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FILE No:
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15 July 2008

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Subject: Request for Authorisation to Advertise a Regional Tender
Council Ref: F97/00696
Your Ref: C2008/111

Reference is made to Council's previous correspondence dated 15 May and your response dated 2 June 2008 regarding a proposed regional tender for the disposal and processing of food and garden organics.

As previously advised Leichhardt Council is a Local Government body located in Sydney NSW who is also part of the Inner Sydney Waste Managers Group (ISWMG) of Council's. This group consists of 6 Local Government Council's being Ashfield, Auburn, Burwood, Canada Bay, Leichhardt & Strathfield.

The above Council's are hereby submitting an application to the Australian Competition & Consumer Commissions (ACCC) seeking authorisation to proceed with a regional tender for the disposal and processing of food and garden organics and the marketing and sale of any material or products derived from the processing of such materials. Please find enclosed:

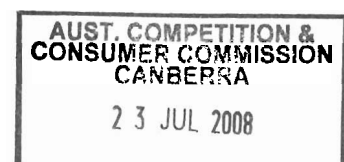
- Form B – Trade Practices Act 1974 – subsection 88 (1)
- Attachment A under the Trade Practices Act 1974 – subsection 88 (1)
- A cheque in the sum \$2500 being the application fee

Leichhardt Council is the lead Council for this project and as such should you require any further information or clarification on the application please contact Council's Manager Works & Waste, Mr Allan Willding on 02 9367 9060, 0418 441 851 or e-mail allanw@lmc.nsw.gov.au

Your earliest determination of this application would be appreciated.

Regards,

Peter Head
GENERAL MANAGER



IMPORTANT

This letter contains important information. If you do not understand it please ask a relative or friend to translate it or come to Council and discuss the letter with Council's staff using the Telephone Interpreter Service.

English

IMPORTANTE

Questa lettera contiene delle informazioni importanti. Se non capisce il contenuto è pregata di chiedere aiuto ad un parente o un amico, oppure La Invitiamo di venire in prersona al Municipio a parlarne con un nostro implegato, utilizzando il Servizio Interprete Telefonico.

Italian

IMPORTANTE

Esta carta contiene información importante. Si usted no la entiende, pídale a un familiar o a un amigo que se la traduzca, o venga a la Oficina de la Municipalidad y hable acerca de la misma con el personal de la oficina a través del Servicio Telefónico de Intérpretes.

Spanish

TIN QUAN TRỌNG

Tin tức trong thư này rất quan trọng. Nếu bạn không hiểu, hãy nhờ thân nhân hoặc bạn bè dịch cho bạn nghe hoặc tới văn phòng Hội Đồng Thành Phố để thảo luận với nhân viên qua dịch vụ thông ngôn điện thoại.

Vietnamese

ΠΡΟΣΟΧΗ

Το γράμμα αυτό περιέχει σπουδαίες πληροφορίες. Αν δεν το καταλαβαίνετε, παρακαλέστε ένα συγγενή ή φίλο να σας το μεταφράσει, ή ελάτε στο Δημαρχείο και συζητείστε το γράμμα με το προσωπικό του Δημαρχείου χρησιμοποιώντας την Τηλεφωνική Υπηρεσία Διερμηνέων.

Greek

重要信息

此信包含重要內容。若有不明白之處，可請親戚或朋友幫助翻譯。或請到市政會來，通過電話傳譯服務與市政會人員討論信的內容。

Chinese

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1)

AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. Applicants

A91096

(a) Name of Applicants:

Council of the Municipality of Ashfield; Auburn Council; Burwood Council; City of Canada Bay Council; Council of the Municipality of Strathfield; Leichhardt Municipal Council

(b) Short description of business carried on by applicant:

The Applicants are all Local Councils as defined by the Local Government Act 1993 acting in accordance with the Council's Charter s(8). One of the service functions of the Council is the provision, management and /or operation of waste removal, transfer, processing and disposal.

(c) Address in Australia for service of documents on the applicant:

C/O Allan Willding

Leichhardt Council

PO Box 45

Leichhardt NSW 2040

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

It is intended that the Councils will jointly tender and contract for the services of a contractor or contractors deemed suitable to provide regional transfer, processing and disposal of food and garden organics, and the marketing

and sale of any material or products derived from that transfer or processing to the respective local government areas.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:
(Refer to direction 4)

Refer to Attachment A (Section 14).

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The goods are the combined and aggregated garden and food waste organics under the control of the Councils, and the services required will be the acceptance and processing of that combined material to reduce residual wastes requiring landfill by reduction treatment and the production of marketable commodities.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Councils are seeking a term of ten (10) years as the initial term of the contract. Contracts of this nature require significant investment of capital by the contractor, and commitment to various practices and collection systems by the Councils and residents, and provide better value when undertaken for at least the period nominated.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

.....
.....
.....
.....

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Refer to Attachment A.

- (b) Facts and evidence relied upon in support of these claims:

Refer to Attachment A.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

Refer to Attachment A (Section 9)

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

Refer to Attachment A (Section 14)

- (b) Facts and evidence relevant to these detriments:

Refer to Attachment A (Section 14)

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Allan Wilding

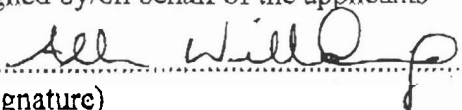
Leichhardt Municipal Council

7-15 Wetherill Street

LEICHHARDT NSW 2040

Dated 23 JULY 2008

Signed by/on behalf of the applicants



(Signature)

ALLAN WILDING

(Full Name)

MANAGER WORKS + WASTE - LEICHHARDT COUNCIL

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

ATTACHMENT A
TO APPLICATION FOR AUTHORISATION BY ASHFIELD, AUBURN, BURWOOD,
CANADA BAY, LEICHARDT AND STRATHFIELD COUNCILS UNDER SECTION 88(1)
OF THE TRADE PRACTICES ACT 1974

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1. PREFACE

This attachment provides supporting information to the Inner Sydney Waste Management Group (ISWMG) of Councils application for authorisation by the Australian Competition and Consumer Commission (ACCC) under the requirements of section 88 (1) of the *Trade Practices Act 1974* to make contract for treatment of their aggregated organics waste stream.

2. EXECUTIVE SUMMARY

The Inner Sydney Waste Management Group of Councils seek a determination for all member Councils to tender and to go to contract for the transfer, processing and disposal of food and garden organics. Councils further seek authorisation for a contract term of 10 years and a collective tender process of at least twelve months.

This application presents member council's of the Inner Sydney Waste Management Group with the ability to provide significant financial, social and environmental benefits to the communities they serve.

The Inner Sydney Waste Management Group believes the following benefits will be derived from this collective approach:

- Promotion of cost savings through cooperative tendering and administration
- Encouragement of economic development and capital investment in organic processing facilities
- Improved quality and safety of organic material for the market
- Promotion of competition in new markets for organics

The success of the regional recycling tender undertaken by the ISWMG (refer to application A90856), and subsequent contractual arrangements authorised by the ACCC, have indicated that the range and type of benefits which flow to the residents and community as a result of this collective type of initiation can be significant.

Public detriments relate to the deduction from open market of a valuable fraction of the Councils waste for a prolonged period, and the potential high costs associated with development of facilities in high land value areas.

It is submitted that the public benefits significantly outweigh the public detriments.

The Inner Sydney Waste Management Group is committed to divert and recycle municipal waste materials ending up in landfill. Food and garden organics wastes have the potential to be a valuable resource when aggregated at this level.

3. BACKGROUND TO APPLICATION

The Inner Sydney Waste Management Group (ISWMG) is a voluntary association of six local councils with shared boundaries which lies within the Sydney metropolitan area.

The constituent Councils are Ashfield, Auburn, Burwood, City of Canada Bay, Leichhardt and Strathfield. Leichhardt Municipal Council has volunteered to coordinate activities as the lead Council for the group. The ISWMG was established to foster co-operative solutions relating to regional municipal waste and resource recovery management. Each of the member Councils is also a signatory to an agreement between them as members of The Inner Sydney Councils Food and Garden Organics Processing Project to seek a long term solution to the processing of co-collected municipal garden and food organics.

The ISWMG recognise the benefits of regional processing and marketing of co-collected municipal food and garden organic waste material, and with the assistance of the

Department of Environment and Climate Change NSW (DECC), will endeavour to collectively put forward a contract to that end.

The local government areas of Ashfield, Auburn, Burwood, Canada Bay, Leichhardt and Strathfield (the Councils) have a regional population of approximately 298,000. In the financial year 2006-07 the region collected 108,000 tonnes of waste material through kerbside collections, with food and garden organic waste material comprising an estimated 40,000 tonnes of that material.

Drivers

- *Waste Avoidance and Resource Recovery Act (2001)*
- *Waste Avoidance and Resource Recovery Strategy (Update 2006)*
- Continuing published increases to the contributions by waste facility licencees under Section 88 of the Protection of the Environment Operations Act (1997) "the Waste Levy"

The preparation and approval of an application for authorisation is seen by all Councils as an important pre-requisite to proceeding with the collaborative tender process. Conditions arising from any authorisation will influence both the substance and form of the eventual contract.

Please find attached a map of the regional area indicating the constituent Councils

4. THE PROPOSED TENDER AND CONTRACT

Type of Contract:	Acceptance, Processing and Marketing, and Disposal of nominated Waste Type(s)
Supply Material:	Aggregated Garden and Food Organic Municipal Wastes
Tender Process Period:	12 months
Term of Contract:	10 years

The scope of the collaborative tendering process now proposed by the constituent Councils of the Inner Sydney Waste Management Group includes the tendering for the processing and marketing of food and garden organics, and disposal of any residual waste material remaining from these activities. As in previous applications of this nature the Councils seek authorisation for a contract term of 10 years and a collective tender process of at least twelve months.

It is intended that individual Councils will continue to remain responsible for the collection and transportation of waste materials to any processing facility awarded a Contract arising from the tender process.

It is anticipated that the contractor will be responsible for

- accepting aggregated food and garden organic waste at a facility designed and licenced for that purpose;
- processing and marketing of any organic material so delivered with the intention of reducing the biologically active component of the waste, managing any greenhouse gas emissions resulting from the decomposition of the organic material, and producing organically based products for resale;
- disposing (if necessary) of any remaining waste materials fraction delivered to the contractor's facility to an appropriately licenced waste facility.

A representative from each of the Councils forming a Contract Management Committee will deal with the Contractor on matters specific to the respective councils. This Committee

will work with the Contractor on contractual issues that apply to the entire region. Transfer from existing collection and disposal contracts will be phased to occur as existing arrangements permit.

There are no current existing waste organics disposal contracts to which any of the ISWMG Councils are a party. Currently, all ISWMG Councils deliver garden organics to WSN Environmental Services at Chullora, a facility located outside the region. The deliveries are on a gate-fee basis only.

Disposal contracts for mixed-waste garbage containing food organics currently only exist for Ashfield Council as a party. This contract is a guaranteed fee per tonne rate, and does not stipulate that supply include any particular waste type. Consequently, the food organics in their respective waste streams can be diverted by all Councils to an aggregated food and garden organics waste supply at a time judged most appropriate to alter their individual waste collection services.

Tenders for the regional contract will be assessed based on price and the assessed performance of the processing and marketing solutions offered. This approach allows the Councils to make key decisions when fully informed by the tenders submitted, rather than when preparing the tender documents. These decisions include:

- How should the materials be collected and streamed?
- Should the gate fee for accepting waste materials vary with level of contamination?
- If so, how should the level of contamination be measured and managed?
- How many receiving points are required and where will they be located?
- What combination of processing technologies is most appropriate to the Councils needs?
- What products can or should be created from the waste materials collected by the Councils?

It is envisaged that the contractor operating the facility would have high incentive to develop a full suite of products from the organics processed, in order to minimise the impact of costs involved with disposal of any unused fraction (including waste levy payments in the current regulatory scheme). Other fractions that may require disposal would be contaminants present in the stream, which can better be managed at the point of collection.

The Councils involved will be seeking to tender for a process of the organics that yields at least some fraction as high-end compost and soil conditioners, and other fractions suitable for application to Council-owned amenities such as sporting fields and parks. Closing the loop in this manner will increase the dependability of market for the processing contractor, and improve Council's triple bottom line for sustainable environmental practices.

In the event that any Council chooses not to participate in the contract, the remaining Councils may seek a second round offer from the contractors based on those Councils which have agreed to accept the tender. In this event contractors will be able to either:

- offer a revised schedule of rates for services, or
- withdraw from the tender

The parties have signed a Memorandum of Agreement as participants in The Inner Sydney Councils Food and Garden Organics processing Project with the objective to commit the participants to develop a tender and contract that provides a medium to long term sustainable solution for regional economic, social and environmental processing of source separated food and garden organics. The Agreement ensures a basis for

- Commitment to enter mutually beneficial contract;
- Management of the collective tender process; and

- Ongoing management of the contract.

The objectives of the proposed regional arrangements are to ensure that:

- the principles of Ecologically Sustainable Development are applied;
 - maximum avoidance, reduction and diversion of waste materials from landfill is achieved;
 - the greatest quantity of recoverable material and/or energy is obtained from waste materials collected at kerbside to improve the viability of a processing facility;
 - the material recovered is recycled or reused at their highest resource value;
 - there is transparency of information relating to the gross and net through-puts of waste materials;
 - overall transportation and materials handling efficiencies are improved (to provide better economic and environmental outcomes);
- reliable markets for recovered materials are supported and the Councils are not exposed to price variations in the market place during the contract period;
- residents are fully and regularly informed about how to source separate waste materials, what to source separate and the outcome of their resource recovery efforts;
 - value for money is obtained.

It is likely that some of these objectives will need to be balanced against others when designing the optimum processing and marketing solution for food and garden organic collected materials.

5. PREVIOUS APPLICATIONS

The Councils application is made with reference to three previous Applications for Authorisation, with the assistance of DECC (formally Resource NSW), one made on behalf of the Southern Sydney group of Councils, one made by Councils of the Macarthur Waste Board and one made by the Inner Sydney Group of Councils (authorization numbers A90861, A90886 and A90856 respectively).

The ACCC determined that the proposed conduct of these three applicants 'is likely to resulting a benefit to the public' and 'that benefit is sufficient to outweigh the detriment to the public constituted by any lessening of competition resulting from the proposed arrangements'. As a result the Commission granted authorisation for the applicants to proceed with their proposed conduct for a contract term of up to ten years.

6. TYPE OF ORGANIC MATERIALS TO BE RECOVERED AND DISPOSED

6.1. ORGANICS—(GENERAL OVERVIEW)

Organics waste material source-separated for collection is dominated in the Sydney waste collection market by material usually termed 'garden organics' and consists of: putrescible garden organics (grass clippings); non-woody garden organics; woody garden organics; trees and limbs; and stumps and rootballs.

The primary reason for source separation and collection of organics material is that it can be composted (biodegraded through aerobic decay). A secondary reason is possible generation of combustible gases such as methane in the decomposition of organic material, which can be used in the generation of electricity from non-fossil fuel sources. Source separation is also intended to systematically reduce the levels of contamination in

the organics stream. Although plastics are organic they are not compatible with composting systems and are defined as a contaminant when found in the organic waste stream. Other common contaminants include treated timber, garden hoses, garden pots (from pot plants) and bags of mixed waste (that should correctly have been placed in the garbage bin). Contamination can interfere with both compost and biogas production outcomes. Overall contamination in the Sydney region is approximately 1-2% in material collected from the kerbside and less than 1% in material dropped-off at supervised waste management centres.

Where a mobile garbage bin (MGB) is provided the size of woody materials is usually limited by the space available in the bin. In other cases residents may be asked to pay a fee or go to a private service provider for collection and/or disposal of material over a certain diameter.

All of the ISWMG Councils currently provide a MGB for their residents to dispose of garden organics. Leichhardt Council also provide facilities for residents to drop-off garden organics.

Kitchen scraps and other highly putrescible wastes from a household can be co-collected with garden organics for combined composting; however this may cause environmental problems in some commercial scale composting systems. If the proportion of putrescible organics is too high composting systems with insufficient environmental controls (non-enclosed systems) may generate excessive odour and leachate. Such problems might cause facilities to breach their license conditions.

Systems designed and dedicated for processing of co-collected organics material are cognisant of such conditions and appropriately designed enclosed facilities handle the treatment of waste. Such facilities are typically highly modular and can be scaled to suit regional conditions and levels of waste materials.

One of the side benefits of co-collecting food and garden organics materials in a source separated collection is that the weight of material in the mixed residual waste bin (garbage bin) is significantly reduced. This leads to a reduction in disposal costs and landfill space demand, and in some cases may permit Councils implementing such systems to reduce the number of collections for garbage thus lowering the number of vehicles using local residential roads.

6.2. AVAILABLE SUPPLY OF FOOD AND GARDEN WASTE MATERIALS

Based on the most recent data, Councils are currently collecting the following annual levels of material in their waste streams. The food organics is currently collected as a fractional part of the mixed waste in the garbage bin. However, both Leichhardt and Canada Bay Councils have recently completed trials of co-collected food and garden organics in MGBs with excellent results, indicating the viability of such systems in the region. The following Table 1 indicates current levels of food and garden organics available for supply under the proposed contract.

Table 1: Food and Garden Organic fractions in current Council waste streams

COUNCIL	Households	Organics Collection system	Garden Organics (T/annum)	Food Organics (T/annum)
Ashfield	15,739	Garden Only: 240L MGB fortnightly (optional service)	1,129	4,564
Auburn	21,337	Garden Only: 240L MGB fortnightly	3,233	5,003
Burwood	10,500	Garden Only: 240L MGB fortnightly	2,200	2,160
Canada Bay	29,900	Garden Only: 240L MGB fortnightly (single dwellings only)	4,195	5,600

Leichhardt	23,979	Garden Only: 240L MGB fortnightly (also collapsible box, tie/bundle larger items)	1,500	4,583
Strathfield	11,455	Garden Only: 240L MGB fortnightly (single dwellings only)	150	3,633
			12,407	25,543
			37,950	

7. EXISTING AGGREGATED ORGANICS PROCESSING INFRASTRUCTURE

While there are several facilities for processing separated garden organics only, or for some processing of food organics mixed with other household solid wastes, currently in the Sydney region there are limited options for the processing of co-collected garden and food organics.

At Camellia, the EarthPower facility generates renewable source electricity from the "landfill gas" produced by fermenting organic wastes. The facility was designed to process separated food organics only, and has extremely limited capacity to accept this mixed with garden organics.

Penrith Council have awarded a contract to SITA Environmental Solutions to build, own and operate an organics processing infrastructure at SITA's Kemps Creek industrial landfill site. The facility is currently under assessment. The indicative completion date has been given as April 2009.

A successful tender and contract for a facility to process aggregated food and garden organics would be of great benefit for the inner Sydney region, addressing the lack of competition in this area of waste infrastructure.

8. SALE AND OWNERSHIP ARRANGEMENTS

When a Council enters into a contract with a service provider for the collection of waste materials, a decision is made whether the Council or the contractor will accept ownership of the material. Where a Council collects the material, it will own the material, and where a contractor collects the material, the Council or the contractor may own the material.

The individual Councils in the ISWMG will need to contest and then introduce a co-collected food and garden organics kerbside collection system, most likely to be timed to coincide with the expiry of current contracts for collection services. The ability of any processor to facilitate or manage this staggered introduction will form part of the key assessment criteria for the proposed tender. It is anticipated based on current contractual arrangements that this introduction of new collection systems would be completed throughout the region by 2011. Both Leichhardt and Canada Bay Councils have already trialled co-collection systems to assist the regional group with the specifications for any future collection system tender. DECC have also compiled research on benefits and challenges in co-collection systems of varying inclusions of food organics (to the extent of assessing impacts if meat and dairy included or excluded) from a range of Councils in Australia and New Zealand which will contribute to any deliberations over service specifications.¹

¹ *Co-Collection of Domestic Food Waste and Garden Organics: The Australian Experience*, Department of Environment and Conservation NSW, 2007.

8.1. CHANGE OF OWNERSHIP

When material is delivered to a waste management facility ownership typically changes at the point of delivery to the owner/operator, usually at the time the load is weighed at the gate. In general, each collection vehicle is weighed inwards and outwards to determine the net weight of each load and Councils are then issued an invoice for payment to the owners of the facility.

The gate fee is based on a cost per tonne (\$/t) paid by Council to the facility owner to cover costs associated with the handling, sorting and processing (or disposal). Since the level of disposal of residual material and contaminants from the source separated aggregated organics stream is not envisaged to be a high fraction of the total, it is envisaged that most processing contractors would absorb the reasonable costs of landfill disposal within their nominated gate fees. The cost to recover resources from the waste stream is generally greater than their value, therefore it is envisaged that Councils pay the processor and marketer rather than receiving payment for the waste materials delivered.

8.2. RESOURCE RECOVERY

After biological or some other form of processing, composted food and garden organics may also be screened and mixed with other recycled or mined raw materials like sand to produce a soil conditioner designed for a variety of customers and uses. The soil conditioner is predominantly sold in bulk (\$/t), however it may be bagged and sold as specialty potting mix or mulch through outlets like nurseries.

Other uses have included mining site rehabilitation material, alternative daily cover at landfill sites (replacing soil or excavated material), landfill closure rehabilitation material, erosion impeding cover for excavations and road development. The DECC continue to investigate more extended uses and work with Councils, processors and end users to increase market openness.

8.3. SUPPLY AND DEMAND

A guaranteed supply of a critical mass of material can significantly affect the cost of processing and marketing. Under the proposed arrangement the successful contractor can have some level of confidence in knowing how much material will be received over the period of the contract and is therefore able to provide a higher level of sorting and processing capability (investment) and secure the long term markets which will deliver the economic stability that the Councils are seeking.

8.4. FORM OF THE REGIONAL CONTRACT

Under the Regional Contract it is proposed that all material supplied to the Head Contractor will become the property of the Head Contractor. Once the material has been processed, the Head Contractor will sell a range of commodities into the marketplace to end users. Individual Councils in the regional contract would have nominated for supply of some fraction of material for their own local government area amenities, forming a secured part of the cost and price structure of the Contract.

The Head Contractor will enter into an agreement with each Council for the acceptance of aggregated food and garden organics based upon a range of factors, including:

- The system of collection used by each Council;
- The timing of full participation in the contract by each Council;
- Quantity of waste material supplied; and
- Quality of waste material supplied.

The success of the tender process will be measured, in part, by the capability of proponents to demonstrate that Councils will benefit financially under the regional arrangement. This may mean that, in relation to the supply of material, Councils would

either materially benefit with an improved acceptance rate in \$/t or a reduced distance to receival facilities.

The Department of Environment and Climate Change NSW (DECC) has a preference for long-term secure market arrangements in order that Councils have financial and budgetary certainty. This will ensure that collection programs will continue uninterrupted for the duration of the arrangement. However, it is recognised that a Head Contractor has the right to have a mix of long-term and spot markets to secure the most favourable financial outcome.

9. MARKET DEFINITION

There are currently three separate markets for kerbside collected waste materials, one for each stream commonly collected at the kerbside (DRM, garden organics and residual mixed waste, including food organics). There is a developing market for co-collected food and garden organics. In all cases the 'service' is the provision of accepting, handling, processing and disposal (by sale or otherwise) of waste materials.

Markets for kerbside collected waste materials are currently in transition. Historically there were no competitive markets for disposal of waste to landfill, and until recently there was little competition for Class 1 landfill disposal (Class 1 landfills are licenced to accept putrescibles material) with the decline of Council owned and operated landfills in Sydney.

WSN Environmental Solutions operate four Class 1 landfills in Sydney metropolitan area to provide disposal of kerbside collected residual mixed waste, together with a number of transfer stations widely located which service those landfills.

WSN have also contracted Global Renewables Ltd to operate a waste treatment facility at Eastern Creek on their behalf, and also in their own right have in development another waste treatment facility at Jacks Gully, Narellan. These facilities are designed to process mixed residual waste to recover resources such as recyclable material and organic material, and produce biogas to power electricity generation. In the case of the Eastern Creek facility, it can also accept and process a certain level of garden organics along with the mixed waste stream. Access to these facilities is largely restricted to contracted users.

Direct competition for landfill began in 2005 with the entry in to the Sydney market of the Veolia Environmental Services bioreactor Class 1 landfill at Woodlawn, south of Goulburn, NSW. Veolia operate an intermodal transfer station at Clyde to transport Sydney waste by rail link to another transfer point near the Woodlawn facility. Veolia have indicated that they will upgrade Woodlawn to permit a measure of resource recovery at the site direct from the delivered waste, including tapping at least some of the biogas arising from decomposition of organic waste fraction within the garbage.

SITA Environmental Solutions have made application to develop a waste treatment facility at Kemps Creek in Sydney's west which will process mixed residual waste for similar recovery of resources as WSN. This proposal also includes the development of the facility to accept source-separated aggregated food and garden organics for processing. Access to this facility will likely be restricted to contracted users.

There is at least one other waste treatment facility tender currently in the market which has the object of servicing the putrescibles waste processing needs for the combined Councils of Parramatta, Holroyd and Bankstown. The tender has only recently closed and the outcome or preferred treatment technology is as yet unannounced.

9.1. MARKET FOR FOOD AND GARDEN ORGANICS

The market for processing of kerbside collected food and garden organics, like the market for DRM, has grown out of the need to divert waste from landfill and recover useful resources. As noted earlier, the market for kerbside collected organics is currently dominated by the source separated garden organics systems, with co-collection of food

and garden organics systems just moving out into the contested service market from trial systems.

Not all Sydney metropolitan area Councils currently provide a kerbside garden organics collection using an MGB. Some Councils encourage residents to maintain their own compost heaps or buy specially designed home composting kits rather than introduce a MGB based collection system.

Those councils that choose to offer a kerbside collection service typically collect source separated garden organics in such large quantities that the use of a contractor specializing in composting and marketing the organic product becomes viable and even desirable. Unless the material is composted under carefully controlled conditions there is a risk that the organic product will spread plant pathogens and active weed seeds wherever it is used. This creates a potential liability for any Council that distributes chipped, mulched and/or poorly composted organic materials.

There are a range of companies that can accept and process garden organics as a source separated material. The Sydney market is currently dominated by dedicated compost-type production companies such as ANL (Australian Native Landscapes Pty Ltd) and Camden Soil Mix.

These companies primarily process garden organics using windrow composting methods. This is an outdoor process that relies on mechanical turning of the rows of shredded material to produce soil conditioners with varying levels of quality. Greenhouse gas emissions are managed by ensuring this aeration process supplies a sufficient level of oxygen to reduce the production of potent greenhouse gases such as methane.

To fully enclose such garden-organics only facilities and capture all rogue released greenhouse gases is not likely to be a market-wide owing to capitalisation required, at least so long as regulation permits windrow composting methods. WSN Environmental Solutions is developing some enclosed garden-waste composting systems at the Macarthur Resource Recovery Park at Jacks Gully, in order to complement the AWT treatment technology on the same site that operates more efficiently with lower levels of garden organics in the mixed waste stream feedstock.

However, enclosed facilities can accommodate food organics as well as garden organics, and the increased emissions that these organics entail, by using known technologies such as biofiltering. This enclosed method allows an increase in available market supply of material needing treatment and related fees to support the operation of the facility.

Facilities such as Earthpower to increase biogas production for energy recovery seek a balanced mix of food organics with high protein content (such as meats) which increase biogas yields from decomposition. Earthpower thus sources its feedstock from commercial food production sources far more than Council supplies to ensure minimal contamination and more consistent components in supply.

The addition of food organics may also lead to increases in nutrient levels in soil conditioning products that may result from the processing.

Enclosed facilities designed to process aggregated food and garden organics compete to a degree with AWT facilities for these two sources of organic waste. The AWT facilities at Eastern Creek and Jacks Gully both rely on organic materials in the mixed waste stream to generate biogas from anaerobic digestion of the waste during processing, which in turn is used to power electricity generation.

9.2. GEOGRAPHICAL BOUNDARIES

The geographical boundaries of the markets are defined mainly by limitations on transport distance. Processing infrastructure outside the Sydney metro area cannot compete for garden or aggregated food and garden organics from the Councils because these materials are too heavy and bulky to transport over long distances in an unprocessed form. A notable exception is Veolia's bioreactor facility at Woodlawn, which has been located to take advantage of rail infrastructure. However, this infrastructure is designed to

accept mixed wastes with varying ratios of food, garden and non-organic materials. The facility is not currently designed for handling and processing source-separated food and garden organics. The facility is currently also capable only of recovering a percentage of biogases for energy production rather than producing soil conditioning products, although this may change in the future depending on development applications in process.

10. EFFECT ON COMPETITION

The applicant's acknowledge that the arrangements as set out above may potentially be construed as infringing section 45(2)(a)(ii) of the Trade Practices Act 1974. The applicants submit, however, that the proposed arrangements do not have the intention or purpose of substantially lessening competition. What remains for consideration is whether the proposed arrangements would have the likely effect of lessening competition as a result.

10.1. TIMING

There is no current service provider that could accept and process the entire food and garden organics waste stream from the Councils immediately. Earthpower could potentially accept a limited fraction of the material at short notice. The SITA facility being built at Kemps Creek might be in a position to accept some material from the middle of 2009.

In other cases, it is most likely that competitors would be tendering to secure land, seek planning approval and construct a processing facility, with a timeframe of one to three years. Sufficient timing must be permitted in the tender development and assessment period to allow the entry of maximum competition in the tender.

Waste facility planning has been clarified recently, with the release of the NSW Infrastructure SEPP. The Department of Planning has updated definitions relating to waste disposal facilities, resource recovery facilities and waste or resource transfer stations in its Standard LEP instrument. The facilities are now designated acceptable land uses in an increased range of zonings. The clarification of permitted use for waste and resource recovery facilities greatly reduces the need for developers of these facilities to enter lengthy development proposals to alter zonings to permit such facilities, and significantly reduces the time needed to obtain such decisions.

It is not likely that the envisaged facility would meet the criterion of >75,000 Tonnes per annum resource recovery that would include the facility planning in the Major Projects SEPP, but this remains a possibility.

Table 2: Timetable for the proposed tender process

Task	Duration	Likely date(s)
Application to ACCC	6 months	July 2008
Prepare tender documents	4 months	After determination from ACCC
Advertise tender and prepare response	4 months	Subject to approval & date of determination from ACCC
Close tender	2 Months	Subject to above
Assess tender	2 months	Subject to above
Award contract	1 month	Subject to above
Develop Food and Garden Organics Processing Facility	Minimum 18 months	Subject to whether the successful tenderer has existing infrastructure in place or has to build new

Start to receive food and garden organics	Staged	As existing Council disposal contracts expire
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11. GUARANTEED SUPPLY AND CRITICAL MASS

By collaboratively tendering the Councils will provide a critical mass of waste organics supply sufficient to allow organisations without established infrastructure, or with innovative technologies, or lacking a secure supply of waste organics from other sources, to submit a competitive tender. Therefore it is submitted that a likely effect of the proposed collaborative tendering process is to increase competition relative to existing market arrangements.

Determining exact levels for critical supply is difficult, as the criticality depends on a secure supply per year over a number of years affected by the capital cost of the facility, dependent in the Sydney market upon real estate supply and demand. Currently, AWTs in Sydney have been built upon existing landfill sites, reducing the land component of a project's total cost. Such facilities also have the advantage of a readily accessible licenced landfill. Both SITA Environmental Services and WSN Environmental Services have tendered to other Councils using these advantages in the market.

These previous tenders were based on nominal supply of mixed residual waste (including food) in a range from 52,000 to 65,000 tonnes per annum, with minimum ten year contracts being contested. The AWT facilities tendered were designed to be able to process from 90,000 to 100,000 tonnes per annum, indicating that potential processing contractors were prepared to enter the market based on a minimum contracted supply of at least 50% of total available processing capacity. In a non-contested scenario, the UR-3R facility was developed with a foundation partner Council supply of around 50,000 tonnes per annum for a facility of 175,000 tonnes per annum capacity. The UR-3R foundation partner also entered an agreement for a period of twenty years.

Since these figures are for AWT facilities designed to process mixed waste rather than source separated food and garden organics, which should yield higher value end products, it is envisaged that the 40,000 tonnes per annum proposed by the Councils constitutes a minimum critical supply for the development of processing infrastructure.

With guaranteed supply across a ten year period, processors can invest in more efficient equipment and amortise the development cost across greater supply of processing material, with corresponding lowering of gate fee in terms of \$/tonne.

Without the collaboration of the Councils to offer a secured critical supply of material, it would remain with individual Councils to attract service providers with established facilities. Currently, the only facility that could process the material is in development and located well outside the region. The impact of transporting the material that distance would be highly negative in that time safety limits for drivers would preclude multiple loads per shift being undertaken, increasing labour or collection vehicle costs.

11.1. EFFECT ON SUPPLY

By collaboratively tendering, the Councils reduce the number of potential individual suppliers of kerbside co-collected food and garden organics. The aggregation of source separated food and garden organics will also reduce the financial viability of the mixed residual waste stream from those Councils, by separating off the sought after organics fraction in that residual waste stream.

It is submitted that the aggregation of food organics with existing supply of garden organics will increase the value of the aggregated organics stream.

It is further submitted that the Councils represent only a small proportion of the overall supply of waste organics. The Councils supply of aggregated food and garden organics comprises approximately 40,000 tonnes per annum, of a Sydney metropolitan area in

which Councils collect a current estimated total of approximately 416,000 tonnes per annum, or approximately 10% of current Council supply (not all of which is source separated and available as an individuated waste stream, but is accessible to recovery using existing AWT technology).

In addition, there is a substantial supply available to the market of waste organics from private generators (and therefore potential suppliers) of food and garden organics. In 2004-05 the commercial/industrial sector in the Sydney metropolitan area generated an estimated 250,000 tonnes of food waste. AWTs such as Earthpower generate electricity from biogas derived almost exclusively from commercial organic waste sources.

Given that the drivers for Councils to introduce source separated garden organics, and give consideration to co-collection of food organics, will be defined by the same State strategy targets and financial pressures from landfill prices, it is unlikely that acting individually or collaboratively would affect the net supply. The aggregated organics waste would need to be treated or diverted from landfill to meet the impacts of those drivers. The market stands to benefit from a collaborative tender in terms of providing critical supply to render facilities viable and encourage competition into the regional market. Without a collaborative tender the individual Councils would likely be faced with high transportation impacts to deliver to facilities remote from the region which would negate any positive aspects.

12. COMPETITION IN DOWNSTREAM MARKETS

The downstream markets for soil conditioners and fuels for energy production (gas or solids) are all substitutable with virgin supplies of the same or similar material and therefore compete with those materials.

Markets for soil conditioners include a much larger range of buyers and depend greatly on supply of quality product designed to the specific needs of customers. Anecdotal evidence indicates that this market, particularly for low quality mulches or contaminated organics, is likely over-supplied at this time. In particular there are few markets for the low grade compost materials produced from AWT processing residual waste (mixed solid waste).

DECC is working hard to develop improved markets for recovered organics resources, and has a dedicated and funded program within the department specifically to undertake this role. As noted elsewhere, the Councils are proposing a contract which would allow them to access some of the processed organics for use on their own amenities such as sporting fields and parks.

A higher grade product can be produced from a source separated aggregated food and garden organics stream such as would form the supply for the envisaged contract being the subject of this application. The intention is for agricultural usage. The market for such material cannot yet be fully defined, as regulations governing the use of waste derived soil conditioners are in development but have not to date been promulgated by the State government. Potential further markets are embryonic for use of the processed material to sequester carbon for greenhouse gas reduction purposes. The scale or financial viability of such a market cannot be gauged until further details of any national emissions trading scheme are published.

An energy product from waste is entirely substitutable with energy from traditional sources such as coal. Waste management solutions that include energy from waste have been encouraged over recent years in an effort both to reduce greenhouse emissions and produce energy from 'green' sources. This is despite the fact that waste to energy is not strictly a renewable source of energy. As a result government agencies have distributed grants to some technology and service providers to assist waste to energy projects.

It is submitted that the successful processor(s) and marketer(s) of waste materials from the Councils will have insufficient market power to negatively influence any of the downstream markets. The only possible exception is the market for soil conditioners,

which may be sufficiently over-supplied to be influenced by the increased diversion of garden organics predicted under the contract. In such a case, use of organic waste to generate fuels and energy would increase in viability.

13. PUBLIC BENEFITS CLAIM OF A REGIONAL CONTRACT FOR COUNCILS

The proposed contract will bring about numerous benefits to the general public. In summary they are:

- Improved coordination of organics collection services between the Councils; leading to an,
- Increased efficiency of service provision and minimisation of costs to Councils;
- Improved resource recovery infrastructure available for domestic generated food and garden organics, particularly arising from improved economies of scale only available under a contract which allows for aggregation of critical supply;
- Increased transportation and materials handling efficiencies; and
- Increased resource recovery, and improved greenhouse gas management, leading to environmental benefits.

The beneficiaries will be:

- Member councils and the communities served by the member councils
- Waste industry businesses willing and able to tender for this contract or part thereof
- End market businesses which could process and remarket materials recovered
- Broader market businesses seeking sources of tradeable greenhouse gas emissions offsets

The distribution of benefits will be:

- Reduction of disposal costs to member councils
- Expanding market for high quality organics
- Development of infrastructure to deal with specific council needs
- Reduction of greenhouse gases released to the atmosphere arising from the member Councils waste contributions
- Potential for Carbon offsets to be generated on behalf of member Councils in relation to their waste contributions.

13.1. INCREASED COMPETITION

As discussed in the previous section, it is likely that the proposed arrangements will increase competition for the waste materials collected by the Councils. The existing market is one in which a single (government owned) company has market dominance and must be regulated by both the ACCC and the NSW State Government in order to control the cost of disposal. The proposed arrangements allow the waste management industry to get one step closer to an open and competitive market where councils and private waste generators can seek the most efficient solution from a range of potential service providers relying on a suite of technological and innovative solutions.

Additional processing of organics waste would provide an incentive for waste processing companies to invest in research and development of waste processing technologies and efficiencies of existing technologies, as well as research to improve the marketability of end products created from the waste stream, so as to avoid landfill costs and levies.

There will also remain a number of uncontracted Councils located close to the ISWMG region which the processor may take into account for the locating and scale of any facility, with a view to competing for supply from a currently available but securable supply based on competitive gate fees together with beneficial location for delivery.

13.2. EFFICIENT SERVICE DELIVERY

The proposed contract will provide a formal mechanism for coordination between six Councils and processors and marketers of waste materials. Without such an agreement between the parties individual councils would establish and maintain individual contracts with each service provider, each one of them constructed and managed in different ways. Apart from the obvious advantages of having a fifth of the contracts to write, agree upon and manage, there is the potential for improved coordination of the collection and disposal services across the six councils.

For example, consistency in the type of organic collection bin means a consistent mix of organics is delivered to a processing facility, requiring only one configuration of equipment. Consistent messages to the public using the same promotional material can also assist in reducing contamination and increasing yield. Such consistency can reduce the necessary infrastructure and therefore increase the processing efficiency.

Centralised processing and handling of materials in bulk is likely to increase transportation and materials handling efficiencies. As pointed out in earlier discussions regarding supply of a critical mass of material, fully utilising key infrastructure and equipment allows service providers to charge a lower gate fee per tonne of material delivered. This is particularly advantageous for the smaller councils who, on an individual basis, either have to be satisfied with less efficient infrastructure or must transport their material in an unprocessed form over long distances.

13.3. APPROPRIATE INFRASTRUCTURE

With a secured supply of aggregated organics, across a sufficient period to amortise costs, and with consistency in terms of delivery, mix of organics and source separation at the household subject to similar behaviour messages, the processor can tailor infrastructure to best suit those known conditions.

The site can be located sufficiently close to the region to minimise transportation costs as a trade off for gate fees including the amortisation cost of higher land value. The processing can be tuned to the presented levels of food organics over garden organics in a region with an increasing reliance on higher intensity residential development. The scale of the facility can be more individually tailored for the region.

13.4. RESOURCE RECOVERY AND ENVIRONMENTAL BENEFITS

The stated aim of the proposed arrangements is to divert waste materials from landfill and convert them, at a cost, into a resource of some economic value. This aim is partially driven by the lack of landfill space in the SMA and the difficulty in locating sites for new landfills. State Government resource recovery targets, the latest municipal sector target being 66%, have also provided an incentive. However, a key motivation for the Councils is resource recovery leading to reduced resource use and lower environmental impact.

While not yet quantifiable, there exists potential for high environmental gains to be made in terms of ameliorating or capturing greenhouse gases (GHG). Even if that GHG reduction is not the primary aim, the elimination of odour associated with processing of organic waste would provide this as a beneficial outcome. In the near future, the selection of such technologies for processing may be of direct financial benefit to Councils depending upon the structuring of carbon offsets within the proposed national emissions trading scheme.

The infrastructure that will be developed under the proposed arrangement replaces or improves upon landfilling, an inherently environmentally risky activity. Landfills potentially produce greenhouse gases, offensive odours and leachate with the potential to pollute

surface and groundwater. Increasing the recovery of organic material and converting it into a resource input to the economy reduces the need to extract virgin materials and returns valuable nutrients to public parks and gardens and intensive agriculture. Developed countries world-wide have recognised the public benefit of recycling and, more recently, have moved towards technologies for recovering resources (including energy) from mixed solid waste.

14. PUBLIC DETRIMENTS

- The proposed contract removes the more valuable fraction of the ISWMG region's waste stream from being contested by other processors in the waste processing market for a period of at least ten years.
- The proposed contract will be highly likely to attract a tender based on delivering a new infrastructure close to if not located within the region. While changes published by the Department of Planning have clarified the availability of certain land zonings for use by waste and resource recovery facilities, the continued high cost of land near the region might demand higher prices for organics processing in order to amortise those costs by the processor.

15. GLOSSARY OF TERMS

"ACCC"	Australian Competition and Consumer Commission
"AWT"	Alternative Waste Treatment (sometimes also Technology)
"DECC"	Department of Environment and Climate Change NSW
"DRM"	Dry Recyclable Material (as opposed to "wet" organics recycling)
"MGB"	Mobile Garbage Bin

Food and Garden Organics Regional Disposal Contract

