



Hunter Resource Recovery

David Hatfield

Competitions Exemptions

Australian Competition and Consumer Commission

14 November 2023

Dear David,

RE: APPLICATION FOR AUTHORISATION: AA1000647 AND AA1000648

1. On behalf of the Hunter Resource Recovery (“HRR”) member Councils, being Cessnock, Lake Macquarie, Maitland City Councils and Singleton Council, as well as the non-member Councils, being Dungog, Muswellbrook and Upper Hunter Councils, we respond to the City of Newcastle’s correspondence dated 20 October 2023 as follows.
2. We are pleased that the City of Newcastle (“CN”) has not objected to authorisation applications AA1000647 and AA1000648. As the ACCC is aware, the proposal is for 4 individual contracts to be tendered, being one for HRR and its member Councils, and one each for the non-member Councils listed above.
3. Hunter Resource Recovery member Councils have always considered the benefits and implications a joint tender process would deliver. Our intent has always been to act in the best interests of all participating Councils, rather than for one singular Council. Regardless of the number of tenements in each Local Government area, all participating Councils have benefitted from equal representation and voting rights. The above-named Councils formed a Regional Recycling Solution Working Group (“Working Group”) and have been working co-operatively since 2020 to develop the best recycling processing solution to the benefit of all Councils.
4. We refer to paragraph 7 of CN’s submission. Since 2016, there have been several International and National changes in law, regulations and industry challenges that have all been a threat to the viability and security of recycling. Most Victorian, and many NSW, Councils either lost their recycling provider or had to renegotiate terms in order to maintain community confidence in recycling processing by way of providing financial support to service providers in order to maintain security of service.

5. It is unfortunate to hear that since 2018, CN's recyclable waste costs have increased by 152%. Whilst HRR acknowledges the challenges faced in the industry (as outlined in paragraph 4 above) during that same period, HRR member Councils experienced no increase in collection costs and saw a comparatively small 74% increase in processing costs. Whilst an increase in processing costs is not abnormal for the industry (as noted by CN's sizable increase) we do not feel that our incumbent processor has leveraged the market complexities for financial gain for the Hunter Region Councils (and their respective rate-payers). In accordance with the existing contracting arrangement, all processing cost increases have been subject to an independent audit assessment via professional financial audit firms. Each audit review has examined all operational costs, market trends and access to markets for our commodities both on shore and overseas and since 2018, we have experienced six annual cost reductions in processing fees. We are therefore assured that our Member Councils and their rate payers continue to receive a high standard of service at an affordable cost.
6. With reference to paragraph 10 of CN's submission, we note that CN was granted access to the Gateshead sorting facility at the commencement of their recently expired contract. The site was established in 1996 for the first recycling collections and processing in the Hunter Region, which was our contract.
7. In accordance with the contract, this site was for the exclusive use of HRR. The HRR contract funded not only processing, but also the infrastructure to support processing and operating facilities. Following an approach from our contractor, the HRR Board gave consent not only to CN accessing the facility but to all Hunter Councils to ensure that all Councils (and their ratepayers) would benefit from reduced processing costs. Such consent was granted without any financial benefit to HRR members Councils.
8. With reference to paragraph 11 of CN's submission, HRR notes that CN made a commercial decision, acting in the best interests of their residents, to change processing service provider. By continuing with the service provider and renegotiating rates, HRR provided financial security to both its member Councils' ratepayers, and those in smaller Councils within the Hunter Region.
9. With reference to paragraph 15 of CN's submission, we agree that a Regional facility would greatly benefit all Hunter Councils. This was determined following initial project development by HRR in 2018 and was validated over subsequent years by advice from several independent expert industry consultants. This was the basis of the formation of the Working Group in which CN briefly participated before withdrawing and arranging plans for their own sorting facility.
10. The original HRR project not only considered processing via economies of scale, but also the financial and environmental impacts associated with delivery of recyclables collected from the region's Councils. This was to ensure that all Councils would benefit financially, and our environmental footprint would be significantly reduced.
11. Our independent transport analysis concluded that without CN participating in the regional project, the optimum location was within the Cessnock LGA and not at Summerhill.

12. HRR notes paragraph 21(c) of CN's submission which states that CN estimates that a new recycling facility would cost upwards of \$60 million. HRR has commissioned an independent expert analysis of its proposal and the estimated cost, which has then been considered by all participating Councils in the Working Group. The analysis has indicated that a new MRF capable of processing 100,000 tonne per annum and located within the collection centroid would cost between \$30 to \$35 million from Greenfield. HRR is comfortable with the estimate provided by its own advisors.
13. In relation to paragraph 22 of CN's submission, CN did participate in the Expressions of Interest undertaken by HRR on behalf of the participating Councils. The EOI was conducted to determine whether there would be a competitive market for the establishment of a new sorting facility that would benefit all Councils whilst ensuring the development of a local circular economy. The Working Group established an EOI criteria that spanned a broad range of services and the conditions which would be required. Further information about this process has already been provided in the application for authorisation AA1000647.
14. A total of ten individual potential contractors expressed an interest in participating in a future tender. Each EOI return was assessed by the representatives of each participating Council based on a score matrix system ranking the EOI returns from 1 to 10. The CN EOI return did not feature in the top five EOIs after this review. With this in mind, we felt that the CN proposal within that EOI would not offer the best value for money for all participating councils and would only benefit CN as a commercially operated facility.
15. Recently, CN has awarded a long-term contract to a commercial processor. HRR notes that no other Hunter Councils were afforded an opportunity to review the proposed contract and, as such, is unable to determine whether the contractual arrangements meet the Working Group's very high standards and conditions set out in our proposed contract. Our contract has been produced by all participating Councils with consideration given to each Councils' needs and desired outcomes.
16. In response to paragraph 23 of CN's submission, from the information provided by CN, it appears that CN's Summerhill sorting facility proposal will be a commercially operated venture and that all other Councils who wish to utilise the facility would be customers. As such, it is in CNs interests to ensure as many customers as possible.

Conclusion

17. We appreciate CN's support of HRR, its member Councils and other non-member Councils' plans for the establishment of a recycling facility that will service the needs of Councils, for potentially up to 25 years.
18. We would welcome a tender return from CN at some future stage and we wish them well with their venture. Due to CN's facility being of a commercial arrangement with all other Councils, HRR has ensured that it has not engaged in any discussions with CN in relation to its potential tender for probity reasons and to ensure that HRR, its member Councils and non-member Councils participating in the proposed tender, comply with the Local Government Act Tendering requirements.

19. As our project has a potential \$300 million expenditure well above the LG Act \$150,000 limit, we will tender on an open tender basis. This tender shall ensure that there will be no claim that Councils have a preferential arrangement with a single supplier. We shall conduct the tender in good faith and provide assurance of openness and accountability, build anticorruption capacity and achieve the best quality, environmental and cost outcomes for all seven Councils represented under four intended contracts.
20. Our tender review committee is represented by a member of each participating Council who shall assess the tender returns against their score matrix under the scrutiny of our legal representatives, independent probity officer and industry professional consultancy team. This will ensure that every tender is judged on its merits fairly and without preference or bias and with all Councils in mind. We shall ensure that no member of the tender review committee engages in any corrupt activities whilst also ensuring that we do not engage in any anti-competitive behaviour.
21. Thank you for your consideration of our response to CN's correspondence and we look forward to hearing from the ACCC in due course.

Regards,



R. Lewis
CEO HRR