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St Marys, 2 August, 2004

**AUTHORISATION No A30231 – TENDER OF THE NORTHERN SYDNEY COUNCILS /
 YOUR PRE-DECISION CONFERENCE DATED TUESDAY 27TH OF JULY 2004**

Dear Sir / Madam,

We would like to refer to the above draft determination in relation to Authorisation A30231 and the Pre-decision Conference from 27th of July 2004, which I attended.

In regards to the above tender of the Northern Sydney Councils and the ACCC Draft Determination we would like to make the following submissions:

1. In the past the State owned Waste Service NSW (WS) had a monopoly to transfer (bulk-up) and dispose of putrescible waste in the Greater Metropolitan area of Sydney (Sydney). This monopoly allowed it to establish infrastructure like transfer stations and landfills in Sydney. Although one of our competitor companies, Collex Pty Ltd, has established the Woodlawn landfill (outside Sydney) and got approval (through an act of Parliament) for its transfer station at Clyde, this created (de jure) some competition for the transfer and disposal of putrescible waste, in the commercial reality there is no (de facto) competition to WS' existing infrastructure for putrescible waste in Sydney. Collex can – at commercially viable rates – only attract putrescible waste from a certain radius around its new transfer station at Clyde. The cost of transport and the existing traffic conditions in Sydney do not allow an effective/viable competition to WS infrastructure. In this light, WS does have a substantial marked power in Sydney.
2. What we believe has to be taken into consideration in assessing the above tender documentation and authorisation is the process and lead time to establish new infrastructure to (theoretically) compete with WS' existing infrastructure. One example might be our proposed recycling plant for dry commercial waste at Botany, for which we lodged a development application in October 2002.

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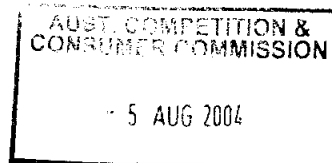
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After Botany Bay City Council did not determine the DA within its statutory time frame, but we received the General Terms of Approval from the EPA we lodged an appeal to the Land & Environment Court in May 2003 based on a deemed refusal of our DA. Council then rejected the development application in July 2003. The Land & Environment Court granted approval, subject to conditions, for our proposed Recycling Facility in March 2004. Council then lodged an appeal with the Courts of Appeal and the hearing for this appeal is now set for the beginning of November 2004. Even if one assumes that the decision of the Land & Environment Court would have been final, it would have taken another approximately 12 months to build and commission our plant so the plant would have become operational in early 2005. It should have become operational by the end of 2003. We believe, therefore, a realistic lead time for any waste infrastructure facility in Sydney is somewhere between 2 and 3 years. One major barrier for any new infrastructure though is the availability of land and the fast rising prices for commercial land threaten to make any infrastructure project unviable at the current pricing regime (opportunity costs) for waste processing.

Having heard at the pre-decision conference that different terms for contracts for waste processing facilities and landfill were suggested, we would like to submit that a contract term for an alternative waste treatment facility of 10 years would be considered the absolute minimum and a more realistic term for such investment would be a contract term of between 15 and 20 years. One has to take into consideration also, that contract terms should not be too long as human behaviour, human consumption and therefore waste generation and waste composition changes over time and that our experience from overseas shows that waste composition can change dramatically over a period of 15 to 20 years. (Our company runs in excess of 200 waste processing facilities throughout the world and processes in excess of 5 Mio tonnes of waste every year).

3. We believe that the tender of the Northern Sydney Councils is farcical insofar as no one can de facto compete with WS' existing infrastructure. The tender documents state that the transporting of waste for more than a few kilometres outside existing Council boundaries would result in additional costs to Councils, which they would not be prepared to bear or for which a tenderer would have to make a case/convince a tendering Council that these additional costs would be a benefit to the Council. As stated above, there is no other provider for putrescible transfer stations and landfills in Sydney other than WS, with the exception that Collex has one transfer station in Clyde. There is no large scale alternative waste treatment facility operating in Sydney at this stage that could deviate/process waste away from landfill. The only large scale infrastructure facility of that kind, that will go on-line in the short term and still has to prove its capability to run such a large commercial scale, is in partnership with WS and operated by Global Renewables Limited (GRL).

The way the tender document is written it could result in a contract of a term of 15 years be let for all the waste of the Northern Sydney Councils to go to landfill. Would WS be allowed to enter into such a contract it would only cement its existing market

power and substantially lessen competition as the contracted volume of waste would not be available to any potential competitor or to any waste treatment facility for the contract term.

CONTRACTS RESULTING IN LANDFILL

We believe there is no commercial reason for any of the participating Councils to enter into a contract of any term for the disposal of waste to landfill. None of the Councils in Greater Sydney had in the past any contracts with WS to that purpose; they did not need to. They had no alternative but to dispose of their waste at WS' landfills. We are aware of the fact that WS submitted at the pre-decision conference on 27th July 2004 that contracts for landfill should not be let for a period of 15 years but only for a period of up to 3 years for various reasons, such as the fact that landfilling of putrescible waste is in contradiction of the waste strategy of the State of NSW. That is correct. However, we do not see any reason why a contract that results in waste being continued to be landfilled should have a term of 3 years. We do not believe that the above mentioned lead time for new infrastructure of 2 to 3 years can be used as an argument for landfill contracts not to exceed 3 years from now on. Firstly, the State Government could change its planning approach or legislation to allow infrastructure for alternative waste treatment or deviation from landfill to be erected much faster and secondly if an infrastructure project or an alternative to landfill would come up during the end of the term of the 3 year landfill contract and the landfill contract be renewed for another term of 3 years, the alternative infrastructure facility to landfill could become operational at the end of year 1 of the renewed term over the landfill-contract and could therefore be excluded for receiving this contracted waste for another 2 years, which could render the new infrastructure facility commercially unviable.

As a result we believe that any contract that results in landfill and would be let to WS should not be contracted for a certain term. In the opposite, it should include a clause that would allow the Council to terminate the contract any time in case an alternative to landfill arises. Should the Commission be of the view that a term of a landfill-contract is not unreasonable, we submit that this term should not exceed one (1) year.

CONTRACTS RESULTING IN ALTERNATIVE WASTE TREATMENT OR DEVIATION FROM LANDFILL

The above tender could also result in a contract be let for the term of 15 years for waste to be deviated from landfill / treated in an alternative waste treatment facility to WS. We believe that this would also strengthen the substantial market power that WS already enjoys, respectively it would substantially lessen any competition for this contracted volume of waste for the contract period.

Should you wish to discuss all the above, please do not hesitate to contact the undersigned.

Yours sincerely,


Frank Klostermann - Director