

Our reference
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567 Collins Melbourne VIC 3000
GPO Box 9925 Melbourne VIC 3001
Tel +61 3 9672 3000
Fax +61 3 9672 3010
www.corrs.com.au

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Sydney
Melbourne
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By email: theo.kelly@accc.gov.au

Mr Theo Kelly
Senior Project Officer
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Special Counsel
Alistair Newton (03) 9672 3483
Email: alistair.newton@corrs.com.au

Contact
John Yiannakou (03) 9672 3277
Email: john.yiannakou@corrs.com.au

Dear Mr Kelly

Loddon Mallee Waste and Resource Recovery Group – authorisation applications A91596 & A91597

As you know, we act for Loddon Mallee Waste and Resource Recovery Group (**LMWRRG**) in relation to the above applications for authorisation (together, the **Application**).

This letter sets out LMWRRG's response to the following interested party submissions received by the Australian Competition and Consumer Commission (**ACCC**) in respect of the Application:

- a submission from Cleanaway Waste Management Limited (**Cleanaway**) dated 18 September 2017 (**Cleanaway Submission**);
- a submission from the Victorian Waste Management Association (**VWMA**) dated 4 September 2017 (**VWMA Submission**); and
- a submission from J.J. Richards & Sons Pty Ltd (**JJR**) dated 30 August 2017 (**JJR Submission**).

In responding to these interested party submissions, this letter generally does not seek to repeat information already provided to the ACCC by LMWRRG and the local councils of the City of Greater Bendigo, Buloke Shire, Gannawarra Shire, Loddon Shire, Mount Alexander Shire Macedon Ranges Shire, Mildura Rural City and Swan Hill Rural City (together, the **Participating Councils**) in the supporting submission to the Application dated 17 August 2017 (**Initial Submission**). However, where appropriate this letter cross-references to the Initial Submission.

1 Introduction

LMWRRG recognises that the Application is of interest to various suppliers of waste and resource recovery services (**Service Providers**) operating in the Loddon Mallee region and that the ACCC's consultation process provides those

Service Providers with an important opportunity to raise issues of possible concern.

However, LMWRRG submits that the interested party submissions make a number of inaccurate assertions, wrongly downplay the proposed conduct's public benefits, and suggest detriments that will not arise. On that basis, LMWRRG submits that the interested party submissions do not form a proper basis for concluding that the proposed conduct does not have net public benefits.

This letter addresses the following specific issues raised in the interested party submissions:

- the proposed conduct's impact on existing contracts – see section 2;
- proposed contractual terms – see section 3;
- innovation and improvements to waste and resource recovery services – see section 4;
- impacts on smaller Service Providers – see section 5; and
- public benefits in the form of reduced transaction costs – see section 6.

2 Impact on existing contracts

The Cleanaway Submission notes Cleanaway's expectation that its arrangements with individual Participating Councils will not be affected by the proposed conduct until the expiry of the relevant existing contracts (including under any contractual extensions). This is correct. Any joint procurement under the proposed conduct will commence only once relevant existing contracts with Service Providers have expired.

3 Proposed joint contract terms

The Cleanaway Submission states that the *"those not successful in winning a part of the tender will be excluded for a very long time"*. The JJR Submission claims that *"joint tenders... with longer contract periods, will reduce competition"*.

LMWRRG assumes these concerns relate to the 11-year contract terms referred to in the Initial Submission (see section 5, page 16) in respect of:

- domestic kerbside waste, recyclables and organic waste; and
- bulk bins and skips.

It is now proposed, however, that each of the contracts in relation to these services will be for an initial five-year period, with an option to extend for another two years. LMWRRG and the Participating Councils consider that the revised proposed contract terms will still allow them to secure competitive tender submissions while also allowing Service Providers time to realise a sufficient return on their capital investments. Accordingly, the Applicants now seek authorisation in respect of the proposed conduct for a period 12 years only (i.e. a period that accommodates contracts that are proposed to commence in 2022 for a

period of up to seven years – see further section 5, page 16 of the Initial Submission).

As noted in the Initial Submission (see section 5, page 16), ongoing contracts will not be sought for services relating to the collection and processing of specific material streams such as mattresses, tyres, e-waste, and certain plastics - these are proposed to be procured jointly on an ad-hoc basis.

4 Innovation and improvements to waste and resource recovery services

The JJR and VWMA Submissions assert that the proposed conduct will not deliver innovations or improvements to waste and resource recovery services in the Loddon Mallee region. The JJR Submission claims that the proposed conduct will “*stifle innovation and (the) introduction of new technology*”. The VWMA Submission claims that “*it does not follow that... joint procurement will automatically deliver improved services and environmental and public health benefits*” (see page 2).

LMWRRG submits that these claims are simply wrong.

By combining their respective waste volumes, the Participating Councils will increase incentives for Service Providers to innovate and improve their services. This is because, with the economies of scale that joint procurement can provide, Service Providers are more likely to make additional investments in new waste and resource recovery technologies.

This dynamic is reflected in the *Victorian Statewide Waste and Resource Recovery Infrastructure Plan*, published by Sustainability Victoria, which notes that the task of identifying and supporting opportunities for cross-regional consolidation of waste materials, and economies of scale in rural areas, are priorities for Victorian state and local governments.¹ It is also recognised in the *Loddon Mallee Waste and Resource Recovery Implementation Plan* which was recently approved by the Victorian State Government² and which notes, in its assessment of the region’s waste treatment technologies, that:

“Both large and small-scale technologies are likely to be more feasible when considered on a regional scale, where access to sufficient feedstock (referring to re-useable raw materials from waste) allows economies of scale to be achieved.”³

Finally, the proposed joint tender process will specifically address the capacity of Service Providers to introduce service and technological improvements as part of the tender evaluation criteria. Proposals from Service Providers that demonstrate

¹ Victorian Statewide Waste and Resource Recovery Infrastructure Plan, Sustainability Victoria, page 25. See <http://www.sustainability.vic.gov.au/our-priorities/statewide-waste-planning/2015-2020-priorities/statewide-waste-and-resource-recovery-infrastructure-plan>.

² The Victorian Minister for Energy, Environment & Climate Change approved the *Loddon Mallee Waste and Resource Recovery Implementation Plan* on 6 July 2017. See <https://www.premier.vic.gov.au/wp-content/uploads/2017/07/170706-New-Waste-Plans-For-Victoria.pdf>.

³ *Loddon Mallee Waste and Resource Recovery Implementation Plan 2016 – 2026*, June 2017, page 43.

an ability to deliver improvements in this regard will be favoured by the Participating Councils.

5 Impacts on smaller Service Providers

The VWMA Submission (see page 2) claims that the proposed conduct will “preclude smaller operators” and that “the nature of the region, the volumes involved and the distances are naturally going to benefit larger businesses” rather than “localised small businesses”, that will be “either sold or closed down due to an inability to compete for contracts.” The Cleanaway Submission also suggests that smaller Service Providers will “no longer [be able to] compete for the contracts”.

In fact, smaller Service Providers will not be precluded from competing. Indeed, various aspects of the proposed tender process have been designed deliberately so that smaller Service Providers can meaningfully participate. The proposed conduct will facilitate the participation of smaller Service Providers, including in at least the following ways.

- **(Open process)** There will be an open process of inviting tenders from all industry participants, regardless of the size or geographic extent of their respective operations. For instance, the tender evaluation criteria will not include any minimum size requirements.
- **(Flexibility in tendering)** All Service Providers, including smaller players, will have significant choice in how they respond to tenders. For example, a Service Provider may submit a tender in respect of a single Participating Council’s requirements, or in relation to only one service. Smaller players may also choose to participate as part of a consortium. These arrangements are intended to provide flexibility to Service Providers and, in addition, maximise opportunities for the Participating Councils to secure competitive and innovative tenders from a broad spectrum of market participants.
- **(Tender evaluation criteria)** Importantly, smaller, localised Service Providers will have the opportunity to be recognised for their local focus. Joint tenders will include specific evaluation criteria aimed at requiring Service Providers to demonstrate their local service capabilities and investment. These criteria include the employment of local staff, use of local sub-contractors and use of local materials. This is intended to provide assurance to the Participating Councils that their respective municipalities will directly benefit from service and employment opportunities.

In this context, claims that the proposed conduct will effectively force smaller Service Providers to close are clearly exaggerated.

6 Joint procurement will reduce transaction costs

The VWMA Submission (see page 1) states that “savings will be limited as each council will still be required to have a separate agreement” with successful Service

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Providers. This claim fundamentally misunderstands the nature of the transaction cost savings to be realised under the proposed conduct.

As outlined in the Initial Submission (see section 9, page 18), the proposed conduct will deliver transaction cost savings simply through the conduct of joint procurement processes. Specifically, Participating Councils will effectively pool their resources in relation to matters such as procurement planning, joint advertising and tender management, all of which can carry significant costs. Transaction cost savings such as these have been recognised by the ACCC in the context of a large number of previous authorisation applications (including in relation to the joint procurement of waste management services) and will be realised whether or not any joint contracts are ultimately entered into.

Next steps

Please let us know if the ACCC would like any further information or clarification on any of the issues raised in this letter.

Yours faithfully

Corrs Chambers Westgarth



Alistair Newton
Special Counsel