taxation Administration Act of the Commonwealth and the GST Laws.

13. RELEASE OF INFORMATION

13.1.1 Save and except as required by law, the Service Provider shall treat and keep all information concerning the Agreement strictly confidential and shall not make any comment or issue to any third person (including any sector of the media) any information or publication, document or article for publication concerning the provision of the Services unless the prior written approval of the Council has been obtained. The Service Provider shall refer to the Council all such inquiries concerning the Agreement.

13.1.2 The Service Provider's obligation in relation to confidentiality shall:

- (a) not apply either:
 - (i) where the Service Provider is required by law to disclose such information; or
 - (ii) where such disclosure has been permitted in writing by the Council prior to such disclosure; or
 - (iii) where any such information becomes available in the public domain other than by reason (whether wholly or partially, directly or indirectly) of the Service Provider breaching its obligation of confidentiality to the Councillor any other party; and
- (b) otherwise survive the expiration or termination of the Agreement.

14. INTELLECTUAL PROPERTY RIGHTS

14.1.1 The Service Provider warrants that the provision or supply of the Services to the Council (including the creation, preparation or delivery of the Deliverables or any Documentation), it is not infringing the Intellectual Property Rights of any third party.

14.1.2 Where the provision of Services requires the Service Provider to design and/or create any Documentation or Deliverable for the Council (either solely or through collaboration with any officers, agents or Service Providers of the Council), the Intellectual Property Rights in such Documentation or Deliverable is deemed to vest in the Council immediately upon creation. Further, the Service Provider shall do all things necessary to perfect the vesting of all such Intellectual Property Rights in the Council.

14.1.3 The Service Provider grants the Council a permanent, irrevocable, royalty free, non-exclusive licence (including the right to sub-licence) to use, produce, adapt or exploit the Intellectual Property Rights owned by the Service Provider or any third party and which are associated with the Services (together with any Documentation or Deliverable) provided that the Council does not on-sell or on-licence (whether for monetary consideration or not) such Intellectual Property Rights to third parties (excluding Related Corporations of the Council). Notwithstanding Part VII of the *Copyright Act 1968* of the Commonwealth, publication of any Documentation or Deliverable in accordance with this licence shall not affect such ownership.

14.1.4 The Service Provider shall notify the Council in writing as soon as practicable of any Claim threatened or brought against the Service Provider arising from an infringement or alleged infringement by the Service Provider of the Intellectual Property Rights of any third party.

15. INDEMNITY

15.1 General

15.1.1 Upon demand being made by the Council, the Service Provider shall fully indemnify the Council and its officers and employees:

- (a) from and against any Claim made by any of the Service Provider's Staff in relation to the performance of the Services that they are employees (as commonly defined) of Council or "workers" of the Council under the *Worker's Compensation and Rehabilitation Act 2003* and the *Work Health and Safety Act 2011* of Queensland (as amended from time to time);
- (b) from and against any Claims whatsoever arising out of or in connection with any claim that the performance of any Services breaches the Intellectual Property Rights of any third party;
- (c) from any and all liability for non-compliance or breach of current Environmental Laws, Regulations and the like by the Service Provider or the Service Provider's Staff;
- (d) from any and all liability for non-compliance or breach of current Legislation by the Service Provider or the Service Provider's Staff;
- (e) from and against any and all liability for fuel and for illegal disposal of waste caused by the Service Provider or the Service Provider's Staff;
- (f) from and against any and all liability for compliance or non-compliance by the Service Provider with the management procedures by the Service Provider or the Service Provider's Staff;
- (g) from and against any and all liability for pollution caused by the by the Service Provider or the Service Provider's Staff;
- (h) from and against any and all liability for a failure by the Service Provider or the Service Provider's Staff to obtain, or a breach of, any licences, approvals and the like;
- (i) in relation to any Claim (including loss of or damage to property or any personal injury or death of any person and including any costs and expenses that may be incurred in connection with any such Claim) where such Claim directly or indirectly arises in any manner out of:
 - (i) any negligent, wilful, unlawful or wrongful act or omission by the Service Provider or any of the Service Provider's Staff in connection with or incidental to the performance or provision of any Services; or
 - (ii) any breach of the Agreement by the Service Provider or any of the Service Provider's Staff.

15.1.2 This indemnity shall survive any termination or expiration of the Agreement.

15.2 Reduction

Notwithstanding clause 15.1, the Service Provider's liability for any Claim arising out of any personal injury to or the death of any person or loss of or damage to property shall be reduced

to the extent that such Claim is a direct result of either any breach by the Council of any provision of the Agreement or any negligent act or omission of the Council, its employees, agents, other service providers or sub-contractors.

16. INSURANCE

- 16.1.1 At all times during the Term of the Agreement, the Service Provider shall take out and maintain, with an insurance company approved by Council, the insurance specified in Item 4 of Schedule A.
- 16.1.2 Within five (5) Business Days of being requested in writing to do so, the Service Provider shall produce the certificates of currency of insurance or such evidence of the currency of the insurance referred to in this clause as Council may require.
- 16.1.3 If the Service Provider fails to insure or to maintain insurance as required by this clause 16, Council may pay the premiums and the Service Provider shall reimburse Council the cost of such payment.
- 16.1.4 Council reserves the right to review the limit of liability of the Public Liability Insurance Policy at the expiry of the initial term, should Council choose to extend the Agreement after the initial term in accordance with clause 2.2.

17. DISPUTES

17.1 Procedure

In the event of any dispute in relation to any matter arising under or in relation to the Agreement, the procedure specified in this clause 17 shall be followed. However, this clause does not prevent or operate to delay either Party from seeking urgent equitable relief from a Court of Law. The Queensland *Commercial Arbitration Act 2013* shall not apply to any dispute under or in relation to the Agreement.

17.2 Discussion

In the event of any dispute arising, the Service Provider's Representative and the Council's Representative shall, in the first instance, discuss the matter in a face to face meeting and shall attempt to resolve the dispute amicably. The meeting shall be held as soon as practicable after either party call for the meeting.

17.3 Chief Executive Officers

In the event that the Service Provider's Representative and the Council's Representative cannot resolve a dispute within seven (7) days of a meeting referred to in clause 17.2, the Chief Executive Officers of the Council and the Service Provider shall discuss the matter with a view to resolving the dispute as soon as practicable after the expiration of the period of seven (7) days from the date of the meeting referred to in clause 17.2.

17.4 Expert

If the dispute remains outstanding after two (2) days following the discussion between Chief Executive Officers (or such longer period as the Parties may agree as a result of their discussions), either Party may refer the subject of the dispute to an independent party ("the Expert") acting as an expert and not as an arbitrator. The Expert shall be a person appropriately qualified to determine the dispute and shall be appointed by agreement or, failing agreement, by the President for the time being of the Queensland Law Society Incorporated. The costs of the Expert shall be met by both Parties in equal proportions.

17.5 Submissions

The Party referring the matter to the Expert shall make written submissions to the Expert detailing the nature of the dispute and its view in relation to the dispute including any supporting material. A copy of the written submission made to the Expert shall be supplied to the other Party within twenty four (24) hours of the submission being provided to the Expert.

17.6 Response

The other Party shall, within seven (7) days of receipt of the submission to the Expert, provide the Expert with its response to the written submission from the Party referring the matter to the Expert.

17.7 Further Information

The Expert may require further information from either Party prior to reaching his or her decision and may request a meeting with either or both of the Parties for this purpose. The additional information shall be supplied within the time frame specified by the Expert.

17.8 Expert's Decision

The Expert shall deliver his or her decision on the matter in dispute within fourteen (14) days of receipt of the written response referred to in clause 17.6, or if additional information is requested under clause 17.7, within fourteen (14) days of receipt of that information.

17.9 Binding Decision

The Expert's decision shall be final and binding on both Parties unless either Party commences litigation within thirty (30) calendar days after the Expert's decision has been provided to both Parties.

17.10 No Disruption

The Service Provider and the Council shall continue to comply with the Agreement during any dispute period unless the dispute relates to termination of the Agreement by the Council.

17.11 Survival

This clause 17 shall survive termination or expiration of the Agreement.

18. TERMINATION

18.1 Termination by the Council without Notice

18.1.1 At any time during the Term of the Agreement, the Council may terminate all or part of the Agreement immediately and without prior notice to the Service Provider if:

- (a) an Insolvency Event occurs in respect of the Service Provider; or
- (b) the Service Provider (or any member of the Service Provider's Staff) has breached any Laws applicable to the provision of the Services or have infringed the intellectual property rights of any third party; or
- (c) the Service Provider has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Council;
- (d) the Service Provider has failed to comply with a Default Notice within the time period specified in a Default Notice; or

- (e) the Service Provider is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any member of the Redland City Council or any officer, employee or agent of the Council; or
- (f) the Service Provider falsifies any records associated with the provision of the Services.

18.1.2 Such termination shall be effected by the Council giving the Service Provider a written notice terminating the Agreement (a "Termination Notice") and specifying the date of termination ("the Termination Date"). Those parts of the Agreement to which the Termination Notice relates shall terminate on the Termination Date.

18.2 Termination for Default

If a party is in default under the Agreement on account of its failure to perform or observe any obligation or undertaking under the Agreement ("the Defaulting Party"), the party not in default may give the Defaulting Party a written notice (a "Default Notice"):

- (a) specifying which provision of the Agreement has been breached;
- (b) requiring the Defaulting Party to:
 - (i) rectify that default to the reasonable satisfaction of the other party within such period as specified in the written notice (which is to be not less than fourteen (14) days of the receipt of the notice by the Defaulting Party); and
 - (ii) show cause in writing why the party not in default should not exercise its right to terminate the Agreement in accordance with clause 18;

providing that a party shall not be entitled to exercise its rights and remedies under this clause if the default in question is wholly due to any event that either is beyond the reasonable control of the Defaulting Party, or the default could not have been prevented by the Defaulting Party taking reasonable precautions.

18.3 Service Provider's Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice pursuant to clause 18.1, the Service Provider shall:

- (a) stop work as specified in the Termination Notice;
- (b) take all available steps to minimise loss resulting from that termination; and
- (c) continue to provide any other Services not affected by the Termination Notice.

18.4 Effect of Termination

Any termination of the Agreement shall not affect any right or entitlement which either party is entitled to claim under the provisions of the Agreement.

18.5 Council's Rights upon Breach

18.5.1 If either the Council terminates the Agreement in whole or in part pursuant to clause 18.1, the Council may itself or by a third party employed or engaged by the Council carry out and complete the Services (or such parts thereof) as are the subject of the said notice.

18.5.2 The Service Provider shall pay all reasonable costs and expenses incurred or expected to be incurred by the Council (including GST) in engaging any such third party and shall do so within thirty (30) days of the Council serving a valid tax invoice on the Service Provider specifying the amount payable. All costs and expenses incurred by the Council in engaging any such third party may be recovered or set-off by the Council pursuant to clause 11.5.

18.6 Suspension

18.6.1 If the Council is of the opinion that the suspension of all or part of the provision of the Services by the Service Provider is desirable due to any changes in the Council's need for the nature, scope or timing of the Services, the Council may give the Service Provider a written notice suspending all or part of the provision of the Services (a "Suspension Notice"). The Suspension Notice shall specify the Services to be suspended and the date of suspension of such Services ("the Suspension Date"). Those parts of the Services to which the Suspension Notice relates shall be suspended as and from the Suspension Date.

18.6.2 Upon receipt of a Suspension Notice pursuant to clause 18.6.1 the Service Provider shall:

- (a) stop work as specified in the Suspension Notice;
- (b) take all available steps to minimise loss resulting from that suspension; and
- (c) continue to provide any other Services not affected by the Suspension Notice.

18.6.3 Upon the suspension of any Service (whether in whole or in part), the Council's liability to the Service Provider (if any) shall be limited to:

- (a) payments (if any) for the Services (or any part) performed in accordance with the Agreement before the Suspension Date;
- (b) subject to the Service Provider fully complying with its obligations under clause 18.6.2 any reasonable costs incurred by the Service Provider and directly attributable to the suspension or partial suspension of that Service; and
- (c) payments for Services not affected by the Suspension Notice

provided always that the maximum amount of the Council's liability to the Service Provider pursuant to this clause shall be capped at the amount of the Agreement Price as varied pursuant to clause 9. The Service Provider shall not be entitled to compensation for loss of prospective profits.

18.7 Force Majeure

18.7.1 Subject to paragraph 18.7.3 of this clause:

- (a) neither party will be liable for any delay or failure to perform its obligations under the Agreement; and
- (b) the performance of a party's obligations under the Agreement shall be suspended;

if and to the extent that delay or failure is caused (directly or indirectly) to Force Majeure provided that the non-performing party is without fault in causing that delay or failure.

18.7.2 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate the Agreement by written notice to the other party.

18.7.3 This clause does not apply to an obligation to pay money.

19. AGREEMENT MANAGEMENT AND NOTICES

19.1 Council's Representative

19.1.1 The Council's Representative (or such other person as the Council may from time to time nominate by written notice to the Service Provider) may exercise all the powers and functions of

the Council under the Agreement (including the power to authorise a Variation provided that the Variation does not breach the Agreement) but does not have the power to vary the Agreement for any other purpose unless authorised by the Council to do so.

- 19.1.2 The Council's Representative may, by written delegation or authorisation, delegate any of their functions or authorise other persons to make or agree to Variations under the Agreement and to carry out administrative functions on behalf of the Council's Representative. Nothing in this clause shall entitle the Council's Representative to delegate his or her powers to terminate the Agreement.

19.2 Service Provider's Representative

The Service Provider shall appoint a person to be the Service Provider's Representative; such appointment shall be approved by the Council's Representative (which approval may be withdrawn at any time). The Service Provider's Representative shall be empowered to receive on behalf of the Service Provider, Directions and instructions from Council's Representative.

19.3 Notices

- 19.3.1 Any notice, request or other communication to be given or served pursuant to the Agreement shall be in writing and addressed as the case may be, as follows:

- (a) if given to the Council, addressed and forwarded to the Council's Representative provided that the Council may alter the persons and/or addresses for the purposes of this clause by the provision of written notice to the Service Provider. Any such alteration shall take effect from the date it was deemed to be given pursuant to clause 19.3 (b); and
- (b) if given by the Council, signed by the Council's Representative and forwarded to the person and address specified within Item 5 of Schedule A provided that the Service Provider may alter the persons and/or addresses for the purposes of this clause by the provision of written notice to the Council. Any such alteration shall take effect from the date it was deemed to be given pursuant to clause 19.3(b).

- 19.3.2 Proof of posting by pre-paid mail is proof of receipt of such notice on the second clear Business Day after posting. Proof of transmission by facsimile of a notice is proof of receipt on the date of transmission but if a transmission is not made on a Business Day or not made before 4.00pm (Standard Queensland Time), then it will be deemed to have been received at 10.00am on the next Business Day after transmission. Proof of receipt of a notice by email is proof of receipt on the date of receipt.

20. GENERAL

20.1 Entire Agreement and Variation

- 20.1.1 This Agreement constitutes the entire agreement between the parties in relation to the matters covered by those respective documents and supersedes all prior representations, agreements, statements and understandings, whether oral or in writing, relating to the subject of this Agreement.

- 20.1.2 No variation or extension of the provisions of the Agreement shall be legally binding upon either party unless it is in the form of a written amendment to the Agreement and authorised by both parties.

20.2 Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of the Agreement shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

20.3 Assignment and Subcontracting

The Service Provider shall not without the prior written approval of the Council:

- (a) assign all or any part of the Agreement or any payment herein. Approval to assign shall be on terms and conditions determined by the Council; or
- (b) subcontract the whole or any part of its obligations or rights under the Agreement. Any approval by the Council to allow the Service Provider to subcontract shall not relieve the Service Provider from any liability or obligation under the Agreement.

20.4 Severability

In the event that any of the terms contained in the Agreement are determined to be invalid or unenforceable to any extent, such term shall be severed from the body of the Agreement which shall continue to be valid and enforceable to the fullest extent permitted by the law.

20.5 Rights and Remedies

The rights of a party under the Agreement are in addition to any other rights or remedies which that party shall or may be entitled to against the other party at law or equity.

20.6 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland and the parties agree to submit to the jurisdiction of the courts of that State.

SCHEDULE A – GENERAL REQUIREMENTS

ITEM 1 AGREEMENT TERM

- (a) Agreement Commencement Date: [TBA]
- (b) Expiry Date: [TBA]

ITEM 2 COUNCIL'S REPRESENTATIVE

[TBA]

ITEM 3 SERVICE PROVIDER'S REPRESENTATIVE

[TBA]

ITEM 4 INSURANCES

- (a) Worker's Compensation Insurance to the extent required by the laws of the State of Queensland.
- (b) Public Liability Insurance in an amount not less than \$20,000,000 per claim to cover:
 - (i) loss, injury, or death to any person;
 - (ii) loss, injury and destruction of any property belonging to any person, including the Council; and
 - (iii) economic loss and damage sustained by any person including the Council.
- (c) Comprehensive Motor Vehicle Insurance for all vehicles used in relation to this Agreement.
- (d) Property Damage Insurance to cover full replacement value of all plant and equipment of the Service Provider used and to be used in the carrying out of the Services from loss or damage from any cause including, but not limited to fire, storm and tempest, malicious acts, fusion, flooding and mechanical breakdown;
- (e) Professional Indemnity Insurance to a sum of \$10,000,000 per claim.
- (f) Such further policies of insurance as Council's Representative may direct from time to time.

ITEM 5 NOTICES TO THE SERVICE PROVIDER

Subject to clause 19.3, notices to the Service Provider must be addressed to:

[TBA]

SCHEDULE B – SCHEDULE OF RATES

[TBA]

SCHEDULE C – SPECIFICATION

1. GENERAL

- 1.1.1 This Schedule sets out the obligations of the parties in respect to the collection, transport and processing of Greenwaste and Untreated Timber; and the collection and transport of Treated Timber in addition to those contained in the Agreement.
- 1.1.2 This Schedule describes the Services required by the Agreement.
- 1.1.3 The parties acknowledge and agree that in performing their respective obligations that nothing contained herein shall be interpreted and or understood to limit, restrict and or exclude the Service Provider's obligations, liabilities and the like to deliver the Services in a Fit for Purpose manner at all times.
- 1.1.4 Prior to the Agreement Commencement Date, and as directed by Council, the Service Provider shall meet and provide to the Council Representative a mobilisation plan detailing the strategic approach to be taken as part of the Service Commencement. The Service Provider shall meet with Council's Representative, at a frequency directed by Council, to provide a detailed progress report and update.
- 1.1.5 All terms and definitions used in this Schedule will have the same meaning as given to them in the Agreement.

2. NORTH STRADBROKE ISLAND WASTE TRANSFER STATION

- 2.1.1 The land upon which North Stradbroke Island Waste Transfer Station (NSI WTS) is situated is currently held in trust by the Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) and has been designated part of the Naree Budjong Djara National Park. Council is in the process of negotiating to secure continued access to the land.
- 2.1.2 Accordingly, collection and transport of Greenwaste and Untreated Timber from the NSI WTS may cease at any time should Council be required to vacate the land or if tenure over the land is not secured. Council reserves the right to unilaterally vary the Specification to remove the portion of the Services relating to collections from the NSI WTS if tenure over the land is not secured.
- 2.1.3 Alternatively, Council may direct the Service Provider to make collections from North Stradbroke Island at an alternate location on North Stradbroke Island or as directed by Council. Any necessary difference in the Agreement Prices as a result of the change in location shall be reasonably assessed by Council and added to or deducted from the Agreement Prices. In all other respects, the Service Provider shall bear the cost of complying with any such changes in location or termination of services from North Stradbroke Island Waste Transfer Station.

3. SCOPE OF SERVICES

3.1 General

- 3.1.1 The Service Provider shall be responsible for providing efficient and effective services regarding the collection and transport of Greenwaste and Timber from the following Waste Transfer Stations:
 - (a) Birkdale Waste Transfer Station;
 - (b) Redland Bay Waste Transfer Station;
 - (c) North Stradbroke Island Waste Transfer Station [note clause 2 above];
 - (d) Russell Island Waste Transfer Station;

- (e) Macleay Island Waste Transfer Station;
- (f) Lamb Island Waste Transfer Station;
- (g) Karragarra Island Waste Transfer Station; and
- (h) Coochiemudlo Island Waste Transfer Station.

3.1.2 The Service Provider’s responsibilities shall include the following:

- (a) removing Greenwaste and Untreated Timber in an Unprocessed state and transporting the material for Beneficial Reuse elsewhere;
- (b) removing Treated Timber in an Unprocessed state and transporting the material for disposal as directed by Council from the following waste transfer stations:
 - (i) Birkdale Waste Transfer Station; and
 - (ii) Redland Bay Waste Transfer Station
- (c) supplying and maintain fit for purpose Bins to be loaded by Council’s Other Service Providers at the following waste transfer stations:
 - (i) North Stradbroke Island Waste Transfer Station;
 - (ii) Macleay Island Waste Transfer Station;
 - (iii) Lamb Island Waste Transfer Station;
 - (iv) Karragarra Island Waste Transfer Station; and
 - (v) Coochiemudlo Island Waste Transfer Station
- (d) provision of a fit for purpose excavator or similar to be used by the Service Provider for loading Greenwaste, Untreated Timber and Treated Timber (where applicable) at each of the following sites:
 - (i) Birkdale Waste Transfer Station;
 - (ii) Redland Bay Waste Transfer Station; and
 - (iii) Russell Island Waste Transfer Station
- (e) loading Greenwaste, Untreated Timber and Treated Timber (where applicable) in a safe, efficient and careful manner at the following sites:
 - (i) Birkdale Waste Transfer Station;
 - (ii) Redland Bay Waste Transfer Station; and
 - (iii) Russell Island Waste Transfer Station
- (f) sweeping and maintenance of the hardstand area upon which greenwaste is stockpiled at the following waste transfer stations:
 - (i) Birkdale Waste Transfer Station;
 - (ii) Redland Bay Waste Transfer Station; and
 - (iii) Russell Island Waste Transfer Station
- (g) ensuring Greenwaste, Untreated Timber and Treated Timber are collected in a timely manner in accordance with Council’s requirements at clause 4.2.

3.2 Hours of Operation

3.2.1 The Services shall be provided by the Service during the hours detailed in the table below unless prior written approval to allow the provision of Services at an alternate time has been obtained from Council:

Waste Transfer Station	Summer 1 Sept – 31 May	Winter 1 Jun – 31 Aug	Christmas Day and Good Friday
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Birkdale	7:00am to 4:00pm Monday to Friday	7:00am to 4:00pm Monday to Friday	Closed
Redland Bay	7:00am to 4:00pm Monday to Friday	7:00am to 4:00pm Monday to Friday	
North Stradbroke Island	8:00am to 1:30pm Monday to Friday		
Russell Island	8:00am to 3:30pm Thursday, Friday and Monday		
Macleay Island	8:00am to 3:30pm Monday to Wednesday		
Coochiemudlo Island	10:00am to 12.30pm Monday, Wednesday & Friday		
Lamb Island	Daylight hours, Monday to Friday		
Karragarra Island	8:00am to 4:00pm Monday to Friday		

3.2.2 Council reserves the right to amend the hours of operation detailed above if required. Council shall provide the Service Provider with written notice of any changes in the hours of operation.

3.2.3 The Service Provider must not undertake collections of Greenwaste, Untreated Timber and Treated Timber on Thursdays between 7:00am and 12:00pm at Redland Bay Waste Transfer Station. Restrictions at this facility may be subject to change and Council will provide the Service Provider thirty (30) days written notice of any changes as to when collections are permitted to be made or otherwise.

4. METHOD OF OPERATION

4.1 General

4.1.1 The tables below outline Greenwaste and Untreated Timber volumes at each relevant Waste Transfer Station during the 2013/14, 2014/15 and 2015/16 financial years. The amounts listed are indicative only and Council does not represent or guarantee any future collection amounts of Greenwaste, Untreated Timber and Treated Timber.

Greenwaste and Untreated Timber (tonnes)			
Waste Transfer Station	2013/14	2014/15	2015/16
Birkdale	13,158	12,166	11,678
Redland Bay	9,656	9,827	9,518
North Stradbroke Island	2,074	1,258	1,452
Russell Island	2,822	2,431	2,157
Macleay Island	1,424	1,414	2,097
Lamb Island	423	351	442
Karragarra Island	204	157	191
Coochiemudlo Island	781	454	519
Total	30,541	28,058	28,054

Treated Timber (tonnes)			
Waste Transfer Station	2013/14	2014/15	2015/16

Birkdale	2,674	3,428	3,108
Redland Bay	1,565	1,659	1,692
Total	4,239	5,087	4,800

4.1.2 The table below outlines the total quantity of Greenwaste and Untreated Timber (in tonnes) removed from the relevant Waste Transfer Stations per month during the 2015/16 financial year. The amounts listed are indicative only and Council does not represent or guarantee any future collection amounts of Greenwaste, Untreated Timber and Treated Timber.

WTS	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Birkdale	878	896	869	893	1,151	1,083	1,086	1,043	1,017	1,033	946	682
Redland Bay	807	966	755	1,151	803	884	640	607	985	767	616	536
Islands	650	511	517	562	591	545	506	571	671	563	606	568
Total	2,335	2,373	2,141	2,606	2,545	2,512	2,232	2,221	2,673	2,363	2,168	1,786

4.1.3 The Service Provider must ensure that it has adequate capacity and capability to collect, transport, receive and process any quantity of Greenwaste, Untreated Timber and Treated Timber that may be required under the Agreement and at the nominated frequencies of removal. Council will not be liable for any miscalculation of handling capacity on the part of the Service Provider.

4.1.4 The Service Provider shall be responsible for continuous monitoring of the Services provided and identifying efficiencies that may result in a more efficient and effective service to Council.

4.2 Order and Frequency of Services

4.2.1 Frequency of Services will depend on customer usage and received volumes of Greenwaste and Untreated Timber, and Treated Timber. Any amount of Greenwaste and Untreated Timber and Treated Timber may be retained, or diverted elsewhere, by Council as required.

4.2.2 The Service Provider must ensure that the following sites are regularly cleared of all Greenwaste, Untreated Timber and Treated Timber (where applicable) and / or as directed by Council:

- (a) Birkdale Waste Transfer Station;
- (b) Redland Bay Waste Transfer Station; and
- (c) Russell Island Waste Transfer Station.

4.2.3 The Service Provider must ensure that the following sites, where the Service Provider's bins are loaded by Council's Other Service Providers, are serviced in accordance with clause 4.2.4(b) below and / or Council's directions:

- (a) North Stradbroke Island Waste Transfer Station;
- (b) Macleay Island Waste Transfer Station;
- (c) Lamb Island Waste Transfer Station;
- (d) Karragarra Island Waste Transfer Station; and
- (e) Coochiemudlo Island Waste Transfer Station.

4.2.4 In the event Council requests that a collection take place, or for additional services, the following process is to be followed by the Service Provider:

- (a) Greenwaste, Untreated Timber and Treated Timber must be collected from Birkdale and Redland Bay Waste Transfer Stations within forty eight (48) hours of being notified by Council that a collection is required;
- (b) Greenwaste and Untreated Timber must be collected from North Stradbroke, Russell, Macleay, Coochiemudlo, Lamb and Karragarra Island Waste Transfer Stations within five (5) days of being notified by Council that a collection is required.

4.2.5 Within thirty (30) days of award of the Agreement the Service Provider must provide a schedule to Council detailing the frequency of collections and the days upon which those collections are to take place in consultation with, and agreed by, Council.

4.3 Supply of Bins

4.3.1 The Service Provider must supply and maintain fit for purpose Bins for the collection and transport of Greenwaste and Untreated Timber at the following Waste Transfer Stations:

- (a) North Stradbroke Island Waste Transfer Station;
- (b) Macleay Island Waste Transfer Station;
- (c) Lamb Island Waste Transfer Station;
- (d) Karragarra Island Waste Transfer Station; and
- (e) Coochiemudlo Island Waste Transfer Station.

4.3.2 The Bins must be a minimum capacity of 60m³ and suitable for the loading and compacting of Greenwaste and Untreated Timber by Council's Other Service Providers for the Island Sites.

4.3.3 Bins shall remain the property of the Service Provider.

4.3.4 The Service Provider must provide a sufficient quantity of bins to effectively provide the Services. The table below indicates the number of bins currently required at each waste transfer station:

Waste Transfer Station	Number of Bins	Loaded by
North Stradbroke Island	1 x 60m ³	Council's Other Service Providers
Macleay Island	2 x 60m ³	Council's Other Service Providers
Lamb Island	1 x 60m ³	Council's Other Service Providers
Karragarra Island	1 x 60m ³	Council's Other Service Providers
Coochiemudlo Island	1 x 60m ³	Council's Other Service Providers

4.3.5 Council reserves the right to amend the bin requirements detailed above if required due to changes in operational requirements and the Service Provider shall be responsible for complying with any changes. Council shall provide the Service Provider with written notices of any changes in bin requirements.

4.3.6 Additional containers may be required upon request by Council's Representative. Upon such a request being made by Council, the Service Provider must provide the required number of containers on site within one (1) week.

4.4 Treated Timber

- 4.4.1 The Service Provider shall be responsible for the collection and transport only of Unprocessed Treated Timber from the following Waste Transfer Stations:
- (a) Birkdale Waste Transfer Station
 - (b) Redland Bay Waste Transfer Station
- 4.4.2 Treated Timber must be disposed of at an approved waste disposal facility or processing facility as directed by Council.
- 4.4.3 Treated Timber is currently disposed of at the Brisbane Landfill, Gardener Road, Brisbane and Council reserves the right to amend the disposal location as required. Council will provide the Service Provider with written notice of any changes in disposal location.
- 4.4.4 Council will be responsible for payment of any gate fees and/or disposal charges relating to the disposal of Treated Timber.
- 4.4.5 Council reserves the right to unilaterally vary the Specification to remove the portion of the Services relating to Treated Timber upon sixty (60) days written notice to the Service Provider. Greenwaste and Untreated Timber services will continue to be provided as specified under the Agreement.

4.5 Contamination

- 4.5.1 Council shall, as far as is practicable, ensure that non-vegetative or treated timber waste is not deposited on the Greenwaste and Untreated Timber stockpile. Council does not warrant that stockpiles will be free of non-vegetative contamination.
- 4.5.2 The Service Provider must inspect for and remove any contamination not identified and removed by Council staff prior to removing the Greenwaste and Untreated Timber from the Waste Transfer Station. The cost for the removal of any contamination by the Service Provider shall be included in the Price Schedule.
- 4.5.3 Any contamination shall be disposed of at an approved waste disposal facility. No waste disposal charge will be levied for this material if disposed of at a Redland City Council Waste Transfer Station at the time of collection where the waste material has originated from a Redland City Council Waste Transfer Station.

4.6 Residual Fines

For the avoidance of doubt, any residual fines derived from any source and emanating from the Greenwaste and Untreated Timber stockpiles must be collected and transported to the Service Provider's facility or an approved waste disposal facility by the Service Provider at no cost to Council.

4.7 Transport, Consumables and Ancillary Equipment

The Service Provider, at its own expense, shall be responsible for:

- (a) transport, including payment of barge fees and any other fees, for all necessary equipment between Waste Transfer Stations and any other facility;
- (b) consumables such as but not limited to fuel, lubricants and the like;
- (c) ancillary equipment sufficient to provide the Services including but not limited to spreader bars, equipment for resizing material and the like; and

(d) any and all other associated expenses involved in the performance of the Services.

4.8 Securing of Loads

- 4.8.1 The Service Provider must ensure that all loads on any vehicles used by the Service Provider to transport Greenwaste and Untreated Timber and Treated Timber are secured in a way that is in accordance with the *Heavy Vehicle National Law (Queensland)*.
- 4.8.2 Compaction of Greenwaste and Untreated Timber and Treated Timber will not be deemed by Council to be sufficient as the sole method for restraining the load on the vehicle. The Service Provider must ensure that an additional method such as, but not limited to, a tarpaulin or net is used to prevent loose material, or material that may loosen upon travel, from being dislodged from the vehicle.
- 4.8.3 If Council deems at any time that a load is unsafe or in breach of any relevant legislation, Council may direct the Service Provider to use an alternate method to secure the load.
- 4.8.4 Any costs associated with the adequate securing of loads are deemed to have been included in the applicable Price Schedule. Council will not be liable for any additional costs in relation to compliance with this clause.

4.9 Maintenance and Care of Waste Transfer Station Hardstands

- 4.9.1 Council receives, manages and stockpiles Greenwaste, Untreated Timber and Treated Timber on compacted gravel hardstands at its Waste Transfer Stations. The Service Provider must take all reasonable care to avoid damage to any hardstands or storage pads.
- 4.9.2 Prior to the commencement of the Services the Service Provider and Council must undertake a Condition Audit of each hardstand. The Condition Audit will be used to confirm original site condition.
- 4.9.3 The Service must ensure that the area of the hardstand or storage pad upon which all Greenwaste, Untreated Timber and Treated Timber stockpiles are situated are carefully swept of all remaining debris and left in a clean and tidy manner upon removal of the material after each collection.
- 4.9.4 Should the Service Provider cause any damage to any of Council's hardstands or any other waste transfer station asset, the Service Provider shall be responsible for making good the damage caused and immediately notifying Council of the damage and details of the Service Provider's proposed actions to rectify the damage. All proposed actions must be approved by Council prior to repair works commencing.
- 4.9.5 The Service Provider shall be responsible for all costs associated with making good any damage caused by the Service Provider.
- 4.9.6 Should the Service Provider fail to promptly repair, and in a satisfactory manner, any damage caused by the Service Provider to any hardstand Council may undertake the repairs or obtain the services of a third party to undertake the repairs. All costs incurred by Council with respect to this clause 4.9.6 shall be a debt due to Council by the Service Provider.

5. MEASUREMENT OF MATERIAL REMOVED

5.1 General

To ensure accurate calculation of payment for the Services, the Service Provider must follow the method described in this clause 5 to determine the quantity of Greenwaste, Untreated Timber and Treated Timber (where applicable) that has been removed from each Waste Transfer Station by the Service Provider.

5.2 Birkdale Waste Transfer Station

When Greenwaste, Untreated Timber and Treated Timber have been loaded onto the Service Provider's vehicle, the vehicle must exit the site via the weighbridge. The Service Provider must ensure they obtain a docket indicating the net mass of the load.

5.3 Redland Bay Waste Transfer Station

5.3.1 When Greenwaste, Untreated Timber and Treated Timber have been loaded onto the Service Provider's vehicle, the vehicle must exit the site via the gatehouse. The Service Provider must ensure they obtain a docket from the gatehouse operator indicating the volume of the load (m³).

5.3.2 The Service Provider must, as soon as practicable, proceed to a registered public weighbridge or the Service Providers weighbridge and obtain valid dockets indicating the net mass of the load.

5.4 North Stradbroke, Russell, Macleay, Coochiemudlo, Lamb and Karragarra Islands Waste Transfer Stations

5.4.1 When Greenwaste and Untreated Timber have been loaded onto the Service Provider's vehicle, the vehicle must notify the gatehouse operator (if applicable) prior to leaving site.

5.4.2 Where the Service Provider services a site when the site is closed to the public, or where no gatehouse exists, the Service Provider must promptly notify Council that a collection has been made.

5.4.3 The Service Provider must, as soon as practicable, proceed to a registered public weighbridge or the Service Providers weighbridge and obtain valid dockets indicating the net mass of the load.

5.5 Weighbridges

5.5.1 Birkdale Waste Transfer Station is currently the only site that operates a registered public weighbridge. Measurement of each load removed by the Service Provider may be undertaken free of charge at the Birkdale Waste Transfer Station.

5.5.2 Where a weighbridge is provided by the Service Provider at the point of delivery, the Service Provider may use that weighbridge for the purposes of this clause provided that the weighbridge is registered with the National Measurement Institute. Use of the Service Provider's weighbridge must be at no cost to Council.

5.5.3 Where applicable, the Service Provider must submit copies of the Service Providers Weighbridge Calibration Certification to Council as requested.

5.6 No Derogation of Legislative Requirements

This clause 5 does not derogate from or lessen the requirement that the Services must be performed in accordance with clause 4.3 of the Service Agreement at all times.

6. PLANT AND EQUIPMENT

6.1 General

Prior to the Agreement Commencement Date the Service Provider must provide Council with a schedule of all plant and equipment, including collection vehicles, to be used in performance of the Services. The Service Provider must advise Council of any changes to plant and equipment listed in this schedule prior to the change occurring. The Service Provider must not change or

replace any plant or equipment where the change would result in a reduction in efficiency, safety or environmental performance, or is contrary to any direction from Council.

6.2 Breakdown and Maintenance

- 6.2.1 The Service Provider shall ensure that any and all plant and equipment used in the performance of the Services is maintained at all times in a proper, safe and efficient condition and meets any and all safety requirements. Council reserves the right to refuse operation of any plant and equipment used in provision of the Services should it fail to meet the standards required under this Agreement and any relevant legislation.
- 6.2.2 Should any plant and equipment used in the provision of the Services break down, fail to meet safety requirements, or is otherwise no longer fit for purpose the Service Provider must repair or replace the plant and equipment within twenty four (24) hours for plant and equipment located on the Mainland Sites and forty eight (48) hours for plant and equipment located on the Island Sites.
- 6.2.3 The Service Provider shall be responsible for any and all costs for an associated with maintenance and repair of any plant and equipment used by the Service Provider in the performance of the Services.
- 6.2.4 If the Service Provider fails to repair or replace plant and equipment any plant and equipment used in the provision of the Services in accordance with this clause 6.2, Council may source suitable plant and equipment used in the provision of the Services including from a third party. Any costs incurred by Council and associated with sourcing plant and equipment under this clause shall be a debt due and payable by the Service Provider to Council.
- 6.2.5 Council reserves the right to undertake any reasonable inspections of the Service Provider's plant and equipment for the purposes of ascertaining that the plant and equipment meets the required standard.

7. REPORTING

7.1 Monthly Report

By the 5th working day of each month, the Service Provider must provide a report to the Council's representative, or to any other person as directed by Council, which provides details of the Services provided during the previous month. The month report must be in a format as directed by Council's Representative and must contain:

- (a) total tonnes of Greenwaste, Untreated Timber and Treated Timber (where applicable) collected from each Waste Transfer Station;
- (b) a breakdown of each individual collection per Waste Transfer Station detailing the:
 - (i) date and time of collection;
 - (ii) gross, tare and net weight of each transaction;
 - (iii) amount invoiced to Council, exclusive and inclusive of GST;
- (c) the percentage of this volume that was recycled into new products, composted, used for energy recovery or used for some other means;
- (d) incidents in relation to this Agreement including, safety, environmental or emergency events;
- (e) workforce events relating to this Agreement including details of :

- (i) new employees;
 - (ii) employees leaving;
 - (iii) any disciplinary action;
 - (iv) industrial action (actual, threatened etc);
- (f) investigations completed by the Service Provider and any proposed amendments, updates or improvements to the Service Provider's procedures;
- (g) any other information as Council's Representative may direct from time to time.

7.2 Meetings

The Service Provider must, in good faith and with the aim of creating a productive working relationship, consult and meet with Council as follows:

- (a) Monthly meetings (or as otherwise agreed) regarding Agreement and operational requirements such as but not limited to:
 - (i) WH&S issues;
 - (ii) environmental issues and incidents;
 - (iii) proposed procedural and staffing changes;
 - (iv) service level and quality review;
 - (v) issues, complaints, incidents and corrective actions; and
 - (vi) continuous improvements initiatives
- (b) site issue meetings on an 'as required' basis to resolve site specific issues and may be conducted the relevant waste transfer station; and
- (c) any other meetings as may be necessary to achieve operational, strategic and customer service objectives.

7.3 Record Keeping

- 7.3.1 The Service Provider shall collate and maintain all up to date records as required by Law, and all other operational and business record keeping to effectively deliver its obligations under the Agreement.
- 7.3.2 Council's Representative shall at all times have access to the Service Provider's records and data relating to the Agreement for the purpose of measuring and monitoring service delivery, verifying volumes of Greenwaste and Untreated Timber and Treated Timber and others as deemed reasonably necessary by Council's Representative.

8. WORKPLACE HEALTH AND SAFETY

8.1 General

- 8.1.1 The Service Provider must, at all times, exercise all necessary precautions for the safety of all persons who may be affected by the Services as per the *Work Health and Safety Act 2011*, relevant Codes of Practice, Australian Standards and any other relevant legislation.
- 8.1.2 The Service Provider must adhere to Council's Work Health and Safety Management System, directions, procedures and policies including site specific safety management plans and safe work methods (where applicable). The Service Provider must ensure that all members of the Service Provider's Staff are provided with any training of procedures and practices necessary to prevent and minimise any risks to health and safety during normal operation and emergencies.
- 8.1.3 The Service Provider must immediately discontinue any practice or remove any equipment which becomes or is reasonably likely to become dangerous or unsafe.

- 8.1.4 The Service Provider must ensure all members of the Service Provider's Staff providing services on site have had a site specific safety induction conducted by Council or its representatives before commencing work on site.
- 8.1.5 The Service Provide must ensure they have adequate and effective safe work method statements and safe work procedures to cover all activities conducted by the Service Provider to ensure compliance with all safety and legislative requirements. These procedures must be provided to Council prior to commencement of the Services.
- 8.1.6 The Service Provider must adhere to all safe work method statements and safe work procedures as referred to in clause 8.1.5 at all times.

8.2 Uniforms and Personal Protective Equipment (PPE)

- 8.2.1 The Service Provider must adhere to Council's Personal Protective Equipment (PPE) requirements. The Service Provider must ensure that all members of the Service Provider's Staff aware of all safety requirements including, but not limited to, having the correct protective equipment and being fully uniformed all times. Fully uniformed includes, as a minimum, safety shoes, broad brimmed hat, high visibility vest/shirt, long sleeves and trousers for outdoor workers.
- 8.2.2 The Service Provider must ensure that the Service Provider's Staff comply with any directions of Council's Representative in respect of their personal appearance or attire concerned with matters of health or safety, consistent with Council's Employee Code of Conduct.

8.3 Business Continuity Plan

- 8.3.1 The Service Provider must develop a Business Continuity Plan (BCP), describing the range of actions available to the Service Provider to minimize any Disruptive Event which might interfere with the Service Providers performance of the Services. Disruptive Events would include natural events and other incidents such as fire, impact by vehicles and aircraft, loss of utility or transport services, system failures and any other event in the opinion of Council that requires a BCP to be invoked.
- 8.3.2 The BCP must be provided to Council within thirty (30) days of award of the Agreement. Upon, and subject to approval of the BCP by Council the Service Provider must invoke and comply with the BCP and any other relevant instructions if directed by Council.

9. COMPETENCY TO OPERATE

- 9.1.1 At any time during the Agreement term Council may request that any of the Service Provider's staff are assessed by an appropriate Council Officer to determine their competency to operate any plant or machinery.
- 9.1.2 In the event that any of the Service Provider's staff are assessed by Council, the Service Provider must follow the direction of Council as to any training or procedures that must be followed as a result of the assessment.
- 9.1.3 Any costs relating to assessment of the Service Provider's staff by Council will be met by the Service Provider.

10. KEY PERFORMANCE INDICATORS

The table below sets out the Key Performance Indicators (**KPI's**) for this Agreement to allow a program of review for the performance of the Services. The Service Provider must ensure that the standards required by all KPI's are met in accordance with the table below and with any relevant provisions of the Agreement. For the avoidance of doubt, the KPI's represent the minimum standard to which the Services must be performed.

Tender Consideration Plan
Collection, Transport and Processing of Greenwaste and Timber from Redland City Council Waste Transfer Stations
ATTACHMENT 2 – PROPOSED CONTRACT TERMS

KPI			Calculation		
Description	Minimum standard	Target	Frequency	Determined by	Source Data
Service Delivery	Attending Council's Waste Transfer Stations to clear Greenwaste and untreated timber and/or Treated Timber as per the Specification	Full Compliance	As required/ per agreed collection schedule	Council	Gatehouse and/or Waste Transfer Station Supervisors
Hardstand and Storage Pad Condition and Clearing	Sites fully cleared and integrity of hardstand to be maintained to the satisfaction of Council	Full Compliance	At all times	Council	Gatehouse and/or Waste Transfer Station Supervisors
Weights	No overweight loads	Full Compliance	At all times	Council	Weighbridge dockets
Compliance with Legislative and Licencing Requirements	All legislative and Council requirements to be met	Full Compliance	At all times	Council	Assessment forms and/or inspections by Council Council, Service Provider and/or Third Party records
Compliance with Council's Code of Conduct	Full compliance at all times	Full Compliance	At all times	Council	Council complaints database and/or inspections records
Complaints	Zero (0) validated complaints against the contractor per month per site	Full Compliance	Monthly	Council	Council complaints database and/or inspections by Council
Site Registration	All operators to report to gatehouse on entry and exit of site (where gatehouse exists)	Full Compliance	At all times	Council	Gatehouse and/or Waste Transfer Station Supervisors
Weighbridge	All loads must be weighed at a registered weighbridge	Full Compliance	At all times	Council	Weighbridge dockets forwarded to Council monthly
Incidents	All incidents reported as per the Specification	Full Compliance	At all times	Council	Council complaints database and/or Council inspections
Submission of Monthly Report	Monthly Report submitted as per the Specifications	Full compliance	Monthly	Council	Council records

EXECUTED as an Agreement on the date first mentioned

SIGNED for and on behalf of)
REDLAND CITY COUNCIL)
by)
.....)
.....)
[Print name and position of Officer])
in the presence of:)
.....)
[Print name of witness])

.....
Signature of Officer

.....
Signature of Witness

SIGNED for and on behalf of)
TBA)
by its duly Authorised Representative:)
.....)
[Print name of Authorised Representative])
in the presence of:)
.....)
[Print name of witness])

.....
Signature of Authorised Representative

.....
Signature of Witness