

**RECEIVAL AND PROCESSING OF GREEN WASTE AND MIXED WASTE BY
DICOM AWT OPERATIONS PTY LTD**

**TENDER ACCEPTANCE CONDITIONS PROPOSAL
APRIL 2010**

The Barwon Region Total Waste Management System Project Team and Tender Evaluation Panel ("**Project Team**") comprising waste management officers from the , Greater Geelong City Council, Surf Coast Shire Council, Colac Otway Shire Council, Queenscliffe Borough Council and Golden Plains Shire Council ("Participating Councils") and the Barwon Region, have a belief in the DiCOM AWT Operations Pty Ltd ("**DiCOM**") process and wish to explore as far as possible within the current tender process the viability of the DiCOM proposal.

However, they do have concerns at this point in time about the ability of the DiCOM process to operate successfully over the term of the contract.

While the test program for the Western Metropolitan Regional Council (WMRC) in Perth and the SKM report indicate that Schedule 10 Section 2 criteria have been met, they do not provide actual solutions to the many issues identified as requiring attention in Stage 2 (and therefore in the Barwon facility) and consequently do not provide any surety that issues will be successfully resolved.

It should also be noted that there is an issue with the acceptance of municipal solid waste ("**MSW**") derived compost in Victoria. EPA Victoria is taking a lead from NSW by questioning the suitability of MSW-derived compost for unrestricted use. Source-separated organics (green and food) are covered by EPA Publication 508.

The issue of concern with MSW-derived compost is contaminant levels (particularly heavy metals), the parameters of which were not addressed in the compost tests associated with the Perth test facility.

As each of the Participating Councils conditionally accepted the DiCOM tender, it is also necessary to clarify the status of the relationship between the parties and the legal basis on which any future activities will occur.

As not all of the conditions on which DiCOM's tender was accepted have been met and DiCOM will be unable to commence operations until after the contract start date of 1 July 2010, the conditional acceptances of DiCOM's tender will be withdrawn.

Notwithstanding the withdrawal of the conditional tender acceptances the Project Team wishes to continue discussion with DiCOM on a possible contract, with acceptance now being subject to the following conditions. It is proposed that the contract would be based on DiCOM's original tender submission dated 20 April 2008.

1. Consent of the Minister for Local Government under Section 186 (5) (c) of the Victorian Local Government Act 1989.
2. Continuous full commercial operation of the WMRC facility for six (6) batches (ie: two complete runs of a three vessel facility) meeting the following performance criteria:
 - a) Each batch loaded to full design capacity (55,000 tonne per annum) and at least three batches loaded to maximum capacity, that is, full design capacity plus 10% (60,500 tonne per annum).
 - b) The six batches shall be run continuous and consecutive, that is, one batch immediately following the other and each batch occupying a twenty one day period to accurately reflect typical full scale commercial operation.
 - c) The end product from each batch shall meet Victorian industry standards for that particular product that will enable the use of the product in accordance with the marketing plan provided under Condition 3. For example, if compost is nominated as an end product this must meet Australian Standards and Environment Protection Authority Victoria requirements.
DiCOM will provide sufficient data on the WMRC waste stream to enable the Participating Councils to make a comparison with the Barwon waste stream to determine that the end product from the WMRC facility provides sufficient evidence to the satisfaction of the Participating Councils that the process will produce a satisfactory end product at the proposed Barwon facility.
 - d) Producing sufficient quantity and quality of end product to meet the requirements specified in the marketing plan provided under Condition 3.
 - e) Meet emission standards applicable in the State of Victoria.
 - f) Provide evidence to the satisfaction of the Participating Councils that an agreed percentage of the organic material in the waste material type entering the facility is separated and processed through the bio conversion process.
 - g) Demonstrate by appropriate design and independent engineering certification to the satisfaction of the Participating Councils how the variances (if any) from the WMRC facility and the Barwon facility will be addressed. This will include all potential variances as determined by the Participating Councils, including but not limited to design capacity and material type.
 - h) Provide to the satisfaction of the Participating Councils a preventative maintenance program for the proposed Barwon facility.
 - i) Provide an assessment to the satisfaction of the Participating Councils that identifies all potential risks and mitigation measures in the operation of the proposed Barwon facility.
3. DiCOM to provide a Marketing Plan that clearly demonstrates:
 - a) the end product or products to be produced
 - b) evidence to the satisfaction of the Participating Councils that all proposed end products will meet Victorian industry standards for that product, as required by Condition 2(c) above.
 - c) the quantity of each end product to be utilized within the facility and the quantity to be available to external markets
 - d) how the end product(s) will be marketed,

e) an assessment of the potential risks in marketing and on selling the end product and how these risks will be mitigated (eg: by alternative markets or alternative end products).

and to include a commitment from end product receiver and marketing organisation(s) (eg: Richgro for compost) to receive and distribute the end product to the market.

4. The Geelong Ring Road Employment Precinct (Heales Road area) to be the preferred site location.
5. In conjunction with DiCOM the Participating Councils to facilitate the processes for obtaining planning and EPA approvals on Lot 1 on Plan of Subdivision PS 625803A, Broderick Road within the Geelong Ring Road Employment Precinct using the DiCOM facility as the template, on a basis to be agreed but generally requiring:
 - DiCOM to provide all necessary technical data (eg: site and facility plans, emissions data) and fund the EPA approvals process.
 - Participating Councils to conduct the consultation process and fund the planning approvals process.

Should either of these approvals not be obtained, at the discretion of the Participating Councils the Hays Road option or another site may or may not be pursued.

6. The Participating Councils reserve the right:
 - a) to carry out any independent assessment to assist in the determination of compliance with any of these tender acceptance conditions, including a confidential assessment of the DiCOM Barwon proposal to determine its viability over the proposed term of the contract, particularly as a result of design changes identified through the test facility as necessary for the WMRC facility and the proposed Barwon facility, and
 - b) to determine whether to accept the tender based on any of these assessments.
7. DiCOM to prepare a schedule that includes the latest date upon which the following key milestones will be achieved.

For the WMRC facility

 - a) Completion of all approvals
 - b) Commencement of construction
 - c) Completion of construction
 - d) Completion of commissioning
 - e) Commencement of full commercial operation
 - f) Commencement date for the six batch tests required under Condition 1 above,

and

 - g) Provision of the Marketing Plan required under Condition 3, including evidence of compliance with Victorian industry standards.

For the Barwon facility

- a) Commencement of construction
- b) Completion of construction
- c) Completion of commissioning
- d) Commencement of full commercial operation

Failure by DiCOM AWT Operations Pty Ltd to meet any one of the milestones related to the WMRC facility will be grounds for the Participating Council(s) to withdraw acceptance of the tender.

8. The design capacity of the Barwon facility be 65,000 tonnes per annum with indicatively 50,000 tonnes per annum MSW and the remainder being made up of green waste, MSW or material mutually agree by DiCOM and the Participating Councils to be suitable for processing.
9. The processing gate fee under any future contract to be the processing gate fee from DiCOM's tender submission dated 20 April 2008, subject to CPI adjustments and any adjustments deemed appropriate as a result of external factors (eg: change of tenure arrangements).
10. The following original conditions of acceptance, to continue to apply, subject to amendments as appropriate to meet the changes in circumstances as a result of the above conditions:
 - a) Finalisation of the cost of disposal of the residual material to a site and by means determined by the Participating Councils.
 - b) Completion of contract documentation and land tenure arrangements.
 - c) Approval of the financial status of DiCOM by a regional panel of financial officers or development of a service continuity plan under the supervision of this panel.
11. The Participating Councils may withdraw from the conditional tender acceptance process (ie: prior to tender acceptance) and elect not to proceed further at any time during this process without compensation to DiCOM should any one of these conditions not be met or should circumstances change such that the Participating Councils deem that they will be disadvantaged should they accept the tender.

It is acknowledged that there is no contractual relationship between DiCOM and any or all of the Participating Councils. The Participating Councils are not to be liable to make any payment to DiCOM with respect to anything done by DiCOM as part of or in connection with the process envisaged in this document.

Upon agreement by the Project Team and DiCOM these new conditions of acceptance will be included in a written request to the Victorian Department of Planning and Community Development to seek in-principle Ministerial consent, subject to which they will be recommended to the Participating Councils for formal adoption.

To assist in the understanding of this document it should be read in conjunction with Attachment A: DiCOM Proposal Support Information.

ATTACHMENT A**DiCOM AWT Operations Pty Ltd
Tender Acceptance Conditions Proposal
Support Information**

The Project Team has concerns regarding the operational reliability of the process as it currently stands. While the SKM report has certified compliance with Section 2 of Schedule 10 of the WMRC Waste Supply Agreement, the Project Team does not consider that the tests to date on the Perth Stage 1 facility have provided enough surety for unqualified acceptance of the DiCOM AWT Operation Pty Ltd tender. The Region & Participating Councils (R&PC) had an expectation that the tests would be post -ramp up and would provide multiple consecutive (ie: immediately following and within the 21 day operating period) fully loaded batch runs.

The Project Team does, however, believe that the DiCOM process will eventually prove itself at a commercial level and when this occurs it will provide significant benefit in achieving waste reduction targets.

The Project Team is therefore proposing that DiCOM's reliability and performance be tested through Stage 2 of the WMRC facility in Perth and that evidence of at least six (6) continuous uninterrupted batch processes be provided. The Project Team believes that this is a positive means of moving forward that will provide opportunities for DiCOM to fully develop the organics treatment process and for the R&PC to carry out adequate due diligence prior to the Participating Councils entering into such significant contracts.

Each of the Participating Councils accepted DiCOM's tender on a conditional basis. Not all of the conditions specified have been met and it is clear that DiCOM will not have an operative processing facility in the Barwon Region by the contract start date of 1 July 2010.

It is, therefore, necessary to clarify the legal status of the arrangements between the parties.

It is intended that each of the Participating Councils will withdraw its acceptance of the DiCOM tender and that the original tender acceptance process will be terminated. Future arrangements will be agreed between the parties on the basis of DiCOM's original tender and the parameters set out as conditions in the preceding Tender Acceptance Conditions Proposal document and this document. Nothing in these documents should be taken as indicating any intention on the part of the Participating Councils to enter into any contract or make any representation with respect to or concerning future arrangements between the parties.

With regards to the conditions within the proposal, the following explanations are provided:

Condition 1. Ministerial Approval:

Due to the current extended timelines, and regardless of when acceptance of any DiCOM proposal may occur in the future, the consent of the Victorian Minister for Local Government will be necessary to comply with Section 186 of the Local Government Act. Prior to approaching the Minister, it is imperative that we can demonstrate adequate due diligence and have agreement upon a direction going forward and fixed timelines. Approval will also be required for any change in contract management arrangements and site location and tenure arrangements.

Condition 2. Continuous Operation of the WMRC Stage 2 facility:

This is a critical condition that will provide a satisfactory level of surety to the Participating Councils that the DiCOM facility will be a reliable commercial operation. This condition includes a set of performance criteria to be met prior to acceptance of the tender. Performance under this condition is based on the operation of a three vessel WMRC facility through two complete operational sequences.

This six batch test program may be conducted as part of commissioning or under actual commercial operation. DiCOM shall nominate when this will occur and include this date in the schedule of key milestones under Condition 7.

The Participating Councils reserve the right to commission an independent assessment of the six batch test program and outcomes to assist in assessing compliance with the criteria.

Further information on specific conditions are provided as follows:

a) The Barwon tender indicates that the design capacity is 65,000 tonne per annum with an additional 10% operational capacity taking the potential capacity to 72,000 tonne per annum. The Participating Councils require that the WMRC facility operate to its higher capacity for at least three of the six test batches.

f) While the tender submission specifies that a minimum of 75% of the material entering the Barwon facility will be recovered the Participating Councils understand that this will be largely dependent upon the characteristics of the feedstock. The Participating Councils are seeking a more specific performance measure that indicates the efficiency of the facility in recovering the organic fraction. It is anticipated that this measurement may be expressed as a maximum percentage of organic material in the residual material.

The Participating Councils are also seeking an agreed means of independently measuring this organic content that can be included in a contract.

i) All potential operational risks shall be identified and measures to restore operations and to deal with potential outcomes shall be included. This shall be independent of any contract documentation risk analysis that may be included under Condition 10(b).

Condition 3. Provision of a Marketing Plan:

While the end product marketing and use is the responsibility of the contractor, the Project Team has always considered this to be a critical element in determining the viability and environmental value of any process.

The DiCOM tender submission made clear reference to compost as the preferred end product and this product must meet Australian Standards and Environment Protection Authority Victoria (EPA) requirements. As DiCOM is now aware EPA Victoria is still finalising its position on the requirements for use of MSW derived compost and this is likely to still take some time to resolve.

The extended consideration of DiCOM's tender will provide time for this matter to be resolved or for DiCOM to pursue and verify other end product uses, such as refuse derived fuel.

Therefore, within the Marketing Plan DiCOM may choose to include alternatives for the end product and / or continue to include compost as the only end product or one of a number of end products.

Should compost remain as an intended end product DiCOM will be required to pursue the requirements of the EPA in order to provide evidence in the Marketing Plan that this end product, as a stand alone product or in a blended or other form, will be acceptable and can be distributed into the Victorian market.

Should alternative end products be proposed the Marketing Plan must identify the Victorian industry standard and provide evidence of product compliance.

Further to the significance of end product use, the Project Team considers an agreement to receive and use or market and distribute the end product is crucial to the viability and environmental value of the process

Note on Compost Requirements: EPA Victoria has indicated that it is monitoring the current position in NSW and is likely to adopt the outcomes of that process. These outcomes were clarified by the gazettal on 5 March 2010 of a general exemption under Part 6, Clause 51 and 51A of the NSW Protection of the Environment Operations (Waste) Regulations 2005. This exemption sets limits on various contaminants in MSW-derived compost and also limits the use of this material. The exemption also indicates that these requirements will remain under review with the critical future outcome date being 30 June 2013, at which time it appears that the requirements may be relaxed or made more stringent.

DiCOM should be fully aware of these requirements. If DiCOM intends to pursue compost as the end use, it must be able to meet these requirements if they are adopted by EPA Victoria and must be prepared to accommodate any future changes without consequence to the Participating Councils.

Condition 4. Geelong Ring Road Employment Precinct (Heales Road) to be the preferred site location:

The Project Team believes the GRREP is the preferred site strategically in terms of access to transport infrastructure for both feedstock and end use markets as discussed with DiCOM and RichGro in Perth in December 2009.

Condition 5. Approvals Processes

The Participating Councils will work collaboratively with DiCOM to obtain approvals for the nominated Geelong Ring Road Employment Precinct site.

DiCOM will be responsible for providing all technical information necessary to complete the approvals processes and shall meet the cost of the EPA works approval application while the participating Councils will meet the cost of the planning approvals application .

Should approvals not be obtained for the nominated site the Participating Councils reserve the right to seek approval at an alternative site or not proceed further.

These approvals processes should commence immediately upon agreement to these tender acceptance conditions to ensure that the approvals are obtained to enable construction of the Barwon facility to commence in accordance with the milestone nominated in Condition 7.

In agreeing to facilitate and contribute to these approval processes the Region and the Participating Councils do not accept any responsibility for delays in the processes and liability should the approvals processes impact upon the key milestone dates to be nominated under Condition 7.

Condition 6. Independent confidential assessment of the DiCOM proposal:

Given the operational amendments that have resulted from the WMRC Stage 1, extended timelines (although CPI increase would continue to apply) and other possible variations, the Project Team considers that it would be of value to both parties if it was to commission an independent review of the DiCOM proposal to ascertain its continuing viability within the context of the original tender (and, in particular, to verify its viability as a stand alone project, without reliance on other projects). DiCOM would be required to co-operate with this assessment.

In addition to the above specific assessment, to assist in its assessment of compliance with these tender acceptance conditions, the Participating Councils shall have the ability to seek and consider input from independent experts in the particular field relating to that condition.

Condition 7. Key Milestones Schedule:

DiCOM would be required to prepare and commit to a comprehensive programme that includes the WMRC facility and the Barwon facility. Milestones around the WMRC facility would become performance criteria within the tender acceptance process and those around the Baron facility would be requirements within any resultant contract.

**** This programme will be critical in obtaining Ministerial consent and therefore is required for inclusion in the submission to the DPCD for in principle consent of the Minister, refer Condition 1.***

Condition 8. Design Capacity at 65,000 tonnes per annum:

The Project Team envisages the DiCOM facility as primarily dealing with the Region's MSW.

The R&PC would therefore require a facility designed to a capacity of 65,000 tonnes per annum (and capable of up to 72,000 tpa, as per the DiCOM tender submission) with approximately 50,000 tpa MSW and the remaining 15,000 tpa being any mixture of green waste, MSW or material agreed by DiCOM and the Participating Councils to be suitable for processing. Under this arrangement, it would be the Participating Councils intention to establish separate processing for most of the green waste and ultimately all of the green waste. This scenario would allow for:

- seasonal variations in materials supply: as these variations are primarily in the green waste this would be catered for by the separate green waste processing contract, and*
- growth over the term of the contract: as the additional 15,000 tpa would be available for this additional MSW as the additional green or other waste supply could be progressively reduced.*

Condition 9. Processing Gate Fee

While it is acknowledged that the DiCOM original tender dated 20 April 2008 will form the basis of any contract this condition is emphasising the significance of the processing gate fee included in that submission.

Condition 10. Original Conditions of Acceptance

With the withdrawal of the Participating Councils from the original tender acceptance this condition provides for the continuation of those original conditions that are still applicable.

Changes however may be necessary as in the case of residual disposal whereby with the change of location it may now be more appropriate to dispose of this residual material at a site other than the Drysdale Landfill site and by an alternative means of transport.

While it is intended to proceed with finalising these conditions immediately the Participating Councils accept no responsibility for any delays in achieving compliance or should any non compliance impact on the key milestone dates to be nominated under Condition 7.

Condition 11. Participating Councils may withdraw from the conditional acceptance process:

This preserves the Participating Councils current position (ie: able to withdraw tender acceptance) and allows for any unforeseen circumstances that may arise that may create a situation that is untenable to the Participating Councils.

It is proposed that this condition is included on the basis of the other conditions requiring minimal commitments from DiCOM. In essence, other than providing

information required for the approvals processes DiCOM would not be required to commit to anything solely related to the Barwon project.

It should be noted that this condition only applies to the tender acceptance process. Once the tender is accepted and a contract entered into this will not apply.

Public Disclosure

The Participating Councils also understand that the release of information to the public will be critical and therefore suggests that should agreement be reached on this means of moving forward, that the following statement represents the Participating Councils and DiCOM's position

'DiCOM and the Barwon Region Councils have agreed to delay the finalisation of contract arrangements for the construction of an organics processing facility in Geelong until a number of outstanding issues are resolved. These issues include EPA Victoria's position on the use of compost derived from municipal solid waste and the securing of site approvals. This delay will also provide the opportunity for DiCOM to complete its first fully commercial facility in Perth.'

It is hoped that DiCOM will also see the mutual benefits in this proposal and continue to work with the R&PC to provide the best opportunity for this development to occur.

