



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

In respect of a notification lodged by

Shellharbour City Council on behalf of itself,  
Wollongong City Council and Shoalhaven City  
Council

in respect of collective tendering for landfill gas  
capture and management services.

Date: 13 September 2018

Notification number: CB10000454

Commissioners: Sims  
Keogh  
Rickard  
Court

## Summary

The ACCC has decided not to object to the notification lodged by Shellharbour City Council to enable itself, Wollongong City Council and Shoalhaven City Council (**the Councils**) to collectively tender for landfill gas capture and management services.

The notification was lodged on 12 July 2018 and the ACCC has decided to allow it to remain in force for a period of 10 years from that date. Accordingly, the notification came into force on 26 July 2018 and will remain in force until 11 July 2028, unless it is withdrawn or revoked.

## The notification

1. On 12 July 2018, Shellharbour City Council lodged a collective bargaining notification<sup>1</sup> to enable itself, Wollongong City Council and Shoalhaven City Council (**the Councils**) to collectively tender for landfill gas capture and management services (**the Notified Conduct**).
2. The tender will be for an independent contractor to install and manage a system or systems and associated plant, to capture gases from landfill sites and use the gases to generate electricity which will be fed into the national grid. The contractor will be required to provide associated services such as remediation of existing plant issues (where relevant), management of carbon credits, and activities required to generate and distribute electricity.
3. The Notified Conduct constitutes collective bargaining under section 93AB of the *Competition and Consumer Act 2010*. The Councils do not propose to engage in collective boycotts. The expected outcome of the Notified Conduct is that the Councils will individually enter contracts, either with separate tenderers or with the same tenderer. The contracts would be for 10 years with the potential for two five year extensions (with the requirement for re-notification if the extensions are taken up). Accordingly, the Councils are seeking a 10 year notification period.<sup>2</sup>

## Consultation

4. The ACCC invited submissions from a wide range of interested parties. A copy of the public submission is available on the [ACCC's public register](#). The ACCC received one submission, from LGI Limited (which provides landfill gas services), which was broadly supportive of the notification.

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<sup>1</sup> Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

<sup>2</sup> The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

## ACCC's Assessment

5. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* C'th (**CCA**).
6. In doing so, the ACCC has taken into account:
  - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each participant in the group is likely to individually negotiate and contract for landfill gas capture and management services.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition likely to be affected is the supply and acquisition of products and services for the management of landfill gases in Australia.

### Public Benefit

7. The ACCC considers that the Notified Conduct is likely to result in public benefits, particularly from:
  - Improved efficiency through:
    - sharing transaction costs (such as negotiation and contracting costs)
    - coordinating the landfill gas management services across a larger number of sites, therefore creating economies of scale.
  - Environmental benefits through:
    - the reduction in each Council's greenhouse gas emissions (to the extent that waste methane which would otherwise vent to the atmosphere is transformed into energy and less harmful carbon dioxide),
    - reduction in the risk of subsurface methane migration, and
    - odour control.

### Public Detriment

8. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the Councils for the acquisition of products and services for the management of landfill gases because:
  - there are a large number of remaining potential acquirers of products and services for the management of landfill gases, both in NSW and nationally
  - the companies which offer products and services for the management of landfill gases operate nationally and/or internationally
  - participation in the Notified Conduct is voluntary for the Councils and each Council may choose different contractors.

### Period for which the Notification will be in force

9. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged, unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
10. In this case, as part of the Notified Conduct, the contracts would be for 10 years with the potential for two five year extensions. Accordingly, the Councils are seeking a 10 year notification period (the maximum the ACCC may approve). The

Councils note that their intention would be to re-notify the Notified Conduct if the extensions are taken up after this period.

11. The ACCC considers that it is appropriate for the notification to remain in force until 11 July 2028 for the following reasons:
  - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
  - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
  - The Notified Conduct is proposed to continue for at least 10 years.

## **Decision**

12. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
13. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
14. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 11, in accordance with s 93AD(5), the ACCC is satisfied that:
  - a three year notification period is not appropriate in all the circumstances, and
  - another period is appropriate in all the circumstances, being the period ending on 11 July 2028.<sup>3</sup>
15. Accordingly, the protection provided by notification CB10000454 commenced on 26 July 2018 and will continue until 11 July 2028, unless the notification is withdrawn or revoked.
16. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

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<sup>3</sup> As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.