

27 May 2024

Shellharbour City Council and Wollongong City Council — application for authorisation AA1000659 — draft determination & interim authorisation

Shellharbour City Council and Wollongong City Councils (Councils) would like to address several key points as detailed in draft authorisation AA1000659.

The Council's requested an 11-year contract period due to the relatively large capital outlays that the successful tenderer will make and the impact of those cost recoveries to the Shellharbour and Wollongong communities.

In simple terms, tenderers for this contract will seek to recoup capital outlays through contract rates, which are passed on to our residents. If they are forced to recover their capital outlays over a period of time much shorter than the previous contract, the rates payable by residents could significantly increase. In the background of increased cost of living pressures for our communities, the Council's are seeking to minimise avoidable price increases

Council would like to request reconsideration of an 11-year authorisation due to a significant change to the regulatory environment. The procurement program initially planned for release of tenders in early 2024 to facilitate a July 2026 contract commencement, noting that new collection truck vehicle lead times are anticipated to take 18 months. However, changes made to the Local Government (General) Regulation 2021 (NSW) (Regulation) in December 2023, have caused a delay in the release of tenders. Section 173 of the Regulation was amended to require tender submissions for the performance of domestic or other waste management services to contain an undertaking that the tenderer will ensure that current employees (whether of the council or the current contractor) will be offered employment to continue to provide the service, and for anyone who accepts the offer of employment:

- The employment will be on at least the same terms as the individual's current employment; and
- The employment will be taken to be a continuation of the individual's current employment with no loss of entitlements; and
- The tenderer will pay an annual increase in the individual's base rate pay in accordance with the applicable industrial instrument or the Local Government (State) Award if there is no applicable instrument.

The change to the Regulation was made without consultation and has been described by Arthur Moses (Senior Counsel engaged by LGNSW) as ambiguous, unworkable and likely to produce adverse consequences for councils, tenderers, employees, ratepayers, and the general public. The Councils advocated (along with many other Council's) for changes to be rescinded when NSW parliament

recently returned from a break. Unfortunately, the Regulation changes were not reconsidered and therefore remain in place.

Such a significant regulatory change has created substantial delays in the procurement process. Subsequently, the tender is yet to be released. It is expected that due to this unexpected delay in tendering both Councils will be required to extend the current contract to end in June 2027.

This extension to the project timeline has an effect on the draft determination and interim authorisation granted by the ACCC. Additionally, due to the unknown elements of the Regulation change it is challenging to define a timeline as the Councils are some of the first to undertake tendering in this new regulatory environment. The estimated timeline for the tender process and contract is detailed in **Table 1** below:

Table 1: Estimated Procurement Timeline

Task	Date
Works with Incumbent Contractor and Registered Organisations to Comply with New Regulation Requirements	June 2024 – October 2024
Tender Released	November 2024
Tender Process and Evaluation Completed	February 2025
Contract Awarded**	March 2025
New Waste Collection Vehicles Ordered	April 2025
New Waste Collection Vehicles Arrive	October 2026
Contract Start Date***	July 2027
Contract Initial Term End Date (7 years)	June 2034
Contract end date with all extensions (max 3 years)	July 2037

**There is the possibility, pending the tender evaluation process, that the Councils could resolve to reject all tenders and enter into negotiations with contractors. Should this occur it is anticipated it will add up to six months to the project timeline. This would result in the new waste collection vehicles arriving in approximately April 2027.

***There is some additional time between the “New Waste Collection Vehicles Arrive” and “Contract Start Date”. If the Councils enter negotiations as part of the tender process this additional time will be reduced by at least six month.

The above timeline demonstrates that the proposed 11-year authorisation period in the draft authorisation is very likely inadequate to provide for the entire tender period, contract preparation time – including long lead times on new collection vehicles which is estimated be up to 18 months – and the actual 10-year contract term, inclusive of three year’s extensions. To allow for the entire tender and contract implementation period the required duration of the authorisation is required to be 13.5 years, which will authorise activities until June 2037.

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The Councils appreciate that the requested term of authorisation extends 2.5 years beyond on the proposed 11-year authorisation. However, this additional time would offer significant cost savings to both Councils communities and reduce risk that there will be a disruption to waste collection services. To this end the Councils would be amenable to an extension of the ACCC's draft determination period, to allow for further discussion and clarifications.

If you would like any further clarification, please contact Mitchell Copas Shellharbour City Council's Contract Manager in the first instance.

Kind Regards,

Ryan Stirling
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Shellharbour City Council

ACCC- Draft Authorisation AA100
Subject
