

**Australian Competition  
&  
Consumer Commission**

**Authorisation A90886**

**lodged by the Council of Camden, Campbelltown City Council, Liverpool City  
Council, Wollondilly Shire Council and Wingecarribee Shire Council**

**PRE-DECISION CONFERENCE**

**27 July 2004**

**Minutes**

**Pre-Decision Conference: Authorisation A90886 lodged by the Council of  
Camden, Campbelltown City Council, Liverpool City Council, Wollondilly Shire  
Council and Wingecarribee Shire Council**

Tuesday 27 July 2004  
Sydney Conference Room  
Australian Competition and Consumer Commission  
Level 7, Angel Place  
123 Pitt Street  
Sydney NSW 2000

**Attendees:**

*Australian Competition and Consumer Commission (ACCC)*

**Ms Louise Sylvan**, ACCC Deputy Chair

**Mr Gavin Jones**, Director, Adjudication Branch

**Ms Tania Mayrhofer**, Senior Project Officer, Adjudication Branch

*Interested Parties*

**Mr Tony Khoury**, Executive Officer, Waste Contractors & Recyclers Association of NSW

**Mr Jim Perry**, President, Waste Contractors & Recyclers Association of NSW

**Mr Brian Thomas**, Secretary, Waste Contractors & Recyclers Association of NSW

**Mr Jeff Angel**, Executive Director, Total Environment Centre

**Ms Jane Castle**, Total Environment Centre

**Mr Damian O'Connor**, Manager – Policy & Government Relations, Waste Service NSW

**Mr Charles Munro**, Acting General Manager – Marketing & Business Development, Waste Service NSW

**Mr Tim Rogers**, Executive Director – Sustainability Programs Division, Department of Environment and Conservation

**Mr Neil Chapman**, Director – Local Government Programs, Department of Environment and Conservation

**Mr John Harley**, Manager – Local Government, Department of Environment & Conservation

**Mr Jason Daniel**, Waste Manager, Rockdale City Council

**Mr Les McMahon**, Director of Operational Services, Botany Bay City Council

**Mr John Lawson**, Manager NSW, Global Renewables

**Ms Fiona Stock**, Waste Manager, Kogarah Council

**Mr Garry Dickens**, Environmental Services Manager, Hurstville City Council

**Mr Talebal Islam**, Waste Manager, Randwick City Council

**Ms Melissa Gibbs**, Executive Director, Southern Sydney Regional Organisation of Councils

**Mr David Somerville**, Waste Projects Co-ordinator, Southern Sydney Regional Organisation of Councils

**Mr Frank Klostermann**, Director, Rethmann Australia Environmental Services Pty Ltd

**Mr Ron Smith**, Waste Manager, Sutherland Shire Council

**Mr Paul Macdonald**, Manager – Waste & Recycling Services, Campbelltown City Council

**Mr Sam Gill**, Senior Waste Management Officer, Campbelltown City Council  
**Mr Geoff Green**, Manager – Environment & Health, Camden Council  
**Ms Sue Morris**, Director – Development & Environment, Camden Council  
**Mr Tony Reed**, Group Manager – Public Works & Services, City of Ryde

Conference commenced: 1.00pm

### *Introduction*

**The ACCC Deputy Chair Louise Sylvan** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, Mr Tony Khoury, on behalf of the Waste Contractors and Recyclers Association of NSW (WCRA NSW), to make an opening statement.

### *Opening Statements*

**Mr Tony Khoury**, Executive Director of WCRA NSW, handed the ACCC Deputy Chair a signed copy of the WCRA NSW submission dated 27 July 2004 in respect of the ACCC's draft determination proposing to authorise the Council of Camden, Campbelltown City Council, Liverpool City Council, Wollondilly Shire Council and Wingecarribee Shire Council (the Macarthur Region Councils) to collectively tender for the services of contractors to process, market or otherwise dispose of kerbside collected waste materials (excluding bulky materials). Mr Khoury read his submission to the conference. A copy of the written submission is available on the ACCC's public register.

In summary, Mr Khoury submitted that the ACCC should not accept the submission of the Macarthur Region Councils that the public benefits of the collective tender outweigh the anti-competitive detriment and therefore that the ACCC should not grant any authorisation for the proposed tender arrangements.

Mr Khoury further submitted that if the ACCC does grant authorisation that it should be subject to the following conditions:

- Authorisation should not be granted in respect of the kerbside collection of waste and/or recyclables from domestic residents and its transport to waste transfer stations. Mr Khoury submitted that the application submitted by the Macarthur Region Councils is unclear about whether it is intended that the proposed arrangements extend to kerbside waste collection.
- All proposed contracts should provide adequate lead times to allow for the required approvals to be obtained as possible entry to the market of alternative service providers is limited by the time delays involved in obtaining of approvals to undertake the work envisaged.

Mr Khoury stated that the WCRA NSW is of the view that clarification is required as to the exact definitions of some of the wording used in the Macarthur Region Councils application and reiterated that clarification was required that the application does not relate to the kerbside collection of waste and/or recyclable material from domestic residences and its transport to waste transfer stations, processing facilities and landfills.

Mr Khoury discussed the physical structure of the Sydney market for the disposing of domestic waste, including the dominant position in the market of Waste Service NSW, as the owner and operator of the majority of waste transfer stations and landfills in the greater Sydney area for the receipt of class one solid waste. Mr Khoury stated that the WCRA NSW is of the view that there is little or no competition at present for the disposal of domestic waste from waste transfer stations into landfills or other facilities. Mr Khoury stated that a collective tender may encourage new entrants into the market for waste transfer stations, waste processing and landfills, however the long lead times for the approval process in respect of developing such facilities makes such an outcome problematical. Mr Khoury noted the significant time it has taken Collex Waste Management to obtain all the approvals for a residual waste facility at Woodlawn and the Clyde inter-modal transfer facility and the fact that Waste Service NSW has not secured any additional class one solid waste landfill sites within NSW in the last 20 years.

Mr Khoury submitted that the proposed tender process should be long enough to allow potential new entrants to secure approval to develop alternative facilities.

Mr Khoury stated that the WCRA NSW does not object per se to the Macarthur Region Councils seeking to undertake a collective tender for the services of waste management providers. Mr Khoury explained that the WCRA NSW supports any process which eliminates the enormous work load required in adequately responding to local government tenders by its members. Mr Khoury submitted that as the Macarthur Region Councils can save money on the tender process, so too can the members of the WCRA NSW in their response. Mr Khoury stated that these savings have the potential to result in lower costs for WCRA NSW members and therefore the possibility of lower prices for the provision of services to councils.

However, Mr Khoury stated that the WCRA NSW remains very concerned at the length of term of the contracts proposed to be entered into under the authorisation. Mr Khoury stated that there are only two operators that have capacity at this time to tender for waste transfer and processing services and undertake such work immediately - Waste Service NSW and Collex. Mr Khoury stated that Collex has only one facility in Sydney at Clyde, whilst Waste Service NSW has eight waste transfer stations, three landfill sites, one materials processing facility and one alternate waste processing facility located throughout greater Sydney with several of these sites located within close proximity to the Macarthur Region Councils.

Mr Khoury submitted that if Waste Service NSW is the successful tenderer this could potentially preclude the entry of other possible suppliers of waste disposal services into the market for the life of the contract entered into.

Mr Khoury stated that a recent tender by Fairfield City Council for alternative waste processing, recyclable materials processing and disposal service providers resulted in an outcome not in the best interests of Fairfield rate payers. Mr Khoury stated that the WCRA NSW believes that the tender drafted by the Fairfield City Council was clear in its intent that the activity to which the tender related was the processing of waste and recyclables. Mr Khoury stated that the WCRA NSW understands that the Fairfield City Council only received one tender response. Mr Khoury noted that the Fairfield City Council granted a 20 year exclusive agreement to Waste Service NSW which

included an extension of the services the subject of the agreement to include the kerbside collection of recyclable materials. Mr Khoury submitted that Waste Service NSW has now acquired vehicles and employees to undertake this work. Mr Khoury stated that no tendering of the transport component, including kerbside collection, of this work took place nor did any discussion with other competitors.

Mr Khoury noted that the Macarthur Region Councils are claiming that the following benefits will flow from authorisation to undertake a collective tender:

- Fostering of business efficiencies;
- Better use of resources as a result of industry rationalisation;
- Encouragement of employment;
- The promotion of cost savings;
- The encouragement of economic development and capital investment;
- Improvement in the quality and safety of goods and services;
- The promotion of competition; and
- The development of equitable dealings in the marketplace.

Mr Khoury submitted that the WCRA NSW is of the view that none of the above suggested benefits will necessarily result from a collective tendering process.

In conclusion, Mr Khoury emphasised that it is the WCRA NSW's view that there are no net gains to be made for rate payers by granting authorisation A90886 and requested that no grant be made.

**The ACCC Deputy Chair** asked Mr Geoff Green, on behalf of the applicants, the Council of Camden, Campbelltown City Council, Liverpool City Council, Wollondilly Shire Council and Wingecarribee Shire Council (the Macarthur Region Councils), if he wished to address the conference.

**Mr Green** stated that Liverpool City Council has withdrawn from the application for authorisation and that the ACCC would be formally advised of this shortly.

Mr Green stated that the application was never intended to include collective tendering for kerbside collection services and that the applicants would be more than happy for the ACCC to include a condition on the authorisation precluding kerbside collection services from being included in the collective tendering arrangements. Mr Green clarified that each individual council has its own arrangements in relation to collection contracts.

Mr Green explained that the purpose of the proposed collective tender was to open up the market and provide an opportunity for other potential providers to compete with Waste Service NSW for the provision of waste transfer, process and disposal services.

Mr Green noted the substantial capital investment necessary in order to enter the market for waste processing services and submitted that 10 years would be the minimum contract term necessary to ensure adequate return on such investment.

It was noted that Collex have entered the market for waste processing services with their facilities at Woodlawn, which demonstrates that there are opportunities for other players to enter the market.

Mr Green explained that the existing Waste Service NSW waste management facility at Jacks Gully, which handles the Macarthur Region putrescible waste, has a limited life due to the impact of increased urbanisation surrounding the facility. Mr Green stated that Waste Service NSW has indicated that it will close the Jacks Gully facility in 2007. Mr Green submitted that, given this, the Macarthur Region Councils have decided to tender for the services of waste management providers in an attempt to 'open up' the market.

Mr Green acknowledged that the process of obtaining approvals for new facilities is lengthy and complex. Mr Green further noted that if there is a proposal for an alternative waste technology facility in the region, the approval process will include a lengthy Environmental Impact Statement (EIS) assessment.

Mr Green stated that Campbelltown City Council and Wollondilly Shire Council have indicated in their collection contracts that collection arrangements will contain provisions for interim arrangements for delivery of waste by the collection service provider in the event that new waste transfer and disposal facilities need to be constructed.

In respect of the length of contracts, Mr Green stated that, it is not in the best interests of the community for the councils to enter into short term contracts with waste management service providers as, given the capital investment necessary to establish new facilities, contracts need to be of sufficient duration to allow amortisation of this investment.

Mr Green advised that the Macarthur Region Councils will seek a variation to their application for authorisation to increase the term of authorisation sought from 10 years to 15 or 20 years. Mr Green explained that this extended period is necessary due to the size of the contract needed to attract a new service provider.

Mr Green concluded by stating that the intention of the proposed arrangements is to provide competition in the market for waste management services, not to preclude competition in that market.

**The ACCC Deputy Chair** asked if representatives from any other organisations wished to address the conference.

**Mr Jeff Angel**, Executive Director of the Total Environment Centre Inc (TEC), referred to paragraphs 6.71 and 6.72 of the draft determination issued by the ACCC. Paragraphs 6.71 and 6.72 discuss the ACCC's evaluation of environmental benefits which may arise as a result of the proposed arrangements, particularly the development of alternative waste technologies.

Mr Angel submitted that the Sydney waste management industry now had the opportunity to move away from landfill as a way of disposing of waste towards alternative waste technologies. Mr Angel stated that the TEC regards the benefits of moving away from landfill as highly important, and that these environmental benefits should be given greater regard by the ACCC in its assessment of public benefits of the tender arrangements.

Mr Angel stated that the TEC opposes the development of further landfill sites and explained that the development of further landfill is against the NSW Government Waste Avoidance and Resource Recover Strategy.

Mr Angel quoted from the NSW Waste Avoidance and Resource Recovery Strategy which states:

It is also important to understand that recovering additional tonnages for reprocessing is not going to happen in a regular, linear fashion, with recovered tonnages building up evenly between now and 2014. A more accurate picture will see stepwise progress with periods of time where we largely maintain current recovery levels as we lay the groundwork for the next surge forward. For example, installations of new plants are dependant on investment decisions, satisfying planning and community consultation requirements and sourcing feedstock. Experience to date suggests this can take up to 5 years.

The adoption of the Wright Aggressive Scenario, Scheme 7, is a strong signal to those considering new infrastructure, that appropriate technology and practices should be adopted so that the targets can be met. Clearly, the infrastructure that we will have in 2014 will largely be that which is decided upon in the next few years.

Mr Angel submitted that long terms contracts awarded to waste management service providers who use landfill as a means of disposing of waste will be contrary to this strategy.

Mr Angel submitted that the term 'alternative waste technology' is sometimes applied ambiguously. Mr Angel stated that 'alternative waste technology', in the current context, means a diversion of waste from landfill. Mr Angel explained that in this context 'alternative waste technology' does not mean waste going to a bioreactor or being used as day cover in landfills, which is possible under both the Collex and Waste Service NSW proposals.

Mr Angel stated that the definition of 'alternative waste technology' should be more specific in that it should refer to the implementation of the NSW Waste Avoidance and Resource Recovery Strategy.

Mr Angel encouraged the ACCC, through its final determination, to embrace the target set out in the NSW Waste Avoidance and Resource Recovery Strategy of 66% diversion from landfill by 2014.

Mr Angel requested that, through its determination, the ACCC does not undermine the waste recovery target, but rather reinforce it.

**Mr Tim Rogers**, Executive Director of the Sustainability Programs Division at the Department of Environment and Conservation, stated that the Department of Environment and Conservation has been involved in the development of the Macarthur Region Councils application for authorisation and confirmed that the collective tender arrangements do not extend to the collection of kerbside waste.

Mr Rogers submitted that increasing the recovery and utilisation of materials from the municipal waste stream from their current level of 26% to 66% will require a series of steps, namely:

- improved recovery of dry recyclable material;
- increased separation and recovery of garden organic material; and
- the treatment of residual waste through one of a number of alternative waste technology systems.

Mr Rogers stated that in order for a waste management service provider to establish new infrastructure to meet these targets, guaranteed minimum waste tonnages of 100,000 tonnes per annum and a contract term of 10 years is necessary.

Mr Rogers submitted that if the Macarthur Region Councils proceed to enter into a collective contract arrangement for waste disposal via landfill, then this will close off the prospect of recovery of this waste for the period of the contract entered into.

Mr Rogers suggested that the ACCC impose a condition of authorisation limiting the period of authorisation granted in the event that the arrangements entered into are for disposal of waste through landfill.

**Mr Damian O'Connor**, Manager of Policy and Government Relations at Waste Service NSW, stated that Waste Service NSW supports the application for authorisation lodged by the Macarthur Region Councils.

Mr O'Connor stated that when the Macarthur Region Councils originally advised Waste Service NSW of their interest in moving to a joint tender process, Waste Service NSW supported the process because new waste infrastructure was required in that region and the Macarthur Region Councils clearly indicated their interest in having their waste processed by an alternative waste technology facility. Mr O'Connor further stated that Waste Service NSW specifically agreed to cease putrescible landfilling at Jacks Gully on the clear understanding that the Macarthur Region Councils would move to alternative waste technology.

Mr O'Connor stated that it is therefore the view of Waste Service NSW that any long term regional tender for the Macarthur Region Councils should be for alternative waste technology. Mr O'Connor stated that if arrangements for the use of landfill are entered into, the authorisation should be for a much shorter period of time.

Mr O'Connor also noted that the Macarthur Region Councils have not yet issued an Expression of Interest or Tender document, and therefore Waste Service NSW is not fully informed regarding the Macarthur Region Councils intended future direction.



**Mr Paul Macdonald**, Manager of Waste and Recycling Services at Campbelltown City Council, addressed the concerns raised by the WCRA NSW that the proposed joint tender arrangements may be extended to include kerbside waste collection. Mr Macdonald noted page four of the Macarthur Region Councils application for authorisation, specifically where it states that it is intended 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.

Mr Macdonald stated that the Campbelltown Council's existing arrangements with respect to kerbside collection expire in September 2004. Mr Macdonald explained that the Campbelltown Council is in the process of preparing tender documentation with respect to kerbside collection, and hope to advertise the tender in September 2004. Mr Macdonald stated that, consistent with the proposal the subject of the current application to enter into new waste transfer, processing and disposal arrangements, the waste collection tender documentation will contain clauses providing, if necessary for, different arrangements during the term of the contract. That is, for waste to be dropped off by the collection vehicles at different waste disposal receiving facilities at different points during the contract term: to Jacks Gully waste management facility until 2007; to an interim facility while the new facility is being built; then to the new facility.

Mr Macdonald confirmed that the Macarthur Region Councils will continue to individually contract with collection service providers.

With respect to concerns that a long term waste management contract will advantage Waste Service NSW because it already has the infrastructure in place to tender for the provision of these services, Mr Macdonald stated that long term contracts would actually favour potential new entrants as it would provide the certainty of return to justify the capital investment necessary to provide these services.

**The ACCC Deputy Chair** opened the conference for discussion and invited additional questions in relation to the issues raised.

**Mr Khoury** clarified that the WCRA NSW is not concerned so much about the length of contracts proposed to be entered into, but rather with the lead times required for tenderers to obtain approvals and establish infrastructure to provide waste management services. Mr Khoury stated that long lead times are required, particularly in obtaining approval to establish new facilities. Mr Khoury stated that if the tender timeframe is insufficient to accommodate this, only those service providers with existing facilities will be in a position to respond to the tender.

**Mr Macdonald** clarified that the draft Expression of Interest document does allow for appropriate lead times and that it is the intention of the Macarthur Region Councils to allow sufficient lead time for tenderers to develop the necessary infrastructure.

Mr Macdonald stated that the Macarthur Region Councils have been in contact with CITEA, Thiess Services, Cleanaway and GRD and that none of those organisations had expressed concerns about having insufficient lead time to respond to the tender.

**Mr Angel** stated that the ACCC decision will be a fundamental one in relation to future waste management in Sydney and that the outcome will either promote or severely jeopardise the NSW Waste Avoidance and Resource Recovery Strategy.

**The ACCC Deputy Chair** then called for any further comments. No further comments were made. The ACCC Deputy Chair closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and requesting further submissions reach the ACCC by 20 August 2004. The ACCC Deputy Chair also explained that the ACCC would be writing to those who attended the conference to provide details of how such submissions could be made, as well as to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 2.10 pm