

APPLICATION for REVOCATION and SUBSTITUTION

Applicants: Camden Council, Campbelltown City Council, Liverpool City Council, Wingecarribee Shire Council and Wollondilly Shire Council



Information

1. Applicants

Provide details of the applicants for revocation and substitution:

There are five Councils party to the application for revocation and substitution, the same Councils that were party to the original application for authorisation.

Campbelltown City Council (hereafter Campbelltown)

ABN 31 459 914 087

Cnr Broughton and Queen Streets
Campbelltown NSW 2560

Applicant's and Campbelltown's

Contact Person: Mr Peter Rimmer
Domestic Waste Services Coordinator

Tel: [REDACTED]

Email: [REDACTED]

Camden Council (hereafter Camden)

ABN: 31 117 341 764

70 Central Avenue
Oran Park NSW 2570

Contact person: Mr Corey McArdle
Manager Waste and City Presentation

Tel: [REDACTED]

Email: [REDACTED]

Liverpool City Council (hereafter Liverpool)

ABN: 84 181 182 471

33 Moore Street
Liverpool NSW 2170

Contact person: Mr Tim Pasley
Manager Waste and Cleansing

Tel: [REDACTED]

Email: [REDACTED]

Wingecarribee Shire Council (hereafter Wingecarribee)

ABN: 49 546 344 354

66 Elizabeth Street
Moss Vale NSW 2577

Contact Person: Mr Neil Townsend
Manager Business Services
Tel: [REDACTED]
Email: [REDACTED]

Wollondilly Shire Council (hereafter Wollondilly)

ABN: 93 723 245 808

62 – 64 Menangle Street
Picton NSW 2571

Contact Person: Ms Alexandra Stengl
Manager Environmental Outcomes
Tel: [REDACTED]
Email: [REDACTED]

Business activities of the Applicants:

The Applicants are local government authorities constituted under the Local Government Act 1993 (NSW) to provide goods, services and facilities and carry out activities, appropriate to the current and future needs within their local communities and the wider public¹.

Under section 8 of Chapter 3 of the LG Act, the Applicant and the Other Councils are subject to a Charter to guide them in carrying out their functions including the following:

- *to provide directly or on behalf of the other levels of government, ... appropriate services and facilities for the community and to ensure that the services and facilities are managed efficiently and effectively ...*
- *to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible ...*
- *to engage in long term planning on behalf of the local community...*

Therefore the Applicants are responsible for the collection and processing/disposal of household generated Waste Material.

The Applicants' primary contact email address:

council@campbelltown.nsw.gov.au

¹ section 24 of LG Act

2. Authorisation to be revoked (the existing authorisation)

Provide details of the authorisation sought to be revoked including:

a. the registration number and date of the authorisation which is to be revoked

Authorisation No AA1000428 dated 22 November 2018.

b. other persons and/or classes of persons who are a party to the authorisation which is to be revoked

The Councils listed under item 1 above.

c. the basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire.

The Councils are seeking revocation of the existing Authorisation, by requesting an extension of the term due to significant changes in circumstances from when the original Authorisation was granted. These changes have arisen as a result of changes to regulations that control organic outputs (MWOO) from mixed waste processing activities, the longer lead time and increased capital investment outlay required to establish Waste to Energy (WtE) facilities and a delay in release of the 20-Year Waste Strategy for NSW.

Mixed Waste Organics Outputs (MWOO) Exemption Revocation

In October 2018 the NSW Environment Protection Authority (EPA) revoked the regulatory exemption that allowed the application to land of organic outputs derived from mixed waste processing, known as MWOO². This decision effectively ceased the processing of household mixed waste in NSW and was made without prior consultation, thus giving the industry and Councils no time to consider alternative strategies or solutions.

The primary benefit of processing mixed waste is to recover resources such as organics (food and garden waste materials), metals, plastics, glass and paper/cardboard, so they can be recycled and diverted from landfill disposal.³ This has been achieved in processing plants described as Alternate Waste Treatment (AWT) facilities⁴ which commenced operation in the Sydney metropolitan market in September 2004, and earlier in some regional locations. However, as a result of the government's MWOO decision this practice has now ceased with all processed waste going to landfill until further notice, thus putting further pressure on Sydney's limited disposal capacity.

² Mixed Waste Organic Outputs (MWOO) <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/recycling/mwoo/19p1894-mwoo-position-statement.pdf?la=en&hash=17328331D0BAC93B8D801C37EFB88393578C3CB9>

³ Approx. 70% of household mixed waste contains recyclable materials.

⁴ Alternate in this context means alternate to landfill.

The decision to ban MWOO has caused delay to the Project 24 timeline as the industry and effected Councils seek clarification about its future processing options, the government's future regulatory position on waste processing, and associated compensation issues. Until these matters are determined the Councils cannot confidently invite tenders nor is the industry in a position to respond with certainty given the uncertainty of the government's regulatory position.

Market Engagement

The Project 24 Councils embarked upon a Market Engagement exercise to better understand the issues of tendering in the current environment and to seek feedback on a range of issues, prior to preparing tender documentation for further consultation. The process closed on 28 February 2020 and resulted in submissions from 10 industry organisations. A copy of the Market Engagement document is included at Annexure A.

The overriding themes that emerged were the preference for the application of Waste to Energy (WtE) technology to manage residual waste and provide baseload power, and the separate collection of organic materials such as combined food and garden organics (FOGO) from household mixed waste.

The primary drivers for these responses were the diminished landfill disposal capacity available to the Sydney Market, the uncertainty of regulations surrounding the future of mixed waste processing, and the government's current preference for household food organics and garden organics (FOGO) collection systems.⁵

Of more significance to the P24 procurement timeline, respondents also indicated that the establishment period for WtE facilities is approx. 5 to 7 years in order to consider issues such as site selection, community consultation (social license), planning approval, construction and commissioning activities. By comparison AWT has traditionally an approx. 3-4 year establishment process.

The cost of establishing WtE facilities is more expensive than the AWT facilities because of complex engineering, technology and pollution controls required. The most recent example of a WtE facility proposal in Sydney is the project by Cleanaway for a thermal waste processing plant at Eastern Creek in Western Sydney, and is currently seeking planning permission from the NSW government. The cost is estimated by Cleanaway at \$500M⁶ whereas the AWT plants producing MWOO were in the order of approx. \$80M to \$100M (refer to Council's letter to ACCC dated 12 October 2018 re cost expectations).

Veolia estimate that WtE establishment requires capital investment in excess of \$100M per 100,000 tonnes to be processed.⁷

⁵ The residual household waste remaining from FOGO collection systems is permitted to be processed in WtE facilities.

⁶ <https://energyandresourcecentre.com.au/resources/#section8>

⁷ House of Representatives, Standing Committee on Industry, Innovation, Science and Resources, Hansard, Veolia 10 June 2020

3. Authorisation to be substituted (the new authorisation)

If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

- a. name, address (registered office), telephone number, and ACN*
- b. contact person's name, telephone number, and email address*
- c. a description of business activities.*

The parties to this application for Revocation and Substitution are the same five Applicants referred to in Section 1 above. There are no other persons involved and there is no change to business activities to that already described.

4. The proposed conduct

Provide details of the proposed conduct, including:

- a. a description of the proposed conduct and any documents that detail the terms of the proposed conduct*

The proposed conduct by the Councils remains unchanged from that as presented in the original application for authorisation, except for the term of the arrangement.

The Applicants propose to engage in a contract or arrangement, or arrive at an understanding, for the collaborative tendering and subsequently the collaborative contracting, for the provision of services by one or more qualified contractors to receive, process, market and dispose of (by sale or otherwise) all of the Councils following four streams of kerbside collected Waste Material:

- Household Waste;
- Dry Recyclable Material;
- Garden Organics; and
- Clean-Up Waste,

(the Proposed Conduct).

Each of the Councils propose to enter into separate, but identical contracts, with the successful tenderer(s) in respect to the processing, marketing and disposal of their respective Waste Material.

It is proposed that one contractor will be contracted by all of the Applicants in respect to one or more of their four streams of Waste Material. A guarantee of supply of all the Councils Waste Material is proposed in order to maximise the objectives of the Councils including efficient and lowest cost waste processing and

disposal.

The Proposed Conduct would or might be construed as conduct that would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the CC Act.

- b. an outline of any changes to the conduct between the existing authorisation and the new authorisation*

The only change to the conduct from the existing authorisation to the new authorisation is the proposed term of the arrangement. The Councils respectfully seek reconsideration of the 15+5 year term granted in the Authorisation AA1000428 for a 20+5 year term.

- c. the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct, ie:*

- i. cartel conduct (Division 1 of Part IV)*
- ii. contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)*
- iii. concerted practices (s. 45)*
- iv. secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)*
- v. misuse of market power (s. 46)*
- vi. exclusive dealing (s.47)*
- vii. resale price maintenance (s. 48) and/or*
- viii. a dual listed company arrangement (s. 49)*

The proposed conduct attracts the provisions of s. 45 of the Competition and Consumer Act 2010 (Cth) that relates to contracts, arrangements or understandings that restrict dealings or affect competition.

- d. the rationale for the proposed conduct*

The Project 24 Councils are seeking to achieve the best outcomes for their respective communities for the 20 year period from 2024 in terms of social, financial and environmental performance criteria.

Given the circumstances referred to above the Councils understand it is not preferable to be inviting tenders until the industry is confident in the direction the NSW government is heading including a stable policy and regulatory environment.

At the present time the industry cannot be expected to confidently respond to a significant tender opportunity such as offered by Project 24 without qualifications, in the absence of a clear direction by the government, articulated through the

proposed 20-year Waste Strategy.

Contract commencement remains at July 2024. However the initial 5-year period between award of contract and contract commencement as set out in our original application for authorisation has been significantly eroded for the reasons stated. Interim services may be required to bridge this period should new infrastructure or an interim solution not be available by the commencement date.

The potential introduction of Waste to Energy (WtE) technology into the NSW market appears the only viable option at present to meet the Government's current position on diverting waste from landfill. WtE is typically a more expensive solution to traditional mixed waste processing and in order to provide sufficient opportunity for return on investment a longer contract term has been signalled by the industry.

With this likelihood the need for Councils to reconsider the procurement timeline is necessary in order that the risk profile is kept to a minimum and communities are afforded the opportunity to gain maximum value for money through the benefit of an extended contract term to 20 years, and an option to extend by a further 5 years.

In the event that WtE facilities take 5-7 years to become established as advised by industry, then a 15 year contract term would only yield approx. 8 to 10 years of processing for the Councils. This would reduce the period available to amortize infrastructure costs thus increasing pressure on processing charges.

The issues of MWOO exemption revocation, delayed release of the 20-year State Waste Strategy for NSW, and the more recently discovered information from the market engagement process about the costs and establishment times for Waste to Energy technology, are unforeseen circumstances that have given the Councils cause to request reconsideration of the procurement timeline as it stands in Authorisation AA1000428.

e. the term of authorisation sought and reasons for seeking this period.

The new term of authorisation sought is twenty years plus five year extension option. The purpose of the longer time period is to

- Encourage market appetite to tender and increase bid competitiveness;
- Respond positively to the market's preference for longer term contracts that provide time to gain approvals to operate, and greater opportunity for return on large capital investments on infrastructure.

Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or

acquirers of the relevant goods or services) and detail how or why they might be impacted.

The target market for Project 24 is represented by the companies that provide processing and disposal services to the resource recovery and waste management sector. This remains unchanged from the original application which contained a full description of market information.

In relation to the Waste Processing Industry, the Councils contend that for the purposes of this Application, the relevant market for acquiring waste processing services, is to be defined by all service providers that process household kerbside Waste Material within the Greater Sydney Region.

Within this market, some service providers are able to process all streams of Waste Material, whereas other service providers process only one or multiple streams of Waste Material. In that sense, the processing of each separate stream of Waste Material within the geographical area, can be viewed as a sub-market.

5. Market information and concentration

Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

The Project 24 Councils are located in south-west Sydney and the geographic coverage is shown in Map 1.

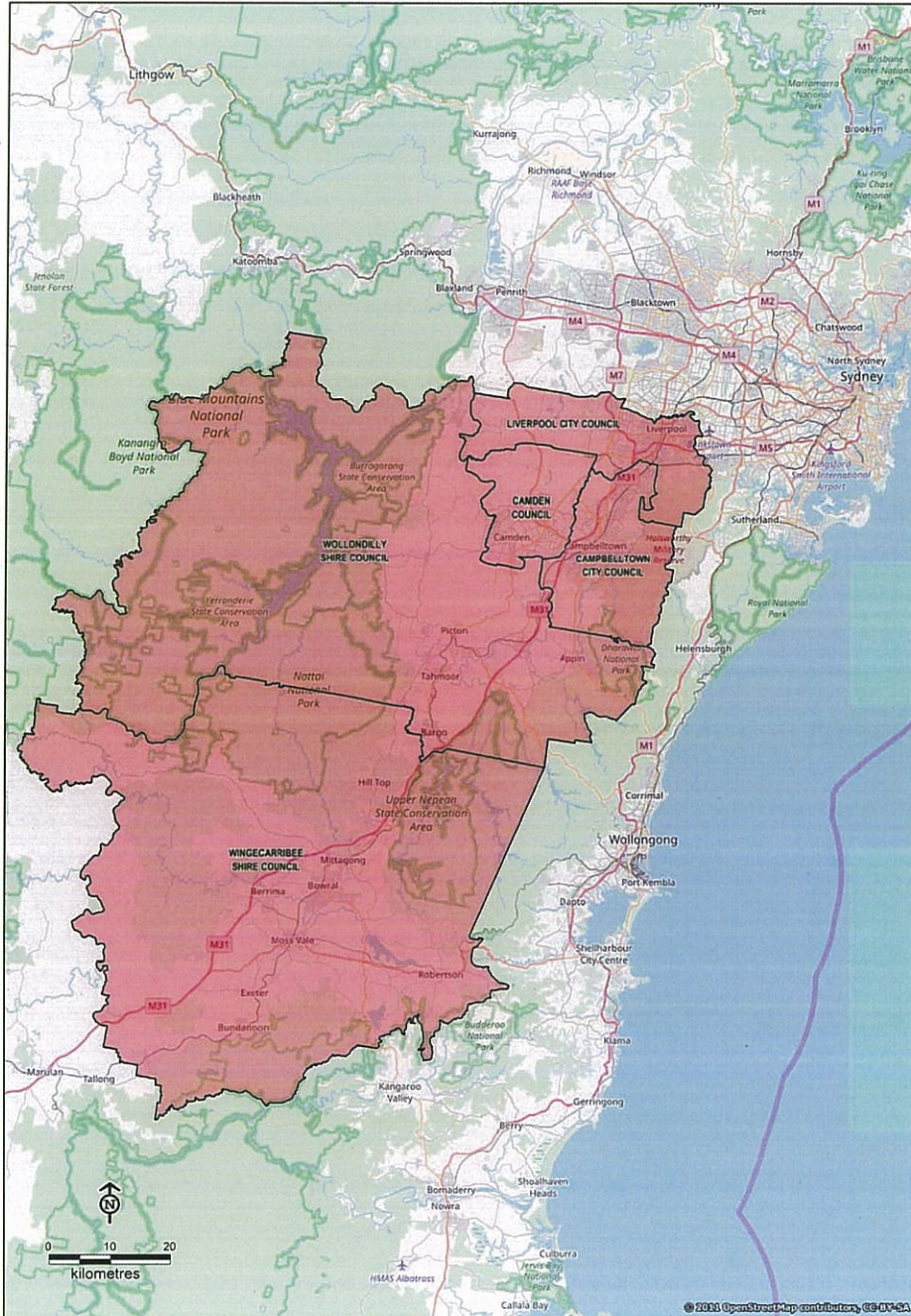
The processing and disposal services currently utilized by the councils under the existing regional disposal/processing contract (refer previous authorisation A90886), are located at Spring Farm, formerly Jacks Gully, in the Camden Council local government area. That is, all kerbside collected waste and recycling streams from each of the participating Councils are delivered to the relevant facilities at the Spring Farm Resource Recovery Park.

Once received at Spring Farm the household waste is transferred off site in bulk haul waste transfer vehicles for either processing at a facility in Kemps Creek or disposal at Lucas Heights landfill. Commingled dry recyclables and garden organics are processed at the facility.

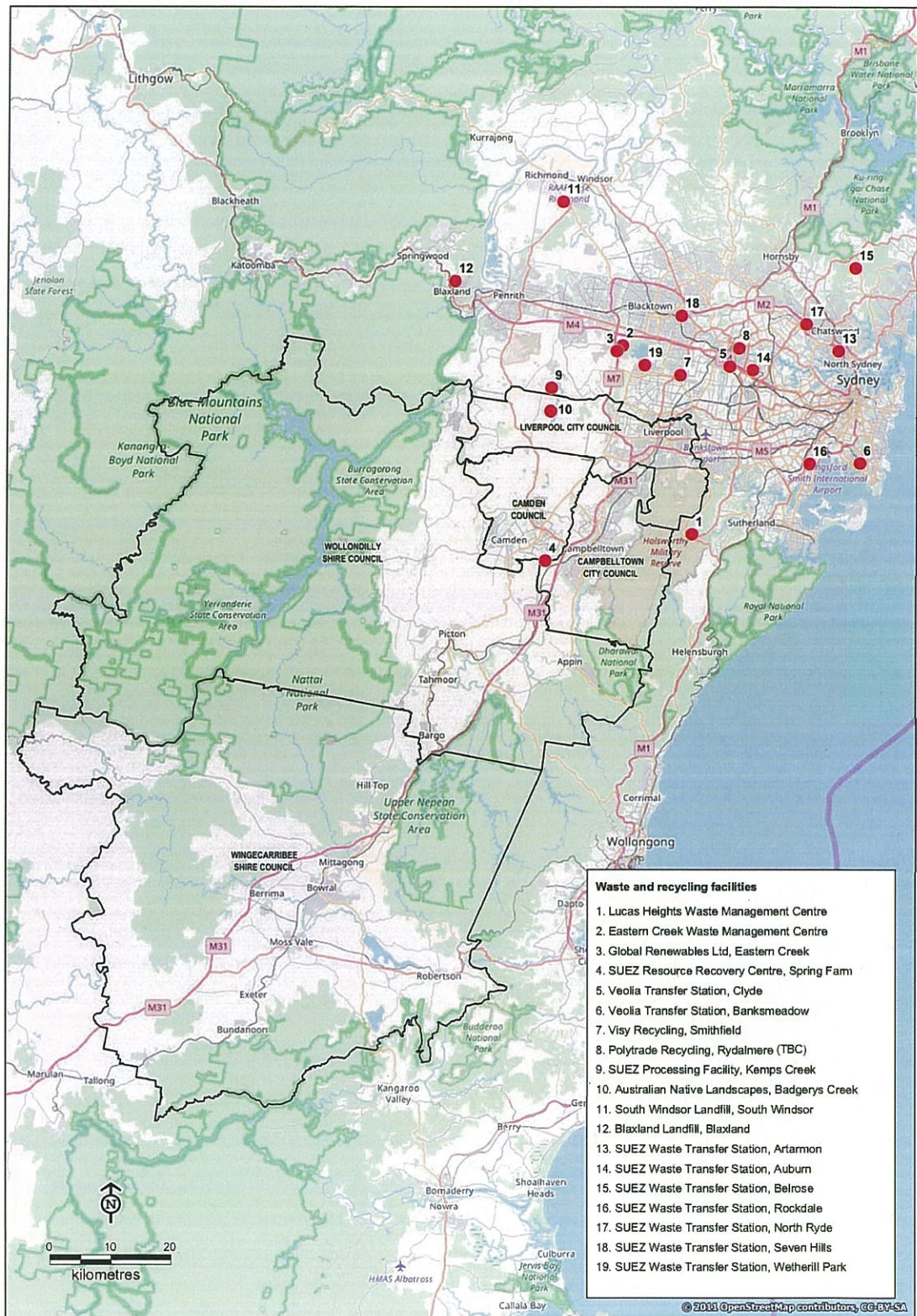
The location of waste and recycling processing/disposal infrastructure in the Sydney Metropolitan Area is shown in Map 2.

Whilst this application does not include collection services it is for noting that the Councils each provide kerbside collection services either by the use of a professional contractor or by day labor. Further details about these service

arrangements can be provided if required.



Map 1 – Project 24 Council Geographic Coverage



Map 2 – Location Processing and Disposal Facilities Sydney Metropolitan Area

Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

In relation to the Waste Processing Industry, the Councils contend that for the purposes of this Application, the relevant market in which the Applicants require to acquire waste processing services, is to be defined by all service providers that process household kerbside Waste Material within the Greater Sydney Region (GSR).

Within this market, some service providers are able to process all streams of Waste Material, whereas other service providers process only one or multiple streams of Waste Material. In that sense, the processing of each separate stream of Waste Material within the geographical area, can be viewed as a sub-market.

SUEZ and Veolia market dominance

The processing and disposal of Waste Material in the GSR is dominated by:

SUEZ, by reason of its control of Transfer Stations in the SMA at North Ryde, Belrose, Chullora, Auburn, Seven Hills, Wetherill Park, Rockdale and Artarmon; and the Lucas Heights Facility, i.e. landfill.

Veolia by reason of its control of Transfer Stations in the SMA at Clyde and Banksmeadow; and the Woodlawn Facility, i.e. processing facility and landfill.

Only SUEZ and Veolia are capable of processing all streams of Waste Material in the GSR.

The Waste Processing Sub-Markets

There are four (4) distinct sub-markets for the processing, marketing and disposal (by sale or otherwise) for each of the following kerbside collected household Waste Material.

Household Waste;

Dry Recyclable Material;

Garden Organics; and

Clean-Up Waste (Hard Waste),

(collectively the Waste Processing Sub-Markets).

Further to the above sub-markets, there is also another sub-market for the processing of Residual Waste; a by-product of the rejected materials of the above sub-markets.

Waste processors seek to recover commercial value from Waste Material by the use of technologies and at a number of operational stages of the processing process; typical stages of which are:

- Weighbridge recording of each input load
- Sorting, separation and decontamination of waste/non-recyclables
- Manual and mechanical processing
- Preparation for sale e.g. baling
- Marketing and disposal by sale or otherwise
- Weighbridge recording of each output load

Waste processing technologies, as an alternative to landfill disposal, are available in a variety of scale and forms. Each is designed to reduce the volume of Residual Waste disposed to landfill, for example by composting technologies to remove recyclables (plastics, steel and aluminium) and to convert organic components like food waste into compost products for sale into soil-based markets. Other technologies employ thermal or anaerobic digestion processes to convert residual and organic wastes into combustible gases to be used to produce “green” electricity.

Those waste processing sub-markets can be distinguished from the markets for the collection and transportation of kerbside Waste Material to locations for waste processing, marketing and disposal.

The Waste Processing Sub-Markets are competitive and serviced by a range of providers or participants who have capabilities to service one or more of the Waste Processing Sub-Markets. They are listed in Attachment 2.

Household Waste including putrescible waste is generally processed in 2 ways:

- Substantially disposed to landfill; and
- Using Alternative Waste Technology.

The competitive market for processing Household Waste in the SMA has reduced in recent years with the closure of licensed putrescible waste landfill sites as follows:

- Belrose – closed in November 2014;
- Jacks Gully – closed in about May 2016; and
- Eastern Creek – closed in August 2017.

The single remaining putrescible waste landfill site in the SMA is the Lucas Heights Facility.

The only other waste to landfill site reasonably accessible for Household Waste and Residual Waste emanating from the SMA is the Woodlawn Facility, which is supplied with waste from Transfer Stations operated by Veolia at Clyde and Banksmeadow – suburbs of Sydney. The Woodlawn Facility is owned and operated by Veolia.

Household Waste sub-market

The sub-market for the receiving, handling, processing and disposal of Household Waste is determined by the necessity for the disposal of Household Waste to landfill. There are presently few options available for landfill disposal of Household Waste including putrescible waste in or relatively near the Applicants' Local Government Areas and the SMA. As indicated, the only practically accessible licensed waste processing sites for Household Waste emanating from those areas are:

- The Lucas Heights Facility is identified on the Map of Waste Processing Facilities at Map 2. The site is operated by SUEZ under Environment Protection Licence Number 5065⁸. Access to this facility is available to kerbside waste collection trucks and bulk haul trailers coming from Transfer Stations servicing the SMA. SUEZ has estimated that the Lucas Heights Facility has a remaining operation life of approximately 16 years, with complete filling of the landfill expected by about 2034.
- The Woodlawn Facility is also identified on the Waste Processing Facilities Map. This site is operated by Veolia under Environment Protection Licence Number 11436⁹. Currently access to this facility is obtained only by rail from Veolia's Transfer Stations located at Clyde and Banksmeadow in the SMA. Veolia has advised the Applicants that the operational life expectancy of the landfill component of the Woodlawn Facility is approximately 30 years i.e. to about 2048. As a result from that time there will be no available landfill sites within the GSR unless new sites are established.

There are other putrescible waste landfills located outside the GSR at Blaxland in the Blue Mountain City Council area and at South Windsor in the Hawkesbury City Council area. Operators of these landfill sites however permit to receive only waste generated within their respective Local Government Areas and are therefore not available to the Applicants.

There are other putrescible waste landfills beyond these regions, namely at Wyong in the Central Coast Council area, Whytes Gully in the Wollongong City Council area, Dunmore in the Shellharbour City Council area and beyond. These sites are not practicably accessible by reason of the long distances from the kerbside collection zones.

In any event, the established landfill sites outside of the SMA that service their local communities, would be unlikely to accommodate the volumes of Waste Material anticipated to be produced by the Applicants in the future.

Not all participants in each of the Waste Collection Industry and Waste Processing Industry offer the same services, which services depend on the nature of the waste streams for collection and processing. Also not all participants in the Waste Processing

⁸ NSW Environment Protection Authority

⁹ NSW Environment Protection Authority Environment Protection Licence.

Industry can provide, or commercially they choose not to provide, waste processing facilities for all streams of Waste Material.

Dry Recyclable Material sub-market

Material Recovery Facilities (MRFs) are licensed by the EPA. They are designed to receive and process, for the purpose of disposal by sale or otherwise, household kerbside collected commingled papers and containers. The MRF removes any contamination such as bags of rubbish, by a combination of manual and mechanical separation processes and then sorts the mix of materials into a number of products for which buyers have agreed to purchase within defined product quality parameters. MRFs typically produce glass, aluminium, steel and paper, cardboard and mixed plastic products. The amount of contamination which appears in the delivered materials is approximately 12% at the Suez Spring Farm MRF.

By way of example, aluminium cans are separated from the main flow of commingled material by the use of an eddy current (reverse magnet system). They are then baled and transported to purchasers for reuse in the manufacture of new aluminium cans. Markets for MRF outputs are available locally and overseas and the price paid is governed primarily by volume and quality parameters.

The market for commingled kerbside recyclables in the SMA is approximately 369,704 tonnes¹⁰. The Applicants collected 51,200 tonnes in FY2017, which represents approximately 14% of the SMA market. This figure will increase commensurate with population growth to approximately 98,000 tonnes in FY2036, a growth of 91%.

The kerbside Dry Recyclables market, like other waste markets is defined by the distance kerbside collection vehicles can travel from a collection zone to the drop-off location two to three times each day and return, within the hours of operation of the facility. Camden, Campbelltown and Wollondilly currently deliver kerbside Dry Recyclables direct to the Suez Spring Farm MRF facility which is located within the GSR. Wingecarribee delivers its kerbside Dry Recyclables to its Moss Vale depot before being bulk hauled approximately 85km to the Suez Spring Farm MRF for processing.

The current MRF operators in Sydney are:

- Visy Recycling, with a facility at Smithfield;
- Polytrade Recycling, with facilities at Rydalmere and Enfield; and
- Suez, with a facility at Spring Farm.

¹⁰ NSW Local Government Waste and Resource Recovery Data Report 2014-2015, NSW EPA March 2017.

Visy Recycling has the largest share of the council Household Waste market. Visy sorts the commingled material into several commodity streams both for its own use as a manufacturer of packaging and for onsale to downstream markets.

Garden Organics Material sub-market

Garden Organics processing systems are designed to convert organic material collected from kerbside and other sources into saleable organic products that are suitable for beneficial land application purposes, for example in replenishing organic-depleted soils in agriculture. The product outputs may vary depending on the feedstock, type of processing undertaken, product quality, proximity to and availability of markets.

Organic (solid) waste is generated by households typically in the form of food waste (termed 'food organics' to confirm that the material is not in fact a waste but a resource) and garden waste (Garden Organics). There are other organic wastes generated such as nappies, however the primary organic matter generated by households is from food and garden origins.

Food organics represent approximately 40% to 50% of Household Waste and its gradual decay in landfill is largely responsible for the production of harmful greenhouse gases (GHGs) such as methane. The diversion of organic matter from landfill delivers a twofold benefit whereby GHGs are not generated and valuable organic materials are recovered and processed so that they may be returned to the soil to improve soil characteristics and to replenish organic matter and nutrients essential for plant growth.

Each Council currently provide residents with a separate bin for the collection of Garden Organics. The material is collected from households each fortnight (weekly in Camden) and delivered to the SUEZ Spring Farm facility for decontamination and processing at the ORRF.

The SMA is serviced by 7 major organics processing companies operating across 8 separate sites:

- Suez, with facilities at Spring Farm, Kemps Creek, Lucas Heights and Eastern Creek;
- Global Renewables with a facility at Eastern Creek;
- Bettergrow, with a facility at Vineyard;
- Australian Native Landscapes, with a facility at Badgery's Creek;
- Earthpower with a facility at Camellia;
- Kimbriki Environmental Enterprise, with a facility at Terry Hills; and
- Soilco, with a facility at Kembla Grange in the Illawarra region.

Bettergrow has also obtained development approval and an EPA license for the construction of a facility at Wetherill Park in the SMA, to also receive and process garden and food organics. The facility is expected to be operational mid to late 2021.

Wingecarribee Shire has its own Garden Organics processing arrangements at its Moss Vale Resource Recovery Centre. This facility is designed for low volume throughputs and does not receive material from out of area. Wingecarribee markets the material locally to farmers and various agricultural pursuits.

Unlike landfills, which eventually reach their design capacity, organics processing facilities either receive and process incoming organic material or act as aggregation points for organics, prior to transfer to regionally based larger scale processing facilities closer to end markets. Finished products are subsequently on-sold to a range of markets. In either case a continuous throughput process is in operation. The resulting products are sold to markets that are located locally or within commercially reasonable transportation proximity of the processing facility.

Approvals for an Organics Recovery and Recycling Facility (ORRF) may not be as difficult to obtain as for other forms of waste processing facilities, however any new facilities in the GSR will need to be enclosed, as exemplified at ANL's new facility at Badgerys Creek, the proposed Bettergrow facility at Wetherill Park and the Re.Group facility at Shellharbour. The EPA controls the licensing of Garden Organics processing facilities to manage odour and any other environmental consequences of composting; accordingly facilities are located well away from residential areas to minimise nuisance.

The market for the processing of household Garden Organics is defined by the distance that kerbside collection vehicles can travel from and return to the collection zone. Councils kerbside vehicles currently deliver directly from the respective collection zones to the SUEZ Spring Farm Facility.

Given the number of established organics processing companies in the SMA, the Applicants anticipate that a competitive outcome would be achieved through a regional process. Although SUEZ has a dominant position by virtue of its extensive infrastructure located across the SMA and its position near the geographical centre of the Councils Local Government Areas, there is still an opportunity for new entrants into the market to service the Applicants' processing needs because of the volume of Garden Organics, the proposed duration of the future contract term, and future population and therefore waste growth anticipated in those areas.

Consideration may need to be given to the opportunity for the location of an aggregation point within the combined Local Government Areas of the Applicants, to allow any new entrant the opportunity to aggregate the Applicants' Waste Material whilst maintaining minimum transport distances for collection vehicles to minimise collection costs.

The generation of Garden Organics is a function of the number of households in a Local Government Area, as opposed to the number of residents (which is the measure to assess generation of Household Waste and Dry Recyclables). The increasing density of urban living will gradually reduce the generation rate of Garden Organics on a per household basis due to decreasing lot sizes, such as when two or more dwellings are constructed on a traditional building block. Accordingly the Councils will adjust service levels over time to meet the decrease in Garden Organics.

The market for kerbside garden organics in the SMA is approx. 369,700 tonnes¹¹. In FY2017 the Applicants collected 34,995 tonnes of Garden Organics and by FY2036 this is expected to grow to 100,450 tonnes, an increase of approximately 92% based on current generation rates and dwelling growth estimates. When compared to the remainder of the kerbside Garden Organics market in the SMA, the P24 Councils volume represents approximately 13% of the total generation by Sydney Councils.

Lack of competition in Residual Waste sub-market

SUEZ and Veolia are practically the only waste processing service providers in the GSR that can provide putrescible waste disposal services to landfill and only at their Lucas Heights Facility and Woodlawn Facility, respectively.

Moreover given the projected end of life of operation of the Lucas Heights Facility in about 2034, in the absence of any additional landfill capacity within, or in reasonable proximity to the SMA or the Local Government Areas of each of the P24 Councils, there will likely be limited landfill availability for disposal of Household Waste, Clean-Up Waste and Residual Waste from that time. For this reason it is vital that the Applicants seek and procure Alternative Waste Technology from a contractor(s) well prior to the expiration of the SUEZ Contracts and with a long lead time for the construction of infrastructure and any approved Alternative Waste Technology.

Potential tenderers for the future waste processing contract of the Councils will require to provide both Alternative Waste Technology, as well as a landfill disposal option for Residual Waste. This will require that they arrange with either SUEZ or Veolia to access their landfill sites, or seek alternative sites.

The Councils estimate that the successful contractor(s) will require a minimum of 4 years in order to secure land for a waste processing site, and to obtain appropriate planning approvals from the Department of Planning, Industry and Environment and appropriate environment protection licensing from the EPA. This period is also necessary to acquire, develop, install and construct the required Alternative Waste Technology and landfill facilities, as will be necessary to process the projected quantities of Waste Material likely to be generated by the Councils.

In the market for processing of Residual Waste, there are very few competitors and operators with the financial standing to propose, procure and successfully implement

¹¹ NSW Local Government Waste and Resource Recovery Data Report 2014-15, NSW EPA March 2017.

the Applicants' required Alternative Waste Technology in order to minimise, over time, the necessity to dispose of Residual Waste to landfill. In that sense the Applicants may be considered "price takers", and somewhat beholden to very few immediately available potential waste processing contractors.

In order to attract a larger number of potential waste processing service providers, the Councils must provide to them (including potential new entrants to the market), sufficient time to prepare a tender, to execute the contract and to develop the necessary infrastructure and secure the appropriate Alternative Waste Technology ahead of the commencement of waste processing and disposal.

If competing service providers are not given sufficient time to establish the required operations, they will be disadvantaged in the tender process compared to contractors with access to landfill disposal, existing licensed waste processing facilities and the current financial standing to develop or acquire the necessary waste processing facilities including Alternative Waste Technology.

Dominance of Household Waste and Residual Waste sub-markets by SUEZ and Veolia

By reason of SUEZ's ownership and control of the SUEZ Spring Farm Facility, the SUEZ Kemps Creek Facility, SUEZ Eastern Creek Facility and the Lucas Heights Facility, all within the SMA, and the ownership and control by Veolia of the Woodlawn Facility and their Transfer Stations at Clyde and Banksmeadow, that provide processing/disposal of Residual Waste, SUEZ and Veolia currently dominate the markets for Household Waste and Residual Waste.

By collaboratively tendering the Applicants will be able to provide sufficient Waste Material for service providers without established infrastructure or lacking a guaranteed supply of waste material from other sources, to submit a competitive proposal and pricing. Therefore it is submitted that a likely effect of the proposed collaborative tendering process will be to increase competition relative to existing market arrangements and capable waste processors.

Applicants' populations – actual and projected

The Applicants had the following populations for FY17, and estimate their projected populations, as summarised in the Table 1. The actual and projected populations have been obtained from the NSW Department of Environment, Industry and Planning.

Table 1 – Councils’ FY17 actual, FY24 projected and FY36 projected populations.

Council	FY16 Population	Projected FY24 Population	Projected FY36 Population	Projected % Increase FY16 – FY36
Camden	80,900	132,470	224,550	177.5%
Campbelltown	164,400	189,320	233,150	41.8%
Liverpool	214,100	261,640	331,000	54.6%
Wingecarribee	47,750	49,820	51,800	8.5%
Wollondilly	49,350	54,930	72,600	47.1%
All total	556,500	688,180	913,100	64.1%

Applicants’ waste tonnages – actual and projected

The Councils have ascertained that the tonnages of Waste Material collected and processed for FY17 as detailed in Table 2.

Table 2 – Councils’ FY17 collected and processed waste tonnages (t).

Council	Household Waste (t)	Dry Recyclable Material (t)	Garden Organics (t)	Clean-Up Waste (t)	Total (t)
Camden	21,045	9,138	11,100	3,133	44,416
Campbelltown	34,468	11,716	15,715	7,146	69,045
Liverpool	47,904	14,991	17,166	4,912	84,973
Wingecarribee	7,424	4,543	5,061	111	17,139
Wollondilly	9,944	4,019	4,264	2,234	20,461
Stream Total	120,785	44,407	43,306	17,536	236,034

The Councils have projected the tonnages of Waste Material they anticipate they will likely collect and have to process through to FY37 as detailed in Table 3.

Table 3 – Councils’ estimated waste tonnage for FY37 (CDS¹² impacts not included).

Council	Household Waste (t)	Dry Recyclable Material (t)	Garden Organics (t)	Clean-Up Waste (t)	Total (t)
Camden	71,697	37,401	38,759	10,029	157,886
Campbelltown	52,000	20,953	24,728	10,409	108,089
Liverpool	77,077	27,392	25,130	7,785	137,383
Wingecarribee	7,682	5,230	5,297	121	18,329
Wollondilly	14,235	7,095	6,538	3,811	31,680
Stream Total	222,691	98,071	100,451	32,154	453,368

The waste tonnage projections in Table 3 have been calculated having regard to the respective actual waste tonnage collection per capita for FY17, and applying that rate to the projected populations of each Council.

By reason of the very significant population increases of 64.1% anticipated for the Applicants as a group from FY17 through to FY37, it is anticipated that there will be a very significant commensurate increase in waste tonnages to be collected and processed by the Applicants.

In particular, waste tonnages to be processed are projected to increase from 232,518 tonnes in FY17 to approximately 300,000 tonnes in FY24 and to exceed 450,000 tonnes in FY37, i.e. an increase of 93%.

This indicates the necessity for very significant additional waste processing capacity, including AWT, which will be required in the period proposed for the future waste processing contracts.

Guaranteed supply of Waste Material and critical mass

In addition to the lack of competition in the Residual Waste Material market in the GSR, there is a related issue of supplying to the successful contractor(s), a critical mass of Waste Material overall and for processing by an AWT, in order to justify the construction and operation of an AWT over the term of the proposed contracts.

It is considered that the Councils will likely receive the most competitive pricing and processing fees for Waste Material the greater their supply of Waste Material, due to the advantages of scale and the security of supply.

¹² Container Deposit System, as introduced by the NSW Government in December 2017, paying \$0.10 for each eligible container returned to approved outlets.

It is considered that a minimum 20 year contract period of operation from commencement, will be required by tenderers for commercial viability of the proposed contracts.

Without guaranteeing a critical mass of each stream of Waste Material to a single service provider, the Applicants will be obliged to seek Residual Waste disposal services from service providers with an established AWT or landfill operation.

Current landfill operations in the GSR have been detailed above. In the case of more remote landfill operations, to utilise these will involve significant additional cost of transportation, which is estimated could add about \$35.00 per tonne to travel 85 kilometers to landfill, additional to a more local operation in or close to the GSR.

In the SMA the current AWT operations that process Household Waste and Garden Organics and to divert them from disposal to landfill are:

- The sorting operation at SUEZ Kemps Creek Facility, and
- The SUEZ Eastern Creek Facility.

The SUEZ Eastern Creek Facility can only be accessed by contract with SUEZ, and its current capacity is fully subscribed and therefore not available to the Applicants.

The Veolia Woodlawn Facility offers the following services:

- Landfill; and
- An AWT.

By ensuring the maximum amount of Waste Material for tenderers to process one or more stream of Waste Material, will likely provide Applicants with minimum processing costs by reason of an expected discount for volume/tonnage of waste supply.

With sufficient quantities of Waste Material to process over an appropriate term, waste processors will be able to invest in more efficient equipment and infrastructure, and amortize their costs over greater volume of material. The inevitable result and benefits for the Applicants and therefore the household ratepayers will be respectively lower per tonne processing fees and lower Domestic Waste Management Charges.

Supply in the Market

By collaboratively tendering it may be said that the Councils may reduce the number of potential suppliers of waste processing services. The Applicants however represent a relatively small proportion of the overall supply of Waste Material in the

SMA¹³. Of the estimated 954,985 tonnes¹⁴ of Waste Material collected by councils in the SMA, the Applicants currently represent approximately 112,380 tonnes or about 12% of the total market for all waste processed in the SMA.

Geographical boundaries of markets

The geographical boundaries of the Waste Processing sub-markets are defined primarily by the time and cost limitations of transportation distance from kerbside waste collection either directly to or via Transfer Stations and on to waste processing facilities and landfill.

Processing infrastructure outside the SMA is not competitive because of the substantial additional time and cost to transport Waste Material over longer distances in an unprocessed form. Inter-modal facilities (transfer from truck to train) would otherwise need to be developed for Household Waste and Residual Waste, to take advantage of remote infrastructure waste processing and notably landfill disposal.

Accordingly the Waste Processing sub-markets are confined to the GSR and to the extent limited by ready access to rail infrastructure in order to access the Woodlawn Facility.

The distance from kerbside collection to delivery for waste processing

Generally, Household Waste collection vehicles servicing the Councils, are allocated a specific collection or service zone each day, comprising approximately 1,000 households. Each garbage truck has a load holding capacity of about 29m³, which holds on average about 7.5 tonnes of waste per load. (Recycling waste trucks have a larger holding capacity of up to 34m³ due to the lighter weight of recyclable materials). One truck will collect approximately 450 bins per load, before necessitating travel to the disposal site – this process is repeated until the allocated households have been serviced for the day.

The distance from the service zone to the disposal site will vary for each load and can take on average 1 to 1.5 hours to tip and return. SUEZ Spring Farm Facility is open for business typically between 6.00am and 4.00pm Monday to Friday.

Accordingly, the putrescible landfill sites other than the Lucas Heights Facility and the Woodlawn Facility that require to be accessed via the SUEZ Transfer Station at Spring Farm or the Veolia Transfer Stations at Clyde and Banksmeadow, are not practically feasible for processing the Applicants' collected waste.

¹³ The Councils are 5 among 31 councils in the Sydney Metropolitan Area.

¹⁴ NSW Local Government Waste and Resource Recovery Report 2014-15 NSW EPA

Excepting for landfill disposal, other putrescible Household Waste in the SMA is processed at the following processing facilities:

- The SUEZ Kemps Creek Facility, using technologies to produce compost products and recover recyclable materials. The site is owned and operated by SUEZ under Environment Protection Licence Number 12889. Currently this facility is fully subscribed and has no available processing capacity for the Applicants to access the facility.
- The Eastern Creek Facility, although currently this facility is also fully subscribed and not available for the Applicants to access. Additional processing capacity may however become available in the future depending on demand for waste processing facilities, such as will be provided by the Applicants' proposed tender.

In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Not applicable to this application.

In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

- a. existing competitors*
- b. likely entry by new competitors*
- c. any countervailing power of customers and/or suppliers*
- d. any other relevant factors.*

Using the current regional contract model as a guide (refer Authorisation A90886) where each participating Council has its own separate but identical contract to the other Councils, it is likely that the proposed arrangements would be structured broadly as follows:

- Price adjustments (gate fee) for example would be controlled by a mechanism tied to movements in the Consumer Price Index or similar,
- Contract variation provisions allowed for;
- The processor would own the material once delivered to the site by or on behalf of the Council, and retain some or all revenues derived through the preparation and sale of the various products;
- The long term nature of the contract allows for innovation to be introduced during the term, provided there are benefits that would enhance delivery of the projects objectives i.e. increased resource recovery and the like;
- Councils would have no investment commitment in the selected technology/ies;

Reference is also made to Section 13 'Effect on Competition' of the original application for a description of the rationale for the collective approach to tendering and contracting, timing of the tender, supply guarantees (and effects) and critical mass.

6. Public benefit

Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The benefits likely to be derived from the Proposed Conduct will include:

- Increased competition due to new entrants into the market;
- Improved coordination and efficiency of services;
- Increased transportation and materials handling efficiencies;
- Improved recycling and resource recovery;
- Compliance with the NSW Waste Strategy targets
- Lower costs to household ratepayers; and
- Environmental benefits.

By acting collectively, the Councils will guarantee a level of Waste Material that could not be provided by each Applicant in its own right. Prospective service providers will be incentivised to invest in the necessary infrastructure and streamline their processes to meet the greater supply of Waste Material and leading to the above public benefits.

Increased Competition

The Proposed Conduct will guarantee the market with a critical mass of Waste Material for processing. Prospective service providers face significant capital outlays in order to provide facilities for waste processing, regardless of the expected supply of Waste Material – with a guarantee of greater volume(s) of Waste Material, investment in the facilities, infrastructure and AWT will have greater justification. This offering may attract new entrants into the market who would not otherwise participate but for the guaranteed supply of Waste Material in order to overcome the high costs of entry into the market.

Further, in seeking a long tender period, the Councils hope to afford potential service providers the opportunity to research and utilise new technology for the provision of AWT. The tender period affords an opportunity for positive engagement with the industry, thereby encouraging greater participation from a range of service providers which will lead to an improved understanding of the current state of AWT and the development of future technologies. As previously foreshadowed, by not providing a critical mass, the Applicants are doubtful that there will be such a proactive industry response and therefore the benefits delivered to the community from the processing of Waste Materials will not be maximised.

Improved Coordination and Efficiency

The proposed processing contract(s) will provide a formal mechanism for coordination

between the Councils and the service provider(s). Without such agreement(s), each individual Councils would have to tender, negotiate and enter into contracts with each service provider, which would operate independently and require separate administration and for higher cost. The Proposed Conduct would allow such administration to be streamlined, both for Councils and for the service provider(s), and would also allow the service provider(s) to achieve an operational efficiency in coordination the Waste Material of the Councils together, rather than on an individual basis.

Increased Transportation and Materials Handling Efficiencies

Centralised processing and handling of Waste Materials is likely to increase transportation and materials handling efficiencies. A larger guaranteed supply of Waste Material will more fully utilise infrastructure, equipment and staff, which should attract particular benefits to the smaller Councils, i.e. Wingecarribee and Wollondilly, that may not accrue the critical mass of Waste Material needed to justify such processing. As it is unlikely that a landfill site could be established at the same site as a new facility in the any of the Project 24 Councils Local Government Areas, Residual Waste will most likely need to be transported from any facility to a landfill. By consolidating each of the relevant waste streams of the Councils to one facility for each or all streams, those transportation costs and arrangements of the service provider(s) will be streamlined.

Improved Resource Recovery

Consolidating the waste streams of the Councils will ensure that the resource recovery processes at the relevant facility are tuned to handle a higher volume of waste material, thereby reducing contamination and leading to a higher rate of resource recovery. Further, a guaranteed supply of Waste Material by the Councils acting collectively may attract new entrants to the market with potentially more efficient technology, leading to improved recovery.

Lower Costs to Households

The aforementioned efficiencies will most likely be reflected in a lower fee paid by householders for Domestic Waste Charges to each Applicant for waste collection and disposal services. Additionally, increased competition from attracting new entrants to the market may lead to more competitive pricing of the services, further leading to downward pressure on the prices paid by householders.

The success of the tender process will be measured in part by the capability of proponents to demonstrate that the Councils will benefit financially from the services, either as reflected in a competitive rate in terms of \$/tonne of Waste Material received for processing, or in reduced transport distances to the processing facilities (which should also result in lower collection and haulage services costs). As the LG Act requires that the Domestic Waste Management Charge levied on ratepayers must reflect the reasonable cost of the provision of the services, any savings from the service providers would necessarily be passed on to ratepayers.

Environmental Benefits

The aforementioned likely increased level of resource recovery, increased efficiency in

terms of transportation and waste processing operations, potential for Advanced Waste Technology and new entrants to the market, will minimise the level of Residual Waste that goes to landfill, rather than if the Councils were to enter into arrangements on an individual basis.

Further, it is assumed that consolidating the processing of the Applicants' Waste Material may also necessarily require only one site for the operations, rather than potentially multiple sites if the Councils were required to tender and contract individually. With severely limited available landfill air space in the SMA, the construction of one site that could accommodate the waste stream(s) of all Applicants rather than multiple sites will utilise less space, thereby preserving more areas for green or residential purposes.

7. Public detriment including any competition effects

Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

The Councils consider that there would be minimal, if any, public detriment caused by the Proposed Conduct.

The Councils concede that by entering into contracts on a collective basis, necessarily contracted service providers will be committed to 5 Councils for the contract duration, rather than perhaps multiple service providers being able to contract with each Council on an individual basis. Further, there is the chance that one service provider will be able to cater for multiple or all of the Councils streams of Waste Material, thereby locking out other service providers from being able to process the Waste Material for the contract duration. In addition, should processing of one or multiple streams of Waste Material be provided by the current dominant providers in the markets, the Proposed Conduct may serve to further those providers' share of the market.

Notwithstanding the Councils strongly believe that any potential detriment is far outweighed by the above public benefits.

The current contractual arrangements under the SUEZ Contracts have demonstrated significant economic benefits to the Participating Councils and their communities. The Councils consider that the benefits from the current contracts can be replicated under the proposed new contracts. Since entering into the current arrangement, whereby all streams of the Participating Councils have been processed by one entity, which was at the time of award the dominant market force, competition in the market has increased. Accordingly, the Councils consider that by once more entering into such arrangements on a collective basis should not have a significant detrimental impact on market competition.

In light of the new and forecasted growth in the region and the expansion of competition in the markets, a collective arrangement should deliver the most efficient, pragmatic and

sustainable solution for the Councils and the public.

Contact details of relevant market participants

8. *Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.*

A list of companies that have participated in consultation about Project 24 appears at Attachment 2. Please note this list is not exhaustive and does not represent the intention of companies to tender or otherwise.

Additional information

9. Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).


Signature of authorised person

DIRECTOR CITY DEVELOPMENT

Office held

JIM BALDWIN

(Print) Name of authorised person

30/6/2020

This [insert day] day of [insert month] [insert year]

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

ATTACHMENT 1

Rationale for Revocation and Substitution Application

Introduction

The five (5) participating Councils in Project 24 request reconsideration of the Authorisation AA1000428 granted by the Australian Competition and Consumer Commission.

The application sought coverage to allow for an 18 month tendering process, 4-year initial set-up period, 15-year waste processing period plus a 5-year extension option effective from 14 December 2018 until 1 July 2044, giving a total coverage of 20 years.

Events within the waste industry over the past 18 months have required a readjustment of the procurement timeline as described in the original application for authorisation. As a result the Councils, following a review of events, are of the view that a longer contract term is warranted i.e. 20 years plus a 5 year extension option. The matters that have arisen are as follows:

- Revocation by the NSW government of the exemption under the Protection of the Environment Operations (Waste) Regulation 2014 to apply processed organic outputs sourced from mixed waste (MWOO) to various land applications;
- The Councils undertook a recent market sounding exercise and received feedback that a 15 year minimum term was insufficient. Most industry respondents had a clear preference for a minimum 20 year term because of the high costs of processing technology, and the long lead times required to procure suitable land and to gain approvals;
- Release of the 20 Year Waste Strategy for NSW is running some 12 months behind schedule. The Councils are most reluctant to invite tenders in the absence of knowing the government's future direction and plans for infrastructure, funding and regulatory requirements, as this would invite additional risk into tenders.

Through this Revocation and Substitution application the Councils respectfully seek re-authorisation of the entirety, on the basis that an extended term better reflects industry expectations and is more likely to deliver equivalent or improved public benefits than that granted under the original Authorisation.

An outline of the key points and rationale that underpin this application are set out below.

Project 24

Project 24 (P24) is the name of the proposed regional procurement project involving 5 local government Councils located in the outer suburban region of south-western Sydney. These five Councils were the applicants for authorisation AA1000428 sought from the ACCC to allow the Councils to collectively tender and contract for waste processing and disposal

services.

The aim of Project 24 is to secure long term processing/disposal outcomes for waste and recycling streams collected from households that provide the respective communities with improved environmental, economic and social outcomes that could only be realised through a collective bargaining approach.

This project follows on the back of the first authorisation ACCC ref. A90886 dated 16 December 2004 to the same group of Councils except for Liverpool City Council.

Australian Competition and Consumer Commission Final Determination

An application for authorisation was made under Section 88 of the Competition and Consumer Act 2010 (Cth) and lodged 7 August 2018 by the Councils of Camden, Campbelltown City, Liverpool City, Wingecarribee Shire and Wollondilly Shire.

The application sought permission to collaboratively tender and contract for the services of qualified contractors able to receive, process, market and dispose (by sale or otherwise) of kerbside collected waste material.

Interim authorisation was granted 12 September 2018 and on 22 November 2018 the ACCC released its final determination.

The Commission granted final authorisation on the basis of a 15 year contract term plus a 5 year extension option, and that the balance of public benefit would outweigh any likely detriment to the public resulting from the proposed conduct.

Mixed Waste Organics Outputs (MWO) Exemption Revocation

In October 2018 the NSW Environment Protection Authority (EPA) revoked the regulatory exemption that allowed the application to land of organic outputs derived from mixed waste processing, known as MWO015. This decision effectively ceased the processing of household mixed waste in NSW and was made without prior consultation, thus giving the industry and Councils no time to consider alternative strategies or solutions.

The primary benefit of processing mixed waste is to recover resources such as organics (food and garden waste materials), metals, plastics, glass and paper/cardboard, so they can be recycled and diverted from landfill disposal.¹⁶ This has been achieved in processing plants described as Alternate Waste Treatment (AWT) facilities¹⁷ which commenced operation in the Sydney metropolitan market in September 2004, and earlier in some regional locations.

¹⁵ Mixed Waste Organic Outputs (MWO) <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/recycling/mwo/19p1894-mwo-position-statement.pdf?la=en&hash=17328331D0BAC93B8D801C37EFB88393578C3CB9>

¹⁶ Approx. 70% of household mixed waste contains recyclable materials.

¹⁷ Alternate in this context means alternate to landfill.

However, as a result of the government's MWOO decision this practice has now ceased with all processed waste going to landfill until further notice, thus putting further pressure on Sydney's limited disposal capacity.

The decision to ban MWOO has caused delay to the Project 24 timeline as the industry and effected Councils seek clarification about its future processing options, the government's future regulatory position on waste processing, and associated compensation issues. Until these matters are determined the Councils cannot confidently invite tenders nor is the industry in a position to respond with certainty given the uncertainty of the government's regulatory position.

Market Engagement

The Project 24 Councils embarked upon a Market Engagement exercise to better understand the issues of tendering in the current environment and to seek feedback on a range of issues, prior to preparing tender documentation for further consultation. The process closed on 28 February 2020 and resulted in submissions from 10 industry organisations. A copy of the Market Engagement document is included at Annexure A.

The overriding themes that emerged were the preference for the application of Waste to Energy (WtE) technology to manage residual waste and provide baseload power, and the separate collection of organic materials such as combined food and garden organics (FOGO) from household mixed waste.

The primary drivers for these responses were the diminished landfill disposal capacity available to the Sydney Market, the uncertainty of regulations surrounding the future of mixed waste processing, and the government's current preference for household food organics and garden organics (FOGO) collection systems.¹⁸

Of more significance to the P24 procurement timeline, respondents also indicated that the establishment period for WtE facilities is approx. 5 to 7 years in order to consider issues such as site selection, community consultation (social license), planning approval, construction and commissioning activities. By comparison AWT has traditionally an approx. 3-4 year establishment process.

The cost of establishing WtE facilities is more expensive than the AWT facilities because of complex engineering, technology and pollution controls required. The most recent example of a WtE facility proposal in Sydney is the project by Cleanaway for a thermal waste processing plant at Eastern Creek in Western Sydney, and is currently seeking planning permission from the NSW government. The cost is estimated by Cleanaway at \$500M¹⁹ whereas the AWT plants producing MWOO were in the order of approx. \$80M to \$100M (refer to Council's letter to ACCC dated 12 October 2018 re cost expectations).

¹⁸ The residual household waste remaining from FOGO collection systems is permitted to be processed in WtE facilities.

¹⁹ <https://energyandresourcecentre.com.au/resources/#section8>

Veolia estimate that WtE establishment requires capital investment in excess of \$100M per 100,000 tonnes to be processed.²⁰

20 Year Waste Strategy for New South Wales

The NSW Government through the Environment Protection Authority is preparing a 20 Year Waste Strategy for NSW and its expected release date has been delayed thus far by approx. 12 months. The Strategy was due to be released mid-2020 which would have aligned with P24 procurement timing. However, the recently released Issues Paper (the precursor to the draft strategy) indicates a release date of the Final Strategy during 1st quarter or early second quarter 2021.²¹

The Strategy is significant to Project 24 as it will define the overall strategic direction for the industry, inform our proposed tender specification and provide certainty on issues such as infrastructure planning, waste reduction targets, diversion from landfill, funding programs and confirming the government’s position on issues such as recycling, waste diversion and processing.

The EPA has not confirmed a release date for the Draft Waste Strategy however the Councils are estimating September 2020, a period of 4 months after closure of the consultation on the Issues Paper.²² This assumption pushes back the procurement timeline for each stage of the tender cycle as shown in Table 4.

If new technology is required to fulfil the P24 contract then the period from October 2021 to July 2024, will not provide sufficient time to be constructed by the commencement date. Should a Waste to Energy facility be proposed, the 5-7 year establishment period (inclusive of approvals etc.) would push back the processing commencement date to approx. October 2028, thus losing 4 years off the initial contract term.

Table 4– Revised Project Timeline Impact

PROJECT PHASE	AUTHORISED PROJECT TIMELINE	REVISED PROJECT TIMELINE
Industry Consultation	September 2018 to November 2018	July to August 2020
Invite Tenders	November 2018	October/November 2020
Close Tenders	July 2019	February 2021
Assess Tenders	August 2019 to October 2019	April to May 2021
Award Contract	November 2019	October 2021

²⁰ House of Representatives, Standing Committee on Industry, Innovation, Science and Resources, Hansard, Veolia 10 June 2020

²¹ <https://yoursay.dpie.nsw.gov.au/20-year-waste-strategy> (refer page 7).

²² Issues Paper consultation closes 8 May 2020.

Contract Commencement	1 June 2024	1 July 2024
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END.

Annexure A

Market Engagement Project 24

PROJECT 24 WASTE PROCESSING & DISPOSAL SERVICES

Proposed Regional Waste Services Procurement Project

The Councils of Camden, Campbelltown City, Liverpool City, Wingecarribee Shire and Wollondilly Shire (the Council's) are planning the procurement process for waste disposal and/or processing services from June 2024. The procurement process is generally referred to as 'Project 24'.

Project 24 is subject to the NSW legislative and regulatory position and planning for the procurement process has resulted in a delay in issuing the Request for Tenders (RFT). The Councils are now seeking to engage with industry participants to gauge readiness for tendering, as well as to allow for the final design of the RFT to be informed by waste management operators.

The regional approach to procuring waste disposal/processing services follows a previously successful regional approach which resulted in the Council's (except Liverpool City) entering into an arrangement with WSN Environmental Solutions (now known as Suez Recycling and Recovery Pty Ltd) for waste processing and disposal services. These contracts are due to expire in June 2024. Project 24 waste management services are expected to commence in June 2024.

As a starting point, and to indicate the Council's commitment to participating in this procurement process, the Councils have each entered into a Memorandum of Understanding (MoU), seeking to collectively and collaboratively engage in a procurement process for waste processing and disposal services. The MoU constitutes a statement of genuine and mutual intentions to procure the services and enter into any eventual contracts following the procurement process.

The Councils have also collectively sought and received a determination from the Australian Competition and Consumer Commission. Authorisation (AA1000428) was granted by the ACCC on 22 November 2018 to engage in collective procurement and to contract for the services included in the application.

CURRENT ARRANGEMENTS

For information, the existing contractual arrangements are that each Council holds a separate almost identical contract with the current service provider for the receipt and processing/disposal of nominated waste streams.

Camden, Campbelltown City and Wollondilly Shire supply the material from their three bin collection system as well as bulky clean up waste.

Wingecarribee Shire currently supplies MSW and recyclables, with garden organics and bulky clean up waste managed separately. Wingecarribee Shire plan to include the organics stream into the new contract.

Liverpool City Council seeks to join the existing Councils in the regional procurement of waste management services.

One of the Councils will act as the contract manager on behalf of all Council's to provide administrative efficiencies.

For Project 24, the Councils are open to alternative contract management arrangements for example, if deemed suitable, the waste streams may be managed by different service providers and so may be administered separately.

P24 GOVERNANCE

Project 24 is being guided by a governance structure and process plans identifying all responsibilities; decision making processes; and probity management. A Project Control Group has been established to oversee the procurement process and comprises the member Council's General Managers and relevant Directors.

The Councils have been planning to tender for their waste processing and disposal services from June 2024. Services are planned to be sought for the following:

- a. Mixed waste processing/disposal
- b. Processing of recycling
- c. Processing of organics
- d. Bulky clean up waste processing/disposal.

The Councils note that one of the key aims of Project 24 is to determine the most suitable management system and will design waste collection systems to allow for proposals if the four streams above need to be re- configured.

The key goals of Project 24 are to secure waste disposal and/or processing services together with price certainty for the agreed term. The Council's now estimate that the procurement process will be managed as follows:

ACTIVITY

Industry Engagement
Review of engagement and update of RFT documentation
Industry Consultation
Issue of RFT
Close of Tenders
Recommendation to Councils/awarding of contract(s)

TIMEFRAME

December 2019 - February 2020
March - May 2020
June-July 2020
September 2020
December 2020
May 2021

Contract commencement

June 2024

The contract/s expect to be for a term of 15 years as a minimum, with a possible 5 year extension to a maximum period of 20 years. However, the term is a matter for this consultation and noted further below. The Councils provide the following indicative information regarding the waste materials to be managed:

SUMMARY OF ANNUAL TONNES COLLECTED 2018-2019				
COUNCIL	MIXED WASTE	RECYCLING	ORGANICS	BULKY
CAMDEN	21,045	9,138	11,100	3,133
CAMPBELLTOWN	34,468	11,716	15,715	7,146
LIVERPOOL	47,904	14,991	17,166	4,912
WINGECARRIBEE	7,424	4,543	5,061	111
WOLLONDILLY	9,944	4,019	4,264	2,234
TOTAL	120,785	44,407	53,306	17,537

The Councils waste collection contracts will expire in June 2024 and any reconfiguration of the kerbside collection services will be informed by Project 24 outcomes.

PURPOSE OF COMMUNICATION

The Councils are seeking to communicate with industry participants to gauge readiness to respond to a tender as well as to gain feedback regarding a number of current matters. Industry participants are considered to be those organisations that have an interest in tendering for the waste processing/disposal services. The Council's request comments and input into the planning for Project 24 to ensure that the broadest considerations guide the project.

As industry participants would be aware, there have been significant events that have impacted on the waste industry recently, including regulatory changes that affect resource recovery solutions. The Council's understand that the waste management industry is reacting to these changes and that Project 24 may be reliant on any new approach from industry as well as the readiness of waste companies to provide solutions.

The Councils expect to engage further with industry participants once tender documentation is further drafted. That consultation will allow for a review of the proposed draft contract and seek feedback on a number of specific contract areas.

The Councils are at this stage, providing an update to the proposed project timeline as well as seeking general feedback on the procurement approach.

RESPONSES SOUGHT

The Councils are seeking general comments from industry participants and provides the following guidance regarding the issues that Project 24 is currently concerned with addressing. Only some matters may be relevant to the particular industry participants. Responses may be returned by way of written letter.

1. Industry participants should indicate if they will consider the request for tenders and whether a tender is likely to be forthcoming given the timeline set out above.
2. The proposed term of the waste services contracts being considered is for an initial term of 15 years.
 - a) Do industry participants consider this to be an appropriate term?
 - b) What risks need to be considered regarding this proposed term? Please respond to the questions above for each waste stream.
3. Will a decision by the Council's in mid- 2021 provide industry participants with adequate time to provide services for a June 2024 commencement?
4. In the event that the Councils determine to retain the current planned commencement date of June 2024 and tenderers proposed facilities that were not able to receive material at that date, would industry participants be able to provide any interim services until facilities are fully commissioned? i.e. tender for services with facilities that may commence receiving material after June 2024, but be able to manage the relevant stream between June 2024 and the facility commencement date?
5. The Councils intend to tender for the management of the four waste streams at the same time. Industry participants should indicate if they will plan to provide a response for a solution for each stream or indicate which waste stream is of interest.
6. Given the development of, and proposed timing for, the NSW 20 Year Waste Strategy, are industry participants confident that it will be possible to respond to a request for tenders from September 2020?
7. What do industry participants now consider the possibilities are for resource recovery from mixed waste?
8. What options and/or facilities are being planned in response to the NSW EPA's new MWOO order and exemption response? Are these responses likely to provide a solution to the Project 24 Councils for their mixed waste?
9. Given there are no publicly listed MWOO 'application to land' exemptions, is 'traditional' mixed waste processing still an option and is the industry confident that other/new mixed waste output uses can be secured for the long term?
10. What broader approach would industry participants recommend, and is adopting a policy of landfill diversion a reasonable alternative to the disposal of mixed waste?
11. Should the Councils consider a short-term waste disposal option rather than waste processing, given the current context?
12. How dependent will any solution be on the composition of mixed waste feedstock?
13. Include comments regarding impacts on the suitability of mixed waste feedstock in the event that the Councils were to opt for introducing FOGO collection systems for their residents.
14. What impacts should the Councils be aware of, in the event that, a system where food waste is collected with garden organics (FOGO) is adopted? Note impacts for mixed waste processing as well as for FOGO processing.

15. Is the proposed procurement timing suitable for the establishment and commissioning of a FOGO processing facility?
16. Are FOGO processing solutions being planned and what would be required by industry for ensuring that a secure long-term processing solution for FOGO can be provided which avoids the impacts of the NSW EPA withdrawing resource recovery exemptions for FOGO in the same way that occurred for MWOO?
17. Can industry participants clarify how the NSW Energy from Waste Policy can be considered by the Council's in designing Project 24?
18. Given the current status of the NSW Energy from Waste Policy Statement, do industry participants suggest the Council's ought to view energy from waste solutions as a viable alternative waste management solution?
19. What plans do industry participants have to provide EfW services?
20. Do industry participants plan to ensure mixed waste is 'processed' in order to be able to be delivered for energy recovery in the highest proportion? How is this proposed?
21. What risks should the Councils be aware of regarding refuse derived fuel which ought to be dealt with in the contract?
22. The Councils are considering the future of processing the comingled recycling material and seeks comments regarding whether risk sharing on MRF output commodities is preferred?
23. Can industry participants provide details of how this might be achieved e.g. indicate indices for commodity price measurement?
24. Are there any other considerations for how Councils should manage the collection of this recycling material that will affect the material to be managed in Project 24?
25. How do industry participants consider that the Councils include CDS refunds in the recycling processing service arrangements?
26. Any impacts of the NSW Circular Economy Policy that ought to be considered in tendering for the Project 24 services?
27. Any comments on how the Councils ought to approach managing changes that may be necessary for their residents e.g. collection systems?
28. Industry participants are invited to address broader risks that ought to be considered by the Councils in the design of the procurement for services.
29. Do industry participants expect any further regulatory hurdles that would affect the proposed Project 24 procurement process?
30. Is lack of certainty an issue for tendering as planned?

General feedback, in the way of comments and explanations, regarding the timing and presentation of the procurement process is sought. In addition, explanations regarding how the approach may impact on the eventual costs per tonne that will be sought by the Councils for each waste stream will be helpful.

The Councils are considering all options and possibilities for the proposed timeline and industry feedback will be instrumental in the next steps taken.

CONFIDENTIALITY

The Councils appeal to industry participants to actively engage in responding to this communication to help inform the document development and procurement process. The security of responses will be of utmost importance and adequate controls will be maintained by the Councils to ensure information provided is maintained as confidential.

Councils will reserve the right to use information gained during this process to inform the final design and content of the eventual request for tenders.

Nothing included in any feedback provided will be considered in the eventual evaluation of tenders, and any industry participant deciding not to provide industry consultation will not be precluded from tendering in the eventual request for tenders.

The Councils have appointed a probity adviser to oversee the procurement process and industry participants are invited to contact Ms Sarah Mullins of OCM on 0413 443 374 or at smullins@ocm.net.au with any concerns regarding this communication or response.

RESPONSES DUE BY

The Councils ask that consideration is given to responding and that a response is provided by 5.00pm on Friday 28 February 2020 in order to allow the process timeline to be maintained. Please provide written responses via Tenderlink. Industry participants provide any responses at their own costs.

ATTACHMENT 2

Company Contact Details

COMPANY	REPRESENTATIVE	CONTACT
Cleanaway	Paul Antony Alex Smith	
United Resource Management	David Johnston	
Veolia Environmental Services	Alex Kanaar,	
Suez Recycling and Recovery	Tony Grebenshikoff	
Visy Recycling	Andrew Johnston	
Remondis Australia	Susie McBurney	
Australian Native Landscapes	Rob Niccol	
ReGroup	Garth Lamb	
Waste Management Association of Australia	Gayle Sloan	
Waste and Recycling Contractors Association NSW	Tony Khoury	
Aionious Consortium	Mark Kogos	
Bioelektra Australia	Fred Itaoui	
Hitachi Zosen Inova	Marc Stammbach	
Recovered Energy Australia	No contact name available	

END NOTESⁱ

ⁱ What is MWOO (NSW EPA)

MWOO is the end product of a practice which aims to separate the organic waste in household red-lid bins from other waste. It was previously allowed to be applied as a soil amendment under strict controls.

MWOO is produced at Alternative Waste Treatment (AWT) facilities, primarily to divert general household waste (red-lid bin) from landfill. AWT operators previously sold MWOO as a soil amendment.

MWOO is also marketed under the trade names Agriblend, Rehab-ARRT Rejuvenate (for mine sites), Pasture-ARRT Rejuvenate (broadacre agriculture) or OGM (organic growth media).

In October 2018 the EPA revoked the general and specific Resource Recovery Orders and Resource Recovery Exemptions for the application of MWOO to land due to risks associated with chemical and physical contaminants.

<https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/mixed-waste-organic-material>