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By Email: exemptions@accc.gov.au; and **cc:** robert.janissen@accc.gov.au

Dear Sir,

AA1000596 – ALBURY CITY COUNCIL AND OTHERS – SUBMISSION

We refer to the Australian Competition & Consumer Commission's ("ACCC") Application for Authorisation and Interim Authorisation released on 16 December 2021 made by Albury City Council, Wodonga City Council, Indigo Shire Council, Greater Hume Council, Federation Council, Leeton Shire Council, Berrigan Shire Council and Edward River Council on behalf of its members on 9 December 2021 ("the Application").

J.J. Richards & Sons Pty Ltd t/as JJ's Waste & Recycling ("JJ's Waste") objects to the Application which would grant the abovenamed eight (8) Councils legal protection to jointly procure waste collection and resource recovery services for 10 years. The reasons are summarised below and detailed on page 3.

As JJ's Waste have submitted to the ACCC in response to other applications in previous years, JJ's Waste continues to be gravely concerned at the increase in the number of applications from Local Government Authorities, and approval of same by the ACCC, for joint waste collection tender processes. It is JJ's Waste's view that the collective impact of the growing number of applications is reason to deny future applications. There is no doubt that a reduction in the number of waste collection tenders available in the marketplace, due to joint tenders and some with longer contract periods, will reduce competition. This has a flow on effect in that it will also stifle innovation and introduction of new vehicle technology which often result in improved efficiency, reduced cost, better quality of service and a positive impact on the environment (introduction of collection vehicles with improved emission standards is one of many examples). The result will be a detrimental outcome for the public in the longer term.

In summary, we submit that allowing the above noted eight (8) Councils to jointly tender and contract for the waste collection and resource recovery services would lessen competition and this would not be outweighed by any public benefit.



JJ's Waste would be pleased to provide any further comment that assists the ACCC in consideration of the Application. If further information is required, please do not hesitate to contact the undersigned on [REDACTED] or via email: [REDACTED]

Thank you for your consideration of our submission.

Yours Sincerely,
J.J. Richards & Sons Pty Ltd

[REDACTED]

Nick Page
General Manager Tendering and Contracts

Submission – AA1000596 – Albury City Council and Ors.

Item 3 – The Proposed Conduct

Current Arrangements:

'Councils are open to alternative contract management arrangements'.

This seems to contradict the supposed benefit of the whole process. It also means tender bids have to be prepared as though for individual Councils or groups and adds significant cost to participate in the tender process. These costs have to be recovered and will add to the service price. It may prevent some companies from participating in the process at all.

Project Control Group:

'known as the "Regional Kerbside Contract Working Group" has been established'.

The process of establishing the 'Regional Kerbside Contract Working Group' to oversee the procurement process adds significantly to the cost of administering the contracts. It is likely meetings would need to be convened between the various participating Councils to establish common ground prior to meetings with the contractor. Issues may be peculiar to one or other Councils resulting in lost time for other participants.

Independence of Decision making and Individual Contracts:

'Whilst Councils seek to advertise a single RFT, each participating Council will make an independent decision and enter into an individual contract'

If any Council does not choose to enter into a contract, they will have to go through the tender process again and these costs have to be recovered by the Contractor and will ultimately add to the service price. For example, a regional group of 5 Councils in Victoria was approved by ACCC to jointly tender, but the tender process was so complicated due to the different contract terms and individual Council requirements, that no contracts were awarded, and each Council had to individually re-tender.

Item 10 – Public Benefit

'Proposed joint procurement process will result in significant public benefit, all of which have been recognised in previous ACCC determinations'.

- We have made previous submissions to the ACCC in relation to other joint tenders for similar reasons expressed in this submission. While one off approvals in markets may only result in diluted anti-competitive outcomes and negative public benefit, we believe that further approvals will definitely result in higher prices and lower quality of service to the detriment of the public. For example, this application now has a further three (3) Councils in addition to the five (5) already under a regional arrangement. That means a total of eight (8) separate contracts that would have otherwise been available to the industry.
- To compound the situation, this application includes waste collection services as well as processing of different waste streams, all of which are typically separate contracts from each other due to the specialist nature of collection services versus sorting recyclables and processing organics. Therefore the number of potential contracts unavailable to the industry is tripled, and the public benefit compromised by a further reduction in competition.
- With larger contracts and fewer competitors, it is possible Councils will have to put up with a poor performing contractor. For example, under the current regional Albury contract, Council states in their Council Report (refer to Annexure A) on pages 1 and 2:

'FOGO material is firstly transported to the AWMC where it is bulked before being transported offsite to Carbon Mate in Wagga Wagga'

'two attempts at establishing a compost plant within our region were unsuccessful'.

The two statements above demonstrate poor performance and reduced public benefit due to losing business outside the LGA and from the additional travel time resulting in higher vehicle emissions and increased cost. Ironically these are three of the public benefits that have been listed by the applicant under item 10b) increased efficiency, 10c) increased competition and 10d) environmental benefits.

- With fewer competitors, if there is poor contract performance and there is either no alternative, or the alternative is located outside the region of Councils' boundary, rendering the ultimate penalty of terminating a contract for poor performance is unrealistic. Such an outcome is not the case with smaller waste collection contracts that still achieve the maximum benefit afforded by economy of scale.

10(a) Transaction Cost Savings:

While some documentation may be similar it is anticipated each individual Council will still have input to all aspects of the tender process and will need to involve the same amount of internal and external resources in the process. There are likely unique service requirements for individual Councils that will have to be encompassed in one document. In addition to the meetings that would normally be held within each Council, there will need to be combined meetings to resolve issues. Therefore, it is likely overall transaction costs will increase.

'This process will also mean that service providers will save costs by preparing a single response to a joint tender'

- The result is an extremely complicated tender bid for service providers to prepare and for Councils to evaluate, potentially resulting in confusion and thereby increasing the risk that individual Councils will opt out of the process and have to re-tender.
- The complexity of the joint tender process will potentially result in fewer tenders being submitted, notwithstanding the ability to tender for separable portions for each local government area. Some companies that participate in waste collection tenders for smaller contracts may not participate in larger processes. Based on the many tenders throughout Australia each year, the number of tender responses received by a Council for a waste collection contract does not correlate to the size of the LGA. The price outcome is also impacted by a multitude of other factors.

10(b) Increased Efficiency:

'The Applicants submit that by jointly procuring these services, the service providers are likely to become more efficient as they will be able to operate a larger scale of operation that if they were to service each Council individually. This will include the ability to utilise more efficient truck routes when travelling significant distances on rural road networks'.

Three (3) of the new Councils (Leeton, Berrigan and Edward River), are not located near the major LGA's of Albury and Wodonga, nor does Leeton share a boundary with any other Councils in the application. Therefore if larger processing facilities for organics or recycling are located in the major LGA's of Albury and Wodonga, the distances travelled outside the LGA's will reduce the efficiency of collections and increase cost for these three (3) Councils.

'The joint procurement process is likely to increase the incentive for service providers to invest in new technology'

This statement is true for the processing of organics and recyclables as infrastructure costs are dispersed over large volumes of waste. However, efficient collection and transportation services will be available to Councils without a joint tender process due to the vehicle technology being able to be written off over a long contract term. A 10-year contract term already allows for the capital investment in loading infrastructure and monitoring technology to be achieved in new vehicles. Past tenders have proven that there is no cost advantage to Councils of this size, via a joint tender process. Each local government is individually large enough to solicit waste collection tender prices that benefit from economies of scale. Pricing obtained jointly or separately for waste collection should be the same. If this is not the case, then consumers in one local government area will be subsidising the cost to the other at their detriment.

10(c) Increased Competition:

For reasons stated above, the number of tenders received are highly likely to be reduced, particularly from smaller operators, as is stated on page 9 of the application:

'The participating Councils have a strong preference for a single provider to be appointed to service all participating Councils in the interest of achieving value for money and economies of scale'.

In broader market terms, a reduction in the total number of contracts available and a reduction in start dates and contract terms will lead to a reduced number of skilled, experienced service providers over time leading to reduced competition and increased costs. Granting authorisation will be to the detriment of surrounding LGA's in terms of long term, sustainable competition and the positive impact this has on long term pricing, service quality, innovation and environmental outcomes.

10(d) Environmental Benefits

'This investment may also result in other community benefits like increases to local and regional employment numbers, economic growth..'

A larger vehicle depot in one part of the region means trucks have to travel further than if multiple depots existed across different Councils through individual contracts, increasing costs and environmental emissions. Local employment will also be limited to that part of the region, restricting jobs and employment opportunities across the other LGAs.

Item 11 - Public Detriment

'The Applicant acknowledges that public detriment may arise as this joint procurement comprises a substantial portion of the market and therefore it may operate to reduce competition and cause some providers to exit the market'.

Each of the eight (8) Councils will have numerous small businesses within their LGA that rely on or are a part of the local waste and recycling supply chain. For instance, local Mum and Dad operators who have a small fleet of trucks or skips, local cardboard/paper recycling businesses and subcontractors that supply heavy equipment at landfills. In turn there are secondary supply chain businesses that rely on those primary suppliers for business, for example, tyre suppliers, welders, mechanics. The revenue those business earn is spent locally and remains in the LGA economy, as does employment. These small businesses will have the capacity to tender for and service the proposed Council of eight (8) LGA's. These small collection and transport businesses may not have the expertise to bid for a complex joint tender and not be willing to partner with another supplier. The proposal will be at the expense of these small local businesses and will be to the detriment of the local economies overall.

'Furthermore, it is noted that the proposed Contract does not include all commercial waste services in the region and is predominately focused upon residential services. Presently, a number of waste providers service the region for commercial waste services and it is envisaged that this will remain available within the industry'.

This does not provide any reassurance that over the 10 year lifecycle of the proposal there will not be any 'creep' into other areas of waste. Our experience is that once a proposal is given exclusivity for a certain area of waste, it is only a matter of time before there is a gradual expansion into other areas of waste, including commercial and industrial. For example, some Councils offer commercial collections of MGB's or bulk bins as a part of their tender specification, which will be to the detriment of local businesses that collect and transport commercial and industrial waste.