



**WASTE CONTRACTORS  
AND  
RECYCLERS ASSOCIATION  
OF N.S.W.**

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199,  
DICKSON ACT 2602

By facsimile 02 6243 1211

4 December, 2003

**Reference No. C2003/1363  
Authorization of Application A90886**

We refer to your letter dated 21 October 2003 relating to an application received by your Commission from the Councils of Camden, Campbelltown City Council, Liverpool City Council, Wollondilly Shire Council and Wingecarribee Shire Council (the Councils) (Application).

Our Association is a peak employer body representing the commercial and industrial interests of its members, who operate in the waste and recycling industry within NSW. We have 60 members and our members have direct controlling interests in an estimated 95% of the available commercial waste collection vehicles within NSW, and our understanding is that wherever a Council contracts out its waste and /or recycling service it does so to one of our members.

We thank you and confirm that we were granted an extension of response time to 8 December 2003 by your Commission on 5 November, 2003 (by return e mail).

Our Association is certainly well placed to provide you with comment on this proposal as the specialized waste and recycling activities in this proposal by the Councils are at the core of the services provided by our members. In fact, six of our members and two associated members are currently commercially involved with the Councils in the collection, processing and / or disposal of the waste streams referred to in this application.

In order to facilitate the easy aggregation of our response along with other responses, we will group our submission into the framework of questions as stated in your letter.

Level 4

162 Goulburn Street

Darlinghurst 2010

Phone (02) 9264 1826

Fax (02) 9264 1829

wcra@nswrta.com.au

ABN 72 805 135 472

## Summary

The position of our Association is that the collective tendering proposal may result in public benefits and increased competition but only if sufficient time periods and other safeguards are built into the process to ensure that it facilitates entry by new service providers and therefore so promotes competition. It is also the view of our Association that there must be careful consideration given to any possible negative implications of this proposal and that the end result is a genuine net increase in public benefits.

### **Do we agree with the public benefits that the Councils claim will flow from the collective tendering arrangements?**

The Association considers that there is potential for some public benefits to arise from the collective tendering and contracts proposed in the Application. Those potential benefits are as follows:

- **DRM:** If there is complete uniformity in collection systems, recyclable types and contract periods then the potential exists for there to be reduced Dry Recyclable Material (DRM) charges to Councils. Provided that such uniformity is achieved it will more than likely result in increased efficiencies in material handling / transfer / processing, transportation and hopefully with this more DRM will be recycled eg., possibly extend this application to commercially generated DRM. This uniformity can be achieved by the use of one common recycling system across all five Council areas. Any such system must as a minimum utilize the same style of bins, be based on the same education program to all residents in all five areas, utilize the same style of collection equipment / vehicles and have common contractual timeframes.
- **Garden Organics:** If a result of the collective tendering and contracting proposal is that a single company will provide Garden Organic processing services in the Council areas, providing that this company can address the issue of identifying a sustainable re use system for all of the Garden Organic materials generated in this area, then this may result in a greater diversion of this material from waste streams to landfill. Again if uniformity is achieved by the use of one common Garden Organics system across all five Council areas then this will increase the likelihood that more material will be diverted away from landfill. Any such system must as a minimum be based on the same education program to all residents in all five areas, utilize the same style of collection equipment / vehicles and have common contractual timeframes

- **Residual Waste:** All Residual Waste collections are currently disposed of at Jacks Gully, Lucas Heights or Eastern Creek. All of these facilities are owned by Waste Service NSW. With the approvals recently given to Collex to accept such waste at Woodlawn, Collex is a potential bidder for providing this service to the Councils in response to a collective tender of the nature proposed by the Councils. However, before Collex can accept such material, it must first obtain an approval from the NSW Government (including the relevant Council, NSW EPA, Planning NSW, Land & Environment Court etc) to allow the transfer of waste by road and / or rail and for the construction of a road and / or rail transfer facility within the Macarthur area. Therefore the potential exists for there to be a public benefit by the potential entry into this market of Collex (or another commercial operator of a waste transfer facility) which could result in increased competition between Collex / another competitor and Waste Service NSW. However any such public benefit would be contingent upon Collex (or another new entrant to the market place) winning the tender for this material. It is worth noting that winning a tender is one thing, however obtaining the approvals to establish any new waste facility will take plenty of time eg., refer to the Clyde Transfer Station dramas experienced by Collex who commenced the approvals process for this proposed Clyde facility in early 2001 ie., almost three years ago and as at the date of writing this letter formal approval for Clyde still remains an unresolved issue.

However, the Association does not consider that the proposed collective tendering and contracts of themselves are likely to result in increased competition in markets currently dominated by one company, for the following reasons:

- **DRM:** The Councils currently have options to dispose of DRM at Jacks Gully, Chullora and Milperra. These facilities are operated by Waste Service NSW, Thiess and Visy Recycling. The Council areas are therefore currently well served by DRM processing facilities. The Association is concerned that a collective tender has the potential to result in market domination by one company because all of the DRM generated by the five Councils could potentially then be diverted to the one processing facility. If this is the end result then this decision could result in the demise of one or more of the existing facilities.
- **Garden Organics:** The Council areas are well served with a number of competing Garden Organics processing facilities. Australian Native Landscapes, Camden Soil Mix and M. Collins & Sons operate in the Liverpool / Camden / Campbelltown areas, whilst Wollondilly and Wingecarribee Councils operate their own facilities. The Association is concerned that a collective tender for the processing of Garden

Organics may result in market domination by one company. It is difficult to envisage that there will be any public benefit that will arise by a collective tendering arrangement for the processing of Garden Organics as it could result in the demise of several existing facilities including those currently in operation by Wollondilly and Wingecarribee Councils where shredded green waste is currently given away to residents for free for beneficial reuse on their properties.

- **Residual Waste:** Collex and Waste Service NSW are currently the only potential bidders to provide a landfill disposal service to the Councils in response to a collective tender. There are major barriers to entry that would prevent another provider from entering this segment of the market eg., approvals, cost, locating a landfill site etc. Therefore if Collex does not obtain the approvals required set out above, or if Waste Service NSW is the successful tender bidder, the collective tender and contract arrangements has the potential for Waste Service NSW to be granted all of the waste and recycling referred to in this application.

**Do we agree with the comments that the Councils have made regarding the likely public detriment flowing from the collective tendering arrangements?**

The Association agrees with the Councils that the Councils must give potential service providers sufficient time to prepare a tender, sign the contract and develop the necessary infrastructure to ensure that such service providers are not disadvantaged in the tender process compared to Waste Services NSW (see Application, page 25). For residual waste processing, the Association agrees that a service provider will require a minimum period of two years in order to establish the infrastructure necessary to accept waste (see Application, page 25). However we highlight that two years is the minimum period required and in all probability it will take even more time.

The Association considers that if the collective tendering arrangements do not provide sufficient time to enable potential service providers to compete in the tender process, the proposed collective tender proposal will have the effect of preventing existing service providers from competing for work and contracts that they currently perform.

- It is the very strong view of our Association that the collective tendering proposal must be structured to ensure that it offers the potential for a number of service provider(s).
- It is the very strong view of our Association that the ACCC must fully consult with key stakeholders, establish and hand down its findings in March 2004 before any tenders are advertised. This very clearly is not the case with the timetable for the proposed tender process in Table 6 of the ACCC Application for Authorisation. This timetable allows for

the concurrent ACCC assessment of the application whilst tenders are being advertised by Councils and as a consequence our Association strongly objects to the timetable in its current form.

- It is the very strong view of our Association that the development of an AWT based facility within two years within the region is more than likely an unreasonable timeframe. With planning approvals, EIS specifications, advertising, consultation, community objections, Land & Environment Court appeals etc. The narrower the time frame for establishing an AWT in the region, the bigger the advantage that Waste Service NSW at Jacks Gully will have over any new proponent into the market.
- We therefore contend that thirty six months is probably a more realistic timeframe for the establishment of any new AWT, Waste Transfer Station, MRF and or Garden Organics facility.
- The other great unknowns in this debate on an AWT include issues such as:
  - Whether or not an AWT will be commercially feasible?
  - Will an AWT be able to produce end product of sufficient quality whereby its processing activities will be sustainable?
  - If the end product is contaminated will it be disposed of to landfill?For this latter reason in particular it is more than likely that an AWT should be located on or near a landfill site and again this does provide Waste Service at Jacks Gully with a decided advantage over other potential competitors especially in the short to medium time frame.

**Do we consider that there might be other detriment to the public caused by the arrangements?**

- If only one service provider expresses an interest in these collective arrangements in any of the three waste streams (DRM, Garden Organics and Residual Waste) then it will merely reinforce that one player's monopoly position which cannot be conducive to a healthy waste management industry, especially over a ten year period. In the view of our Association the ACCC should set out a clear guideline that prevents this collective tender from proceeding if these circumstances prevail. To this extent our Association asks you to consider in your approval of this application the inclusion of a condition requiring the Council's to withdraw the collective tender if only one service provider expresses an interest in tendering.

**Do we have other comments on the proposed collective arrangements?**

- The Application states that the Councils seek authorization to collectively tender for the services of qualified contractors, able to process, market or otherwise dispose of kerbside collected waste materials. The Application states that individual Councils will continue to remain responsible for the collection and transportation of waste materials to the receiving facilities nominated during the tender process.
- It is therefore very clear that the Application does not include collection and transportation of any materials from kerbside. It is the very strong view of our Association that all advertising in any such tender must be very specifically noted accordingly. Again our Association asks that it be a requirement of any authorization of the proposed collective tendering that it expressly excludes the collection and transportation of any materials from kerbside and that it is a requirement that this express exclusion be included in all tender material.
- Five of our members have existing collection and transportation arrangements with four of the Councils referred to in the Application. These contracts are based on differing collection systems and have different terms left to run. It is therefore the very strong view of our Association that these members should not be disadvantaged by any proposed collective tender arrangements. In fact these members if so disadvantaged will no doubt seek to rely at law on binding contractual arrangements.
- Five of our members (or Associates through our agreement with the NSW Road Transport Association) have processing and / or disposal arrangements with the Councils referred to in the Application and these members should not be disadvantaged by any proposed collective tender arrangements especially if they have current contractual arrangements in place.
- Large contracts such as that proposed by the five Councils can only be performed by large multi national operators with the capital and financial capability to be able to bid for these contracts. This precludes many small to medium waste and recycling operators from bidding for this work. Notwithstanding this reservation, it is worth noting that provided that the sufficient time frames referred to earlier being observed there are several companies within the industry that are capable of undertaking this project.

### **Closing comments**

We thank you for the opportunity of having input into these issues and the Waste Contractors & Recyclers Association of NSW would welcome any opportunity of meeting with you and discussing these issues which are extremely important to our industry, in particular after the ACCC has issued its draft determination of the Application.

Yours faithfully,



Tony Khoury  
Executive Officer