



Determination

Application for authorisation AA1000659
lodged by
Shellharbour City Council and Wollongong City Council
in respect of
joint procurement for waste collection services
Authorisation number: AA1000659

6 June 2024

Commissioners: Keogh
Lowe
Carver

Summary

The ACCC has decided to grant authorisation to enable the Shellharbour City Council and Wollongong City Council to jointly tender and contract for waste collection services for their respective areas.

This decision is a finely balanced one.

The ACCC considers that the authorised conduct is likely to result in some public benefits in the form of environmental benefits, improved efficiencies and economic benefits and transaction cost savings.

The ACCC considers that the authorised conduct is also likely to result in some public detriments in the form of a reduction in competition between service providers due to potentially reducing the number of service providers competing over the longer term.

The comparison between likely public benefits and likely public detriments is finely balanced in this situation. Ultimately, the ACCC has concluded that it is satisfied, in all the circumstances, that the public benefits likely to result from the Proposed Conduct narrowly outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct.

The ACCC has decided to grant authorisation until 1 July 2037.

The application for authorisation

- 1.1. On 21 December 2023, Shellharbour City Council and Wollongong City Council (the **Applicants**) lodged application for authorisation AA1000659 with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation for the joint procurement of waste collection services for their respective communities. The Applicants seek authorisation for 13 years, until 1 July 2037.¹
- 1.2. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the Proposed Conduct would or is likely to result in benefit to the public that would outweigh the likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.3. On 14 May 2024, the ACCC granted interim authorisation in accordance with subsection 91(2) of the Act to enable the Applicants to engage in the Proposed Conduct, but not enter into and give effect to any contracts, while the ACCC is considering the substantive application. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until the ACCC decides to revoke interim authorisation.

The Applicants

- 1.4. The Applicants are:

¹ Applicants, [Further amendment to the period of authorisation sought](#), 27 May 2024.

- Shellharbour City Council
 - Wollongong City Council.
- 1.5. The Applicants are local councils in New South Wales (**NSW**), with Wollongong City being situated approximately 80 km south of Sydney and Shellharbour situated approximately 100 km south of Sydney. Both Councils are located in the Illawarra region of NSW.
- 1.6. Wollongong City is the third largest city in NSW with a population of 214,564, whilst Shellharbour City has a population of 76,271. The combined population of the Applicants is approximately 290,835 which makes up approximately 3.51% of NSW's population. The combined number of households is approximately 119,191.
- 1.7. The Applicants have previously successfully tendered for similar services in 2013 under authorisation A91361.²

The Proposed Conduct

- 1.8. The Applicants are seeking authorisation to:³
- (a) jointly tender, and evaluate proposals for, the provision of waste collection services, and
 - (b) enter into and give effect to contracts with the preferred tenderer.
- 1.9. The services in the tender include:
- garbage collection services (residential and commercial properties⁴)
 - recyclables collection services (residential and commercial properties)
 - food organics and garden organics collection services (residential and commercial properties)
 - bulky waste collection services
 - public place waste and litter bins services (Shellharbour City Council only)
 - mobile bin wheel-out wheel-back collection services
 - supply, repair and removal of mobile bins
 - waste education and customer service
- (the **waste collection services**).
- 1.10. Together, paragraphs 1.8 and 1.9 constitute the **Proposed Conduct**.
- 1.11. Under the Joint Procurement Agreement the Applicants have entered, either council has the option to exit the tendering process if the outcome of the process does not benefit the community or council.
- 1.12. The Applicants will jointly advertise a Request for Tender; however, each participating council will enter into an individual contract with the preferred tenderer following the provision of an independent report to their respective council. The evaluation of all

² See Wollongong City Council & Shellharbour City Council, [Application for authorisation A91361](#).

³ See Wollongong City Council & Shellharbour City Council, [Clarification of Conduct](#), 20 February 2024.

⁴ The Applicants submit that the commercial services constitute a small part of the contract. As an example, the Applicants cite the terms of their current contract, which services 1,174 commercial properties across both councils, out of a total 19,311 businesses across both councils.

responses to the Request for Tender will be undertaken by a Tender Evaluation Panel, established with key representatives and leaders from both councils.

- 1.13. The Applicants are not bound by the recommendations provided by the Tender Evaluation Panel and may choose to request additional information from the tenderers, reject all tenders or accept a tender.
- 1.14. The Request for Tender will require the tenderers to submit the prices for both Applicants.
- 1.15. A conforming tender will be required to include the servicing of both councils as well as all the waste collection services.

2. Consultation

- 2.1. The ACCC has considered, and granted, many applications for authorisation involving local councils jointly procuring and contracting for waste services. In the ACCC's experience, a streamlined process is appropriate if the following features are in place:
 - The parties to the proposed conduct include only local councils.
 - The participating councils propose to jointly tender for and procure services from an unrelated commercial entity.
 - The joint tender and procurement will be the result of a competitive process.
 - Participation by service providers is voluntary and no collective boycott activity is involved.
 - The participating councils are free to choose to negotiate outside the joint procurement process.
 - Contracts are entered voluntarily and participating councils may jointly enter into contracts, but remain free to enter into their own contracts.
 - Length is appropriate.
- 2.2. Where proposed conduct has the above features, the ACCC considers it appropriate to proceed directly to a draft determination, without an initial consultation phase. Interested parties with concerns about the proposed conduct are able to make submissions on the draft determination.
- 2.3. The ACCC considered that in these circumstances, the Proposed Conduct does have the above features and it therefore decided to issue a draft determination without initial consultation.
- 2.4. On 14 May 2024, the ACCC issued a draft determination proposing to grant authorisation for 11 years. A pre-decision conference was not requested following the draft determination. The Applicants provided a submission in response to the draft determination which amends the period of authorisation sought and is discussed in section 4 below.

3. ACCC assessment

- 3.1. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act.

- 3.2. In applying the authorisation test, the ACCC compares the likely future with the proposed conduct that is the subject of the authorisation to the likely future in which the proposed conduct does not occur. The ACCC considers that the likely future without the Proposed Conduct would involve each Applicant carrying out a separate tender process for the waste collection services.
- 3.3. To assist with the assessment of the Proposed Conduct, the ACCC also considers the relevant areas of competition likely to be affected by the Proposed Conduct.
- 3.4. The ACCC considers that the relevant areas of competition are likely to be the supply and acquisition of the waste collection services.
- 3.5. The ACCC considers that there are national and state-based service providers of the waste collection services which are positioned to provide their services to local councils. Consequently, while the Applicants are both councils in the Illawarra region of NSW, the ACCC considers that the relevant area within which to consider effects on competition is the state of NSW.

Public benefits

- 3.6. The Applicants submit that the Proposed Conduct would result in the following public benefits:
 - improved efficiency
 - economic benefits
 - improved cost savings
 - reduced environmental impact
 - enhanced community outreach.
- 3.7. The ACCC has assessed the above under the following headings:
 - environmental benefits
 - improved efficiencies and economic benefits
 - transaction cost savings.

Environmental benefits

- 3.8. The Applicants submit that the Proposed Conduct can help to reduce the environmental impact of waste by reducing the number of waste collection vehicles on the road, reducing emissions and fuel consumption, and minimising the amount of waste that is disposed of in landfills.
- 3.9. The ACCC considers that the Proposed Conduct is likely to result in some environmental benefits through the more efficient aggregation of materials reducing greenhouse gas emissions (for example, through more efficient transport between retrieval and processing sites).
- 3.10. The Applicants submit that the size of the current contract has allowed the contractor to invest in Australia's first zero-emission, hydrogen-powered waste collection vehicle. In the initial application, in which authorisation was sought for a 14-year contract, the Applicants submitted that this term would allow for the adequate return on investment for an initial diesel-power vehicle fleet, but also offer options to transition to low emission vehicles within the contract term when they are expected to become economically viable (expected to occur within the next 5 to 10 years).

- 3.11. The ACCC acknowledges that the use of zero-emission vehicles would result in environmental benefits. However, as the Applicants subsequently revised their request for authorisation for a 7-year contract (with 3-year extension option), it is less likely that there would be a transition to low emission vehicles as a result of the Proposed Conduct. Further, the Proposed Conduct does not require the successful service provider to use this type of vehicle.
- 3.12. It is also unclear to the ACCC how the Proposed Conduct would minimise the amount of waste disposed of in landfills as the Applicants have not provided information to support this claim.
- 3.13. Therefore, the ACCC considers that the Proposed Conduct is likely to result in some environmental benefits through the more efficient aggregation of materials reducing greenhouse gas emissions. However, it is uncertain whether the Proposed Conduct would be likely to result in public benefits in the form of reducing emissions and fuel consumption or minimising the amount of waste disposed of in landfill; and if it did result, the extent or significance of those benefits. The ACCC has therefore given little weight to this claimed public benefit.

Improved efficiencies and economic benefits

- 3.14. The Applicants submit that contractors can realise efficiency gains from joint procurement through pooling resources, such as vehicles and personnel. The ACCC accepts that there is likely to be efficiency in combining operations over the 2 councils. These efficiencies include, across the 2 councils, reduced maintenance staff, land taken as a depot and the number of staff in management positions.
- 3.15. The Applicants also submit that joint tenders can help to improve community outreach and education about waste management, noting that the Applicants work together to deliver these education messages when appropriate. However, it is not clear to the ACCC how these initiatives are an outcome of joint procurement for waste services (that is, why they would not also occur without the Proposed Conduct). Therefore, the ACCC does not consider this to be a public benefit resulting from the Proposed Conduct and has consequently given no weight to this efficiency.
- 3.16. However, the ACCC considers that the Proposed Conduct is likely to result in a public benefit by improving economic efficiency in the form of economies of scale arising from a greater volume of waste services. To the extent the Proposed Conduct is also likely to enable service providers to achieve economies of scope by sharing fixed and variable costs between waste streams and economies of density, this would also constitute a public benefit. Economies of scale, scope and density can produce lower average costs for the Applicants, which can lead to lower costs for rate payers.

Transaction cost savings

- 3.17. The Applicants submit that a joint tender for waste collection can also result in cost savings for the councils and therefore residents, as transaction cost savings can be achieved through shared resources and coordinated efforts. The councils would share the legal, procurement and technical advice costs of the tendering process. The Proposed Conduct would also help avoid duplication of capital expense, land use, infrastructure and administrative resources, such as operation of a joint vehicle depot and a joint customer service centre. The Applicants submit that the current estimated cost of the joint tendering process is \$122,000, which will be equally divided between both councils. They submit that the total cost would be incurred by each council, individually, absent the joint procurement. The Applicants further submit that the last joint procurement of a waste collection services saved the councils \$120,000 over the life of the contract.

3.18. The ACCC considers that the Proposed Conduct is likely to result in public benefits to the councils and service providers in the form of reduced administrative and legal costs relative to each council conducting, and each service provider responding to, separate tender processes. However, to the extent that the Proposed Conduct covers a greater number of waste streams, the ACCC considers that the transaction costs savings may be partially offset by additional costs associated with coordinating and administering their service agreements. Similarly, in the context of differing specific council requirements, transaction costs savings may be partially offset by any additional transaction costs incurred by service providers.

Public detriments

3.19. The Applicants submit that the proposed joint procurement may result in the following public detriments:

- lack of competition
- inequitable dealing in the market
- framing of the conduct forecloses competition.

3.20. However, the Applicants submit that all service providers will be able to respond to the public tender, thus promoting competition. The tendering process will also be conducted in accordance with both the *Local Government (General) Regulation 2021 (NSW)*, Part 7 Tendering and Shellharbour City Council's Procurement Policy. Therefore, the tender process will provide opportunity for the maximum number of service providers to compete.

ACCC views on public detriment

3.21. The ACCC notes that the Proposed Conduct will effectively foreclose competition for waste collection services in the area of the participating councils for a period of at least 7 years (and potentially up to a maximum of 10 years).

3.22. The ACCC considers that longer contracts carry an increased risk of a foreclosing effect on rivals by reducing the size of the contestable market available at any particular point in time. The end result of a longer-term contract in the present circumstances is likely to be a reduction in the number of waste service providers competing to provide such services when contracts eventually expire. While the ACCC recognises that longer contracts generate efficiencies that are public benefits, these public benefits are not considerably greater than the likely public detriment of reduced longer-term competition in the market.

3.23. The ACCC considers that the public detriment likely to result from the Proposed Conduct in these circumstances will be mitigated by the following factors:

- Although the Proposed Conduct covers a number of different waste streams, it is limited to 2 councils. The participating councils make up only 3.5% (approximate) of NSW's population.
- Participation is voluntary for the Applicants, and the councils have the option to exit the tendering process if the outcome of the process does not benefit the community or council.
- Each council will enter into an individual contract with the preferred tenderer following the evaluation of all responses to the Request for Tender by the Tender Evaluation Panel. However, the councils are not bound by the recommendations

provided by the Tender Evaluation Panel and may request to reject all tenders or accept a tender.

- No collective boycott is proposed.

Balance of public benefit and detriment

3.24. The ACCC considers that the Proposed Conduct is likely to result in some public benefits in the form of environmental benefits, improved efficiencies and economic benefits, and transaction cost savings.

3.25. The ACCC also considers that the Proposed Conduct is likely to result in some public detriments in the form of a reduction in competition between service providers due to reducing the number of service providers competing over the longer term. The extent of this likely public detriment is directly correlated with the duration of the contract proposed to be entered into as part of the authorised conduct.

3.26. The comparison between likely public benefits and likely public detriments is finely balanced in this situation. Ultimately, the ACCC has concluded that it is satisfied, in all the circumstances, that the public benefits likely to result from the Proposed Conduct narrowly outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct,.

4. Length of authorisation

4.1. In this instance, the Applicants seek authorisation for 13 years, until 1 July 2037.

4.2. Prior to the draft determination, the Applicants had sought authorisation for 12 years, which was comprised of:⁵

- 1 year for the procurement conduct
- a 7-year initial term for the contract entered into between councils and service providers and an extension period of up to 3 years (for a maximum 10-year operating term)
- an additional 1 year to allow for potential slippage in the procurement process or contract negotiations.

4.3. However, in its draft determination, the ACCC considered it was unclear why it was necessary to grant the additional 1 year sought for 'potential slippage in the procurement process or contract negotiations'. The ACCC therefore proposed to grant authorisation for 11 years, but it invited submissions from the Applicants in this regard.

4.4. On 24 May 2024, the Applicants amended their initial request and now seek authorisation for 13 years, until July 2037. This is submitted to be on the basis that significant regulatory changes in NSW⁶ in December 2023 that affect tender submissions have caused delay in the release of tenders. The Applicants submit that 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. The Applicants submit that while it is challenging to define a timeline in this new regulatory environment, they have provided the following estimates for this project:

⁵ Applicants, [Amendment to period of authorisation sought](#), 18 April 2024.

⁶ Amendments to the Local Government (General) Regulation 2021 (NSW) (Regulation), detailed in the Applicants' submission: Applicants, [Further amendment to the period of authorisation sought](#), 27 May 2024.

- tender released in November 2024
 - contract awarded in March 2025
 - new waste collection vehicles ordered in April 2025 and arrive in October 2026 (an 18-month lead time). However, it is possible that pending the tender evaluation process, the Applicants could resolve to reject all tenders and enter into negotiations with contractors, which is anticipated to add up to 6 months to the timeline (that is, vehicles would arrive in April 2027)
 - new contract starts in July 2027 (with an ultimate end date of July 2037, if extended).
- 4.5. More generally, the Applicants submit that a 10-year contract period is appropriate because:
- The Applicants' previous waste collection services contract had a 7-year initial term and if the term was reduced, the increase to the capital recovery rate would need to be passed onto the community. Based on the Applicants' submission, a 7-year term would allow the contractor to recoup the capital costs at a lower yearly rate. These capital costs include purchasing up to 30 collection vehicles (which are designed to have a long operational life of at least 10 years) and establishing a depot and office space. Reducing the term to an initial 5 years would mean that the costs to the councils and community would be 40% more expensive on a yearly basis (although the total absolute level of costs would remain the same). The Applicants estimate that a 7-year term would require each household to pay \$31.06 per annum; whereas a 5-year term would require a \$43.38 per annum fee.
 - A long-term contract will allow the selected operator to offer stable, and reliable services to the community. It is also likely to increase competition for the services offered because where the capital costs, such as establishing a depot or office, are considered over a short term, tenderers may consider that they cannot offer a competitive tender price compared to the incumbent contractor.
 - The tender process for this type of service can take several years and involve specialist consultants. Increasing the frequency of tendering will increase the time the Applicants are required to be engaged in tendering and increase cost to the community and tenderers.
- 4.6. The ACCC considers that contracts of this length may be required so that the successful tenderer can earn a normal commercial return while recovering the cost of the capital investment without unreasonably high yearly outlays. Noting that the collection vehicles have an operational life of at least 10 years, it is possible that both incumbent and other service providers would have to make some capital investments to service the Applicants' contract. Moreover, the ACCC further considers that if contract terms are too short, this may deter service providers from bidding against the incumbent due to the possible additional start-up costs and need to establish a depot or office. The ACCC also considers that the tendering process is lengthy and that requiring more frequent tendering may increase costs to the councils, and ultimately, to ratepayers.
- 4.7. Overall, the ACCC considers that the revised period of authorisation sought is appropriate in these circumstances, on the basis that authorisation is not sought for contracts exceeding 10 years in duration. It notes that the contract term will remain the same; that is, it will be limited to a maximum of 7 years, with an optional 3-year extension period. It further acknowledges that regulatory changes have caused a delay in releasing the tender and the Applicants' timeline, and therefore that it is appropriate

in these circumstances that the overall period of authorisation be extended from that originally sought.

4.8. The ACCC therefore grants authorisation until 1 July 2037.

5. Determination

The application

5.1. On, the Applicants lodged application with the ACCC, seeking authorisation under subsection 88(1) of the Act.

Conduct which the ACCC has decided to authorise

5.2. For the reasons outlined in this determination, the ACCC considers that the authorisation test is met, although this decision was finely balanced. Accordingly, the ACCC has decided to grant authorisation AA1000659 in relation to Division 1 of Part IV of the Act, and section 45 of the Act, for 13 years to enable the Applicants to engage in the following Authorised Conduct:

- (a) jointly tender, and evaluate proposals for, the provision of waste collection services (as defined bellow), and
 - (b) enter into and give effect to contracts with the preferred tenderer(s) , the duration of each of which will not exceed 10 years, for the provision of waste collection services,
- together, the **Authorised Conduct**.

5.3. For the purpose of this authorisation, **waste collection services** include:

- garbage collection services (residential and commercial properties)
- recyclables collection services (residential and commercial properties)
- food organics and garden organics collection services (residential and commercial properties)
- bulky waste collection services
- public place waste and litter bins services (Shellharbour City Council only)
- mobile bin wheel-out wheel-back collection services
- supply, repair and removal of mobile bins
- waste education and customer service.

5.4. The ACCC has decided to grant authorisation AA1000659 until 1 July 2037.

6. Date authorisation comes into effect

6.1. This determination is made on 6 June 2024. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 28 June 2024.