



# Statement of Reasons

In respect of a notification lodged by  
Waverley Council (in its own right and on behalf of  
Woollahra Municipal Council)  
in respect of  
collective bargaining with waste services providers

Date: 23 May 2018

Notification number: CB10000452

Commissioners: Sims  
Rickard  
Schaper  
Court  
Featherston

## Summary

The ACCC has decided not to object to the notification lodged by Waverley Council (in its own right and on behalf of Woolahra Municipal Council) (together, the **Councils**) to enable the Councils to collectively negotiate and give effect to individual contracts for the receipt and processing of residential solid waste and council collected illegally dumped and roadside waste.

The ACCC has also decided to allow the notification to remain in force for a period of approximately five years. The notification came into force on 4 May 2018 and will remain in force on 31 May 2023, unless it is withdrawn or revoked.

The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the conduct.

## The notification

1. On 20 April 2018, the Waverley Council lodged a collective bargaining notification<sup>1</sup> to enable the Councils to collectively negotiate (via joint tender) separate contracts for the receipt and processing of residential solid (council 'clean up day') waste and council collected illegally dumped and roadside waste (the **Notified Conduct**).
2. The Councils have advised that the term of the contract to be entered as part of the Notified Conduct will be three years with two options to extend for one year, at the sole discretion of the Councils. Therefore the contract term will be a maximum of five years.<sup>2</sup>

## Consultation

3. The ACCC invited submissions from a wide range of interested parties. Copies of all public submissions are available on the [ACCC's public register](#).

## ACCC's Assessment

4. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* C'th (**CCA**).
5. In doing so, the ACCC has taken into account:
  - The notification and the information it contains.
  - Information independently obtained by the ACCC during the course of its review of this notification and information available to the ACCC from prior similar matters.

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<sup>1</sup> Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010* (CCA) for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

<sup>2</sup> The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

- The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each of the Councils is likely to continue to individually negotiate and contract for the receipt and processing of residential solid waste and council collected illegally dumped and roadside waste.
- The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the supply and acquisition of waste receipt and processing/disposal services in the Sydney Metropolitan Area.
- The maximum five year term of the contracts to be entered as part of the Notified Conduct.
- That no collective boycott activity is proposed and participation in the bargaining group is voluntary.
- That interested parties did not raise objections to the Notified Conduct or the proposed five year contract term.

### **Public Benefit**

6. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
  - Improved efficiency through:
    - sharing transaction costs (such as negotiation and contracting costs)
    - coordinating the waste and recycling disposal operations of the Councils.
  - Improved environmental outcomes through:
    - supporting the viability of recycling waste which might otherwise have gone to landfill, and
    - reducing emissions from the transportation of waste as a result of coordination between the Councils.

### **Public Detriment**

7. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from any reduction in competition between the Councils to acquire waste services because:
  - It does not remove a significant number of opportunities for waste service providers to bid to supply their services. The Notified Conduct only involves a limited number of services provided by two out of 35 councils in the Sydney Metropolitan Area.
  - The Councils propose to use a tender process which will ensure that there is competition between waste services providers to win the contract.
  - Participation in the Notified Conduct is voluntary for the Councils.

### **Period for which the Notification will be in force**

8. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
9. In this case, as part of the Notified Conduct, the Councils are proposing to enter a contract with a maximum five year term.

10. Having regard to these estimated dates and the term of the proposed contracts, the ACCC considers that it is appropriate for the notification to remain in force until 31 May 2023 for the following reasons:
- The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
  - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
  - In this case, it is administratively efficient for the period of legal protection to coincide with the maximum period of the Contracts which is five years.

## **Decision**

11. Having considered the matters referred to in paragraph 5 above, the ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
12. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the Notified Conduct will not outweigh the likely detriment to the public from the conduct.
13. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 10 above, in accordance with s 93AD(5), the ACCC is satisfied that:
- a three year notification period is not appropriate in all the circumstances, and
  - another period is appropriate in all the circumstances, being the period ending on 31 May 2023.<sup>3</sup>
14. Accordingly, the protection provided by notification CB10000452 commenced on 4 May 2018 and will continue until 31 May 2023, unless the notification is withdrawn or revoked.
15. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

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<sup>3</sup> As required by s 93AC(5)(b), this period will end no later than 10 years after the day that the notification was lodged.