



**CRIMINAL JUSTICE
COMMISSION**

**REPORT ON THE INVESTIGATION
INTO THE COMPLAINTS OF
JAMES GERARD SOORLEY
AGAINST THE BRISBANE CITY COUNCIL**

MAY 1991



CRIMINAL JUSTICE COMMISSION
QUEENSLAND

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Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989-90, the Commission hereby furnishes to each of you its Report into the investigation of the complaints of Mr J Soorley against the Brisbane City Council. Recommendations made pursuant to Section 3.21 appear in Section I of the Report.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

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A. INTRODUCTION

On 17 April 1989, the Brisbane City Council invited tenders for the acceptance, transport, treatment and disposal of refuse within the City of Brisbane.

At the close of tenders on 29 September 1989, seven (7) tenders had been received.

All tenders were initially rejected owing to their collective failure to conform to Council requirements. Of the seven tenderers, five (5) were later formally notified that further negotiations with them would cease; four (4) due to the absence of Environmental Impact Statements in their respective tenders, the fifth due to deficiencies in proposed operational procedures and environmental safeguards.

Negotiations were then continued with the remaining tenderers and on 5 February 1991, the Brisbane City Council announced that it would enter into the Waste Disposal Contract with Pacific Waste Management Pty Ltd.

On the same day, the current Lord Mayor Mr Jim Soorley, then an ALP candidate, released a media statement in which he indicated that a submission was to be made to the Criminal Justice Commission calling for an urgent inquiry into the "Liberal City Council's Financial Mismanagement of the Rochedale Dump Deal".

The Criminal Justice Commission received a copy of that media statement accompanied by Mr Soorley's submission on 5 February 1991 and subsequently commenced inquiries into the specific allegations contained therein.

Interested parties were advised by letter dated 19 March 1991 (Appendix 1) that the Commission was not able to substantiate the allegations of corruption or official misconduct made against the Brisbane City Council, although inadequacies in the administrative procedures adopted by the Council had been identified. The parties were further advised that a report detailing the results of the investigation would be completed and released in due course.

The allegations made by Mr Soorley are reproduced in Section B of the report. The evidence adduced with respect to each allegation is dealt with in Section G, whilst the findings of the Commission and its recommendations appear in Sections H and I respectively. The jurisdiction of the Commission to conduct the investigation, a chronology of events, the logistics of the investigation and the circumstances surrounding the tender are also dealt with in the body of the report.

B. ALLEGATIONS

When distilled, Mr Soorley's submission outlined six general areas of concern. The full text of the submission is reproduced at Appendix 2. The issues as identified by the Commission are reproduced below:

- 1. Political Donations: Did Pacific Waste Management Pty Ltd (hereinafter referred to as Pacific Waste) make payments to the Liberal Party or the "Lord Mayor's Trust Fund" in circumstances where such payments could be considered improper?**
- 2. The 1987 Town Plan Amendment: Was the Town Plan amended with a view to siting a dump at Rochedale? If so, why was the land not purchased in 1987?**
- 3. The Purchase of the Rochedale Site by the Successful Tenderer: Can it be implied from its purchase of the Rochedale site before close of tenders that Pacific Waste had prior knowledge that its tender would ultimately be successful?**
- 4. Contract Negotiations: Were the contract negotiations conducted in a biased or otherwise improper manner?**

5. **Land-fill Site Cost of \$14.2 million: Was the price of land corruptly or improperly inflated?**

6. **Interpretation of Tender Documents:**

Were tender costs improperly included by Pacific Waste in the agreed contract price?

Would the fact that the Contractors were to be paid a fee for the amount of refuse transported from the transfer stations to the dump site prove a dis-incentive to recycling and, in effect, afford a "blank cheque" offer to the successful Contractor?

Subsequently the Commission also received for its consideration further information from Mr Soorley and members of the Southside Action Group regarding the activities in the United States of the parent company of the Contractor. The substance of the information did not fall within the terms of reference of the present inquiry as it related to matters outside the jurisdiction of this Commission.

C. THE JURISDICTION OF THE CRIMINAL JUSTICE COMMISSION

Under the Criminal Justice Act 1989-1990, the Criminal Justice Commission is empowered to investigate allegations of corruption and official misconduct by public officials and others who, by their conduct, adversely affect or could adversely affect the honest and impartial discharge of duties by public officials.

The Act provides that the responsibilities of the Commission include the investigation of official corruption in units of public administration and the investigation of all cases of alleged or suspected official misconduct by persons

holding appointments in units of public administration (cf: Sections 2.15(f)(iii) and 2.20(2)(c)(ii) Criminal Justice Act).

Section 2.23(1) of the Act defines the general nature of official misconduct. It provides, inter alia, that official misconduct is:

- (a) Conduct of a person, whether or not he holds an appointment in a unit of public administration, that adversely affects or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or any person holding an appointment therein.
- (b) Conduct of a person while he holds or held an appointment in a unit of public administration that involves the discharge of his functions or exercise of his powers or authority in a manner that is dishonest or not impartial.

The definition also specifically incorporates conduct which constitutes a breach of trust or involves the misuse of information or material acquired in an official capacity.

In the case of holders of appointments in units of public administration, the conduct must constitute a criminal offence or a sufficiently serious disciplinary breach to provide reasonable grounds for termination of employment.

The term "Unit of Public Administration" is defined under Section 1.4(f) to include every corporate entity that is constituted by an Act, or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act.

For the purposes of determining its jurisdiction to conduct the investigation of the allegations made by Mr Soorley, the Criminal Justice Commission found that the

Brisbane City Council is a "Unit of Public Administration" and that the relevant Brisbane City Council employees were holders of appointments in such a unit of public administration, in terms of the Act.

In investigating the allegations of official misconduct Commission staff had reference, in addition to those sections of the Criminal Justice Act previously enumerated to, inter alia, the following provisions:

- City of Brisbane Act 1924 as amended: Sections 3; 8; 36 and 38

These sections set forth the powers and jurisdiction of the Brisbane City Council.

- Criminal Code (Queensland): Sections 440, 442A(1) and 442B

These sections create offences of Misappropriation by Members of Local Authorities, and Receipt of Secret Commissions.

D. LOGISTICS OF THE INVESTIGATION

Investigations into the allegations were conducted by a senior lawyer in consultation with the Chief Financial Analyst of the Commission and a staff of police investigators.

The investigation was given priority over other matters before the Commission as it was considered in the interest of both a community facing Local Government elections in March 1991 and those standing for election to resolve the issues raised as soon as practicable. Accordingly, resources were diverted from other investigations, which were temporarily suspended.

The investigation was ultimately of six weeks duration. Approximately one thousand hours were expended in the interviewing of witnesses and the taking of statements, and in the perusal, identification and collation of information, including historical data. Tens of thousands of pages were perused and considered in the course of the investigation. Much of the data was captured on computer as an aid to analysis.

Investigators researched events from late 1985, at which time the Brisbane City Council first identified a need for the development of an alternative to the sanitary land-fill method of refuse disposal in the Brisbane area, until the awarding of the contract in February 1991.

Commission investigators were given complete access to all relevant material held by:

- The Brisbane City Council
- Pacific Waste Management Pty Ltd
- Blake Dawson Waldron (Solicitors for Pacific Waste Management Pty Ltd)
- Thiess Contractors Pty Ltd (Parent company of Rail Waste Technology Pty Ltd)
- Austral Bricks Pty Ltd.

Copies of documents were made where necessary.

The sixteen people whose names appear in **Appendix 3** were interviewed. All provided Statutory Declarations to the Commission.

A detailed list of all documents referred to in the Statutory Declarations and in this report appears in **Appendix 4**.

Upon the conclusion of the investigation, a brief of evidence detailing the Commission's findings was submitted to a Queen's Counsel independent of the Commission for consideration. Counsel concurred with the Commission's findings.

E. CHRONOLOGY OF EVENTS

- 8 July 1986 Draft Town Plan tabled for public comment. Proposed changes included an expanded definition of "public utility undertaking" to include, inter alia, the disposal of refuse.
- 13 June 1987 Town Plan incorporating amended definition gazetted in the Queensland Government Gazette
- 17 April 1989 Brisbane City Council invited tenders for the acceptance, transport, treatment and disposal of refuse within the City of Brisbane. Tender documents stipulate that tenderers must own or have an option over the site, which would then be on-sold to the Brisbane City Council.
- May 1989 Number of companies indicate interest in purchase of property at Rochedale owned by Austral Bricks Pty Ltd
- 25 May 1989 Austral Bricks Pty Ltd corresponds with companies (including Pacific Waste) seeking expressions of interest in purchase

- 3 August 1989 Pacific Waste forward letter of intent to Austral Bricks Pty Ltd outlining Pacific Waste's interest in acquiring the land-fill site.
- 14 September 1989 Pacific Waste contracts with Austral Bricks Pty Ltd to purchase Rochedale site
- 29 September 1989 Close of tenders
- 29 May 1990 Stores Board recommends rejection of all seven tenders
- 5 June 1990 Brisbane City Council adopts recommendation of Stores Board to reject all tenders
- 6 June 1990 Brisbane City Council advises all tenderers of rejection of tenders and invites further negotiations
- 23 July 1990 Ian Morrison Wood, a Civil Engineer, is appointed to take responsibility for tender assessment. Mr Wood is the Manager of the Brisbane City Council Department of Works
- 21 August 1990 Brisbane City Council advises four of the tenderers of cessation of negotiations
- 18 October 1990 Brisbane City Council advises one of the remaining three tenderers of cessation of negotiations

- 24 October 1990 Brisbane City Council requests the two remaining tenderers, Pacific Waste and Rail Waste Technology Pty Ltd to schedule indicative pricing particulars
- 5 November 1990 Rail Waste Technology Pty Ltd submits particulars of indicative pricing
- 6 November 1990 Pacific Waste submits particulars of indicative pricing
- 17 November 1990 Amendment of Ordinance 15(8) extending the time for negotiation after all tenders have been rejected from six months to nine months published in the Queensland Government Gazette.
- 27 December 1990 Brisbane City Council provides re-draft of proposed contract and requests final prices from remaining tenderers.
- 7 January 1991 Pacific Waste and Rail Waste Technology Pty Ltd submit final prices
- 14 January 1991 Financial evaluation of the remaining tenderers completed by Brisbane City Council
- 29 January 1991 Stores Board recommends that the Brisbane City Council enter into a contract with Pacific Waste which incorporates the purchase by the Brisbane City Council of the land-fill site at Rochedale from Pacific Waste for \$14.2 million

- 30 January 1991 Pacific Waste advises Brisbane City Council of particulars of components of the figure of \$14.2 million
- 5 February 1991 Brisbane City Council adopts recommendation of Stores Board to enter into a contract with Pacific Waste
- 5 February 1991 Criminal Justice Commission receives submission from Mr James Soorley
- 18 February 1991 Contract signed by both parties
- 4 March 1991 Expiry of period under Ordinance 15(8) as amended
- 19 March 1991 CJC advises interested parties of results of investigations
- 23 March 1991 Brisbane City Council elections

F. THE CIRCUMSTANCES OF THE TENDER

It appears, upon full consideration of the tender documents, that at the time of calling tenders on 17 April 1989, the Brisbane City Council had no preconceived plan with respect to the method or methods to be employed for the disposition of refuse.

Clause 2.24 provided:

"A tender shall specify the method or methods to be used to accept, transport, treat and dispose of refuse. Such methods may include -

- (a) *Sanitary land-fill with Refuse Transfer Stations sufficient to ensure that collection vehicles and members of the public are adequately served thereby;*
- (b) *Incineration with sanitary land-fill and Refuse Transfer Stations as above; and*
- (c) *Recycling or composting or both carried out in conjunction with one of the methods set out in (a) and (b) above".*

The Council stipulated that the contracted period was to be not less than ten years and not more than thirty years. The successful tenderer should have title to or an option to purchase or otherwise acquire all land to be used in connection with the site. The land was to then be transferred to the Council within ninety (90) days of the acceptance of the tender.

Seven companies had submitted tenders by 29 September 1989. These tenderers were:

- Acc Waste Pty Ltd
- Brambles Holdings Pty Ltd
- Duncanson and Brittain (Quarries) Pty Ltd
- Pacific Waste Management Pty Ltd
- Rail Waste Technology Pty Ltd
- Roche Bros. Pty Ltd Queensland
- Xavier Investments Pty Ltd

The Stores Board of the Brisbane City Council, whose members participate in the management of Council affairs at executive level, then considered all tenders. The Board is chaired by the Town Clerk and otherwise comprised of Council

Departmental heads. A tender assessment group was established. This group reported directly to the Board.

Adopting a recommendation of the Board made 29 May 1990, the Council determined that all tenders be rejected. It was the Council's view that in no instance did a tenderer comply sufficiently with the conditions of the tender. Further substantial submission of either geotechnical, environmental or engineering detail and investigation would be required before a proper assessment of tenders could be embarked upon.

The Brisbane City Council Ordinances lay down certain procedures to be followed by the Council with respect to entry into proposed contracts for the transport, treatment and disposal of refuse after an initial rejection of tenders.

As they are highly pertinent to the present inquiry, it is proposed to reproduce sections of the relevant ordinances in full. Ordinance 2 of Part 9 of the City Council Ordinances prohibits the Council from purchasing goods and services except in accordance with Ordinance 15(8) which provides:

"Subject to paragraph (9) and otherwise notwithstanding any other provision of this Part, where the Council has with respect to a proposed contract -

(a) relating to -

(i) the transport, treatment and disposal of refuse; or

(ii) the supply, installation and maintenance of computer hardware and computer software or either of them; and

(b) wherefore tenders have been invited as provided in this Part,

adopted a recommendation of the Board that all tenders be refused by the Council, at any time within six months after the adoption of that recommendation the Council may negotiate and enter into a contract for its purchase of, or for its purchase of a modification of, the goods or services to which that proposed contract related with any of the persons whose tender was refused pursuant to the adoption of that recommendation."

Ordinance 15(9) provides as follows:

"The Council shall not approve its entry into a contract pursuant to paragraph (8) until in its opinion -

- (a) it is in the public interest that the Council enter into that contract; and*
- (b) no injustice will be rendered to any person by the entry of the Council into that contract."*

The tenderers were advised by correspondence dated 6 June 1990 that their respective tenders had been unsuccessful. Further negotiations were, however, invited in each instance.¹

On 21 August 1990 Ace Waste Pty Ltd, Duncanson and Brittain (Quarries) Pty Ltd, Roche Bros. Pty Ltd Queensland and Xavier Investments Pty Ltd were formally advised that negotiations would not be continued due to the failure on the part of each Company to provide an Environmental Impact Statement.²

¹ Appendix 3: Correspondence referred to in the Statutory Declaration of Ian Morrison Wood, IMW2A-G

² Ibid, IMW5A-D

A further tenderer, Brambles Holdings Pty Ltd, was advised on 18 October 1990 that negotiations with it would cease due to perceived deficiencies in proposed operational procedures and environmental safeguards.³

The time for entering into a contract pursuant to Ordinance 15 (8)⁴ was extended from six months to nine months to enable the Council to continue negotiations with the remaining tenderers. The extended period expired on 4 March 1991. The enabling amendment was published in the Queensland Government Gazette on 17 November 1990.

Negotiations were then continued with Rail Waste Technology Pty Ltd (hereinafter referred to as "Rail Waste") and Pacific Waste. Both tenderers proposed to transfer land to the Council if awarded the contract. Rail Waste offered to provide two sites - one located at Grindle Road, Rocklea, which would be used as a major transfer station, and one at Swanbank near Ipswich. The latter site, to be used for land-fill, was 32 kilometres from Brisbane City.

The concept design of the transfer stations as proposed by the respective tenderers was found by the Council to be essentially the same, except that Pacific Waste offered the option of the provision of a larger station at Ferny Grove.

The capacity of the respective land-fill sites offered by the tenderers was disparate: the site offered by Rail Waste had an operational capacity of ten (10) years; Pacific Waste offered sites with an operational capacity of thirty (30) years.

At the time of the tender, the Swanbank site offered by Rail Waste had yet to be rezoned to enable it to be used as a land-fill site. There existed the possibility of an objector appeal. Despite positive indications to the contrary, there could be no

³ Ibid, IMW6

⁴ Ibid, IMW3

guarantee that the land would be appropriately zoned at the required time, as the property was situated outside the City of Brisbane in the Moreton Shire.

The main Pacific Waste site was zoned "Extractive Industry" and, as such, its use as a land-fill site would be permitted as-of-right. Only a portion of the second site was similarly zoned - the other portions were situated in zones which would allow the proposed operations to be conducted as a permitted use viz: by consent of the Brisbane City Council.

In summary, the major technical and environmental concerns to emerge in connection with the use of the Swanbank site were:

- (i) Settlements of land-fill of up to 300mm projected to occur;
- (ii) Risk of fire due to presence of underground coal seams and the presence of reject carbonaceous material and washery reject;
- (iii) Site monitoring system would be difficult to design and ineffective in detecting leaks;
- (iv) Questionable suitability of original liner design proposal.

The only major technical concern to emerge regarding the use of the Rochedale site was the necessity to implement a groundwater lowering system.

Concerns were raised regarding irrigation from groundwater systems. Pacific Waste consultants advised that the land-fill site is down-gradient from the existing bores: this advice was accepted by the Council engineers. The proposal for the construction of the lining system and cover was found to be feasible, with the prospect of some wet weather cover having to be imported into the site. The design for the wet land habitat and East/West Creek was likewise found to be satisfactory.

Significant social issues raised by each proposal are outlined as follows:

1. Swanbank

- (i) City of Brisbane's dump located in the Shire of Moreton;
- (ii) Site is reasonably remote - nearest residence 350 metres;
- (iii) Increased traffic for residents near intersection of Cunningham Highway and Swanbank Road;
- (iv) Community Consultation Programme undertaken by tenderers during development of proposal.

2. Rochedale

- (i) Site is located adjacent to rural residential development and operating quarry and brickworks, near major road network;
- (ii) Increased traffic for residents in some sections of Gardner Road;
- (iii) Pacific Waste yet to initiate a community consultation programme;

Concerns regarding odour, noise, presence of hazardous substances and potentially negative visual impact were viewed as common to both local communities.

After further negotiations with tenderers, the Brisbane City Council ultimately adopted a further recommendation of the Stores Board made on 29 January 1991 that the Council enter into a contract with Pacific Waste for the acceptance, transport, treatment and disposal of refuse for the City of Brisbane. The Contract period was twelve (12) years from the date of commencement of works or the

expiration of the life of the refuse tip, whichever occurred first in time. The Council maintained three (3) options to renew the contract, each of six (6) years duration, to run consecutively.

G. THE ISSUES

1. **Political Donations:** Did Pacific Waste Management Pty Ltd make payments to the Liberal Party or the "Lord Mayor's Trust Fund" in circumstances where such payments could be considered improper?

Advice received from the General Secretary of the Liberal Party of Australia (Queensland Division) confirmed that a record is kept of all donations made to the Liberal Party (Queensland Division). No donation was received from Pacific Waste as from 1 July 1986; the draft Town Plan being tabled for public comment on 8 July 1986. The Liberal Party (Queensland Division) does not keep records of donations made to individual branches or zones of the Party.

The Finance Division of the Brisbane City Council does not operate a "Lord Mayor's Trust Fund", nor did such a fund operate within the general Trust Fund of the Council. A City of Brisbane Benefit Fund is, however, operated by the Council. This fund was used to raise funds for charity and is traditionally chaired by the Lady Mayoress. There is no record of any donation to that fund by Pacific Waste.

Funds were held by the Council in trust for Pacific Waste by way of tender and preliminary deposits on the Contract. These sums have since been returned to the company. As at 31 December 1990, the Council held c. \$250,000 by way of cash security on the account of Pacific Waste. These funds were designed to cover potential long service and sick leave entitlements of employees of Pacific Waste under an existing refuse collection contract.

The Council also holds inscribed stock on behalf of Pacific Waste in the sum of \$569,000 for security on another unrelated contract.

2. The 1987 Town Plan Amendment: Was the Town Plan amended with a view to siting a dump at Rochedale? If so, why was the land not purchased in 1987?

Immediately prior to 13 June 1987, the definition of "Public Utility Undertaking" under the Town Plan of the City of Brisbane did not incorporate the collection of refuse. Included as part of the definition were rail, road, air and water transport; the supply of water, hydraulic power, electricity or gas; the provision of sewerage or drainage services; the provision of maintenance of roads; the provision of postal and telecommunication services.⁵

On 8 July 1986 the proposed Town Plan with an amended definition of "public utility undertaking" was tabled for public comment.⁶ A reference to an undertaking for the collection, removal or disposal of refuse was included. The 1987 amendments to the Town Plan contained the expanded definition of "public utility undertaking" as previously exhibited to the public.⁷

Although the amendment of the definition to its present form was gazetted on 13 June 1987, the Commission investigators found that it had been foreshadowed in late 1985/early 1986. The Director of Town Planning for the Brisbane City Council, John Leslie Thomas Butler, advised that the definition of "public utility undertaking" has existed for many years under various guises and that the Town Plan was amended to ensure consistency of definition. This latter proposition was

⁵ Appendix 4 "A" (referred to in Statement of J L T Butler)

⁶ Ibid, "B"

⁷ Ibid, "C"

predicated on the basis that the collection, removal or disposal of refuse should be treated as a "public utility undertaking" in the same manner as the provision of sewerage or drainage services and other similar services.

The Rochedale land-fill site is located in an Extractive Industry Zone. In such zones utility installation is an as-of-right or permitted use ie: no further Council approval is required, nor can objections be lodged prior to the installation of nominated utilities. The definition of "utility installation" under the relevant legislation includes "public utility undertakings".

The practical effect of the expansion of the definition was to remove the right of objection by members of the public to the siting of a refuse tip in their suburb if the suburb is zoned "Extractive Industry".

An exhaustive search of Council records including Minutes of Council meetings and interviews with employees failed, however, to locate any evidence to suggest that the Brisbane City Council had formed the intention at the time the Town Plan was amended in 1987 to site a dump at Rochedale. In fact, as previously observed, the Brisbane City Council appeared to have no site or systems for waste disposal envisaged as late as April of 1989, when tenders were called.

3. The Purchase of the Rochedale Site by the Successful Tenderer: Can it be implied from its purchase of the Rochedale site before close of tenders that Pacific Waste Management Pty Ltd had prior knowledge that its tender would ultimately be successful?

The General Manager of Austral Bricks Pty Ltd (hereinafter referred to as Austral Bricks), John Raymond Giffen, indicated that in May of 1989 a number of companies had expressed an interest in purchasing an old quarry site on two deeds

at Rochdale, owned by Austral Bricks.⁸ These companies included Brambles Holdings Pty Ltd, Roche Bros Pty Ltd Queensland, Thiess Contractors Pty Ltd, Hunter Bros Pty Ltd, Pioneer Concrete Qld Pty Ltd and Pacific Waste.

Following these approaches, Austral Bricks sought expressions of interest from any interested parties. Offers were received from Brambles Holdings Pty Ltd, Pioneer Concrete Qld Pty Ltd, Transpacific Industries Pty Ltd, Thiess Contractors Pty Ltd, Neutralysis Industries Pty Ltd, Roche Bros Pty Ltd and Pacific Waste etc.

All companies initially offered to purchase the land subject to being awarded the Brisbane City Council tender. The General Manager of Austral Bricks, John Giffen, did not accept any first offers, although he continued to negotiate with various companies. Austral Bricks stipulated that any agreement for the sale of the main site would be viewed more favourably if it were unconditional.

The two major offers were made by Brambles Holdings Pty Ltd and Pacific Waste. Pacific Waste submitted a final offer to purchase one parcel of land for \$4.5 million. This offer was not conditional upon the company being awarded the waste disposal contract. It made a further conditional offer of \$1 million for the other parcel. Both offers were made by correspondence dated 30 August 1989. The contractual condition was unrelated to the awarding of the contract to Pacific Waste. The combined offer made by Pacific Waste was for a lesser amount than that offered by Brambles Holdings, however the latter offer was made conditional upon Brambles Holdings being awarded the tender. An unconditional contract was subsequently settled and signed between Austral Bricks and Pacific Waste for the main site, with a conditional contract being entered into by the parties on the lesser site.

⁸ Real property description contained in Appendix 6

The Managing Director of Pacific Waste, Dennis Charles Clements informed the Commission that as the original tender documents required tenderers to have possession of any site which it proposed to use, his company took the view that to conform with the tender, the proposed site would have to be owned by or be the subject of an option to purchase by, the successful tenderer. During negotiations with Austral Bricks, the company became aware that Austral Bricks had written to a number of parties seeking expressions of interest in the purchase of the site. Further, Pacific Waste had been informed that Austral Bricks was not willing to accept conditional offers over the main site and accordingly, his company negotiated with Austral Bricks to purchase the main site unconditionally, with a conditional offer only being made over the second parcel of land. This contract was entered into fifteen days before the close of tenders.

Clements negotiated on behalf of Pacific Waste with John Giffen. He received a letter dated 25 May 1989 seeking expressions of interest in the purchase of the site. Pacific Waste forwarded a letter of intent on 3 August 1989 and signed a contract on 14 September 1989. Prior to entering into the contract, however, Pacific Waste had an expert from the United States inspect the site and conduct preliminary tests. It was concluded on the basis of the results of these tests that the site was suitable for waste disposal due to its clay base.

Pacific Waste informed the Commission that it had formed the view that even if it was unsuccessful in its tender bid with the Brisbane City Council, the site was worthy of purchase as it could be productively used for a hard-fill solid waste disposal site.

Upon consideration of all relevant Council records, the records of Pacific Waste and Austral Bricks and their solicitors and transcripts of interviews with company executives and Council officials, the Commission found no evidence to support the suggestion that Pacific Waste had prior knowledge that it would ultimately be successful in its tender bid.

4. Contract Negotiations: Were the contractual negotiations conducted in a biased or otherwise improper manner?

During the investigation, Commission Officers reviewed large quantities of documents with a view to determining if any lack of impartiality on behalf of the Council officers in negotiation with tenderers could be discerned. Council employees and company executives were also interviewed.

Dealings with three companies only were targeted: Pacific Waste, Rail Waste and Brambles Holdings Pty Ltd. The other four unsuccessful tenderers were not interviewed as their tenders were rejected for failure to meet a standard specification; namely, the failure to provide environmental impact statements.

Solicitors for the Southside Action Group also referred a Mr Michael George Palmer to the Commission, and provided a copy of an affidavit by Palmer. The issues raised by Palmer's affidavit will be dealt with later in this section of the report.

On 23 July 1990 Ian Morrison Wood was approached by the Lord Mayor and asked to take responsibility for the assessment of tenders for the waste disposal contract. Wood, a civil engineer, was at that time a member of the Brisbane City Council Stores Board. Following the request from the Lord Mayor, he established a tender assessment group which reported to the Board. The group was also responsible for the compilation of the final report to the Board which recommended the awarding of the contract to Pacific Waste.

As previously stated, all tenders were initially rejected. Wood advised the Commission that when he assumed responsibility for tender assessment, he was aware that the tenderers were required to provide environmental impact statements. Of the seven tenderers only three, Pacific Waste, Rail Waste and Brambles Holdings Pty Ltd, provided environmental impact statements. The statement

provided by Brambles Holdings Pty Ltd was later found to be inadequate for Council purposes.

Following the initial rejection of all tenders, legal advice from two Queen's Counsel concerning the parameters within which negotiations could continue to be conducted was relied upon by Council officers. The advice was to the effect that further negotiations should be constrained within the terms of the original tender.

Wood states that to his knowledge, none of the tenderers sought to improperly influence either the negotiations or the assessment of tenders, or indeed, to gain any other unfair advantage during the negotiation stage.

The Director of the Waste Management Branch within the Department of Works of the Council, Mr Peter Clark Burrows, was also interviewed by Commission investigators. Burrows, also an engineer, participated in the tender assessment group as from July of 1990. At this stage all tenderers were still in negotiation with the Council.

He states that negotiations between the Council officers and the tenderers were recorded on tape recorders or by contemporaneous notes; confirmation of negotiations was later made in writing. The negotiation phase was treated as a process whereby the Council provided more specific information of its requirements to the tenderers.

It was his view that there was no difference in the manner in which each company was treated by the Council. The tender assessment group was careful to treat each proponent impartially, and that timely meetings would be conducted with each of the tenderers to canvass the same issues. He cites the example of one meeting between Rail Waste Technology Pty Ltd and Council officers, wherein a comment was made by a Rail Waste company executive to the effect that the Council was merely obtaining information from the company in order to assist in its own staffing

procedures. Burrows was concerned about the comment and as a result, later wrote to Rail Waste. A reply was received in which it was suggested that the comment was made light-heartedly and that the company was happy with the negotiation process undertaken thus far by the Council.⁹

The Commission investigators also spoke to the Manager for Environment Services of Thiess Contractors Pty Ltd, Mr Leigh Elwin Ainsworth. He advised that Thiess Contractors had been involved in developing a major process for waste disposal in the Brisbane area for a number of years, having been aware that there was a pending shortage of land-fill capacity. The company approached both the Brisbane City Council and the Moreton Shire Council in early 1987 with an unsolicited proposal. It was in the process of developing this proposal for waste disposal that the company Rail Waste Technology Pty Ltd was incorporated. The tender ultimately submitted by Rail Waste to the Council was prepared by Ainsworth in association with other company officers.

Ainsworth, in detailing the tender process, advised that after tenders closed, all tenderers attended the Council offices and were informed that their tenders were to be rejected and that further negotiations were to commence. He states that subsequent negotiations were very much "one-way", in that the Council provided the tenderers with formal information as to specifications. He recalls that a number of meetings were held with the Council during which technical matters were discussed. He did not have any complaints or concerns regarding the impartiality of the Brisbane City Council in the conduct of negotiations and, to the best of his knowledge, no other officers employed by Rail Waste or Thiess Contractors Pty Ltd have such complaints.

The Queensland Manager for Brambles Holdings Pty Ltd, Michael Shaw Iliff, was also interviewed by Commission Officers. He stated that shortly after commencing

⁹ Annexure 3: Correspondence referred to in the Statement of Peter Clark Burrows, PCB1

employment with the company, he was required to form a project team which was to produce a tender for the waste disposal contract. He recalls that on 27 November 1989, the company was invited by the Council to a meeting in order to answer questions on the tender proffered. He also recalls that on three other occasions, discussions were had with the Council in relation to matters associated with the tender.

After the initial rejection of tenders on 6 June 1990, his company was involved in further negotiations with the Council. Meetings took place in June, July and August of 1990. These meetings were called by the Council to advise Brambles Holdings of inadequacies in the company's tender (as perceived by the Council) and to offer the appropriate manner of correction should the company intend to continue with negotiations.

Brambles Holdings executives had initially formed the view that the Council was searching for a different solution to the waste disposal problem from the traditional approach to land-fill. Early in negotiations, however, the Brambles executives concluded that the tender assessment group was not particularly interested in the high technology solution proffered by Brambles Holdings, which had tendered on the basis of a neutralysis process. [Neutralysis is the process whereby solid waste aggregate is recycled into products such as building bricks etc.]

On 18 October 1990, the Council wrote to the company severing negotiations. The company responded to the Council shortly thereafter and indicated that it was of the opinion that Council officers had not grasped the technical details of the company's tender. Thereafter negotiations between the parties ceased.

Notwithstanding his belief that the Brisbane City Council tender assessment group was not interested in the technical aspects of the Brambles tender, Iliff could offer no evidence in support of the proposition that the Council officers had at any stage acted other than impartially.

Regarding the affidavit supplied by solicitors for the Southside Action Group, it was confirmed that the deponent, Mr Palmer, was a Director of the company Sydney Earthmoving Pty Ltd, which operates from Mascot Airport in New South Wales. Until December of 1990 the company had been involved in the recycling of industrial waste. Palmer informed Commission officers that whilst in Brisbane in about April or May of 1990, he was advised that Brisbane City Council officers would be visiting Sydney in the near future and would inspect his company's operations.

In the latter half of 1990, Mr Ian Wood did visit the Sydney operations of the company and, according to Palmer, said in respect of recycling, that he would like Palmer to speak to executives of Pacific Waste Management Pty Ltd because that company was the Council's "preferred tenderer" with respect to the Brisbane waste disposal contract. Wood also provided the name and telephone number of Mr Clements. Palmer said the names of other companies or individuals were not mentioned during the conversation.

Later in that year, Palmer rang Clements and by arrangement, met with Mr Joseph Anthony Parziale, a Director of Pacific Waste Management Pty Ltd, for breakfast during which discussions were had in relation to the recycling of waste. At a later stage Parziale contacted Palmer and in the course of conversation, mentioned the tender. He gave no indication to Palmer, however, that he had knowledge that Pacific Waste would in fact be the successful tenderer.

When asked to give a response to the issues raised by Palmer, Wood stated that in about October or November of 1990, he attended the premises of Sydney Earthmoving Pty Ltd at the invitation of Palmer, where he inspected an operation involving the recycling of waste. He recalled advising Palmer that he should discuss his operation with officers of Pacific Waste but he does not recall saying the company was the Council's "preferred tenderer". Wood stated that at that stage of negotiations, two tenderers were remaining and that he could have said that

Pacific Waste Management was one of the remaining tenderers. Wood was of the opinion that he would have also given the name of Rail Waste Technology to Palmer.

Upon assessment of all the evidence, however, the Commission found that the fact that Wood may, on one version, have described Pacific Waste as the "preferred tenderer" was not of itself evidence that he or others had in some way improperly predetermined the outcome of the negotiations. Those assigned to assess tenders are obliged, by the very nature of their function, to form a view regarding matters before them. In any event, there is no independent evidence to corroborate either Palmer or Wood's version of the relevant conversations and no adverse findings can be made against either Mr Wood or the Council in this regard.

In summary, it appears that the contract negotiations were conducted in an unbiased and impartial manner. The Commission has formed the view that the Council officers had in fact conducted themselves in an impartial manner at all relevant times and were meticulous in engaging in consistent communications with all tenderers.

5. Land-fill Site Cost of 14.2 Million: Was the price of the land corruptly or improperly inflated?

As previously mentioned, the tender documents stipulated that the tenderer should have title to or an option to purchase the relevant land, such that a sufficient interest could be transferred to the Council within 90 days of the signing of the contract.

Pacific Waste purchased both parcels of land on 14 September 1989 at a total cost of \$5.5 million. On 22 October 1990, the Council forwarded a schedule to tenderers requesting the provision of indicative pricing. On 6 November 1990, Pacific Waste submitted particulars as requested and on 7 January 1991 submitted final prices.

The figure of \$14.2m was listed by Pacific Waste as the cost associated with the provision of land for the land-fill site. Council officers advised that they were concerned about the amount quoted and asked the company to provide a breakdown of the figure. Pacific Waste indicated that it considered this information commercially sensitive and was thus reluctant to provide the components of the figure unless first notified that the Stores Board had recommended it as the successful tenderer. The Council Officers accepted the company's stance at the time and after the recommendation of the Stores Board endorsing the Pacific Waste tender was confirmed, the company forwarded a confidential letter to the Council setting out the breakdown. This letter,¹⁰ dated 30 January 1991, was under the hand of John Joseph Stankiewicz, the Finance Director of Pacific Waste. Details of the costings are as follows:

Purchase price of land	\$5,500,000
Contingency 5%	275,000
Tender preparation costs	1,605,000
Contract mobilisation costs	856,000
Rates and taxes	253,674
Bank fees re bonding and guarantees	52,990
Interest (9/89 through 3/93)	3,844,318
Stamp duty and registration fees	426,826
Margin	1,423,757
TOTAL TENDERED PRICE	14,237,565

Stankiewicz was interviewed by senior Commission officers. He advised that the total figure quoted included all costs involved in securing the site and developing the proposal. It incorporated a cost for the holding of the site by Pacific Waste

¹⁰ Appendix 3, correspondence referred to in the Statement of John Joseph Stankiewicz, z, JJS41

until March 1993, which was the latest possible date whereby transfer of the land to the Council could be effected under the contract.

Working sheets detailing the individual figures which underpinned the costings quoted were provided to the Commission and analysed. The first item represents the bare purchase price of the land as \$5.5m - ostensibly the same total cost incurred in respect of both parcels purchased by Pacific Waste. The contingency fee of \$275,000 represents an allowance for risk in the purchase [and presumably development] of the site. The tender preparation costs of \$1.605m are an estimate of the costs incurred by Pacific Waste in the development of the proposal, up to the point of the awarding of the tender.

The contract mobilisation costs at \$856,000 represents the costs incurred in bringing technical personnel from the United States and housing them in Australia, negotiating costs with consultants in relation to the detailed design of the construction work, and the costs associated with the compilation and negotiation of a contract with a [sub-contracting] construction firm. The figure of \$253,674, representing expenses incurred by way of rates and taxes, includes an estimate of those rates and taxes payable to March 1993, the latest time under the contract for transfer of the company's interest in the sites to the Council. The bank fees of \$52,990 represent a fee payable to Pacific Waste's bank for the provision of the \$20m bond required at the commencement of a contract. The interest figure of \$3.8m is calculated on the amount of \$5.5m from the time of the first payment required to be made by Pacific Waste in September of 1989. Interest rates at that time were in the vicinity of 20 percent. The stamp duty and registration fees of \$426,826 are payable on and relate to the total tendered price. The amount represented as "Margin" is the amount of profit derived by Pacific Waste.

Council officers took the view that it was commercially acceptable for Pacific Waste to ensure that its genuine costs were absorbed in the contract. The structure

of the tender proposal in this regard, and the heads under which costs were presented, were likewise considered to be a matter for the tenderer.

No evidence was uncovered to indicate that the price of the land-fill site was improperly or corruptly inflated. It may be argued that the acceptance of the pricing schedule as presented in this form was advantageous to Pacific Waste in that it enabled the company to recover costs at the outset rather than over the life of the contract, and conversely, disadvantageous to the Council in that the Council would be tied to the provision of funds at an earlier stage than would be the case had the costs been spread over the life of the contract.

There must exist real questions as to whether the inflated figure of \$14.2m is commercially acceptable, and whether it represents an unjustifiable windfall to Pacific Waste at the expense of the ratepayers of Brisbane; however, these are not questions which the Commission can, by law, confront. By the terms of its legislation, the only question to be considered by the Commission in relation to this issue is whether the figure was corruptly inflated. There is no evidence that it was. The fact that serious questions however, relating to the commercial soundness of the transaction and by necessary corollary, the business acumen of those representing the Council in negotiations were raised does not of itself afford evidence of official misconduct or corruption.

6. Interpretation of Tender Documents:

Were tender costs improperly included by Pacific Waste in the agreed contract price?

Would the fact that the Contractors were to be paid a fee for the amount of refuse transported from the transfer station to the dump site prove a disincentive to recycling and, in effect, afford a "blank cheque" offer to the successful contractor?

The issue as to whether the tenderer should have included tender costs in the agreed contract price is a matter to be determined upon the interpretation of the contract and any relevant ordinances. In the absence of any evidence of official misconduct or corruption it is not of itself a proper matter for consideration by the Commission.

Similarly, the policy question as to whether the method of payment prescribed in the contract for refuse transfer and the attendant contractual obligations was consistent with sound business practice is again not a proper matter for investigation by the Commission where no official misconduct or corruption is indicated.

It is recognised that, in theory, tender costs could be improperly inflated and excessive payments could be made to contractors for corrupt purposes; in the present circumstances however, allegations that the tender costs were included as a result of a corrupt private arrangement between the Brisbane City Council and the tenderer, or that excessive payments would likewise be made as a result of an improper bargain, could not be substantiated upon consideration of all available evidence.

H. FINDINGS

1. **Political Donations: Did Pacific Waste Management Pty Ltd (hereinafter referred to as Pacific Waste) make payments to the Liberal Party or the "Lord Mayor's Trust Fund" in circumstances where such payments could be considered improper?**

The Commission found no evidence of improper payments by Pacific Waste to the Liberal Party or to any trust fund administered by the Brisbane City Council.

2. **The 1987 Town Plan Amendment: Was the Town Plan amended with a view to siting a dump at Rochedale? If so, why was the land not purchased in 1987?**

The Commission found no evidence that the relevant amendment to the 1987 Town Plan of the City of Brisbane was made with a view to siting a dump at Rochedale. Consequently, the Council had no reason to purchase the land at that time. The Commission found that the amendment was not made for any corrupt or improper purpose.

3. **The Purchase of the Rochedale Site by the Successful Tenderer: Can it be implied from its purchase of the Rochedale site before close of tenders that Pacific Waste had prior knowledge that its tender would ultimately be successful?**

Under the terms of the contract, the Council stipulated that the tenderer must have title to/option to purchase over, the site. Several companies offered to purchase the site prior to the close of tenders. The offer made by Pacific Waste was considered superior and accepted by the vendor. The Commission is satisfied that no implication can be drawn that Pacific Waste had prior knowledge of the ultimate outcome of the tender, on the basis of its purchase of the Rochedale site before the close of tenders.

4. **Contract Negotiations: Were the contract negotiations conducted in a biased or otherwise improper manner?**

The Commission is satisfied that the contract negotiations were conducted in an unbiased and impartial manner.

5. **Land-fill Site Cost of \$14.2 million: Was the price of land corruptly or improperly inflated?**

The Commission, upon consideration of all the evidence, including a breakdown of the component costs of the land-fill site, found no evidence to support any allegation of misconduct or corruption with respect to the price of the land-fill site.

6. **Interpretation of Tender Documents:**

Were tender costs improperly included by Pacific Waste in the agreed contract price?

Would the fact that the Contractors were to be paid a fee for the amount of refuse transported from the transfer stations to the dump site prove a dis-incentive to recycling and, in effect, afford a "blank cheque" offer to the successful Contractor?

In the absence of any evidence of official misconduct or corruption, no findings can be made in respect of the propriety or otherwise of the contractual arrangements.

I. INADEQUACIES IN THE BRISBANE CITY COUNCIL ADMINISTRATIVE PROCEDURES

In summary, no adverse findings can be made against the Council or its officers with respect to allegations of official misconduct or corruption arising out of the awarding of the tender to Pacific Waste and the siting of the proposed dump at Rochedale. The investigation did raise serious questions, however, as to the efficacy of the tendering process as applied by the Brisbane City Council to

significant undertakings such as the waste disposal project, and the level of appropriate training and guidelines for officers entrusted with the not insubstantial burden of financial negotiations in multi-million dollar projects.

The Criminal Justice Commission is obliged by statute¹¹ to include in its reports recommendations with respect to matters relevant to the subject matter of the report. In so doing, the Commission is also required to include an objective summary and comment with respect to all considerations that support, oppose or are otherwise pertinent to its recommendations.

By way of explanation for the approach adopted, the Brisbane City Council officers involved indicated that they had sought and obtained legal opinion as to the basis upon which negotiations could be conducted after the initial rejection of tenders and acted accordingly, believing that the financial aspects of the tender could not be re-negotiated. Furthermore, they had followed the appropriate procedure set down by the ordinances to deal with waste disposal contracts. All objective evidence confirms that they had strictly adhered to this procedure.

(i) Review of Tendering Strategy – the Problems Created by Non-Specific Tendering

The use of the tendering process merely to canvass differing technical solutions which would then be refined in the course of further assessment with a view to arriving at a preferred solution, would seem to create a number of problems. It clearly locks the Council into a highly structured process not designed for the initial surveying of technical options as the amount of discussion and debate which can be engaged in with the tenderers is limited and the time frame for the completion of the process is inflexible and restricted by the ordinances.

¹¹ Criminal Justice Act, Section 3.21(2)(c)

The Council consciously embarked on a tendering strategy which did not specify a preferred method. Its officers were aware that the relevant ordinances would be invoked should the tenders received be regarded as non-conforming and a further six month negotiating period would be available. The tendering period proved insufficient; the six month negotiating period was also inadequate. The extension by three months (six months was requested) enabled sufficient time for a contract to be produced, however the Commission has genuine concerns as to whether the ultimate result was achieved comfortably and with full evaluation of all relevant factors. It is at best questionable whether the strategy of embarking on a formal tender process with incomplete specifications for such a major contract was appropriate, given the perceived restrictions on negotiating during the tendering process and the restrictions on the period over which any subsequent negotiations may take place.

An inevitable side effect of such a system is that tenderers who have the capacity to tender on the basis of differing technical solutions may be inclined to tender only on a preferred solution where significant tendering costs are to be incurred, and thereby in effect be excluded from providing a competitive bid on what later emerges as the Council's preferred technical solution.

Although Ordinance 15(8) may owe its existence to the difficulty in drafting precise specifications for refuse handling and computing software and hardware and to the volatility of the technology in these areas, the provision of the safety net of a negotiating phase does not seem to have compensated sufficiently in this instance for the lack of precision in determining a technical solution before the tendering process was embarked upon.

RECOMMENDATIONS

- **Alternative administrative arrangements should be developed and implemented by the Council to be employed where a preferred technical**

solution/preconceived development plan on a given topic has not been formulated, in preference to the present automatic recourse at a preliminary stage to an unwieldy tendering system. Methods should be developed to enable the canvassing of different technical solutions as a precursor to the receipt of competitive bids. This would necessarily involve consultation with the Department of Local Government to ensure the most efficient system is achieved.

- The relevant ordinances should be amended to extend time periods and clearly set forth what restrictions, if any, should be placed on the parties during both negotiations in the tendering process and any subsequent negotiations, to accommodate circumstances where the Council has no alternative but to seek tenders without first specifying a preferred method.
- In addition to the matters outlined above, the Council should give consideration to the compilation and implementation of guidelines to be followed by Council officers involved in the tendering and negotiating process, specifically with respect to financial matters, and provide suitable training in the area. This would be of particular assistance to those officers without specific legal training or practical experience in contract negotiation.

(ii) Adequacy of Financial Assessments

Much of the controversy surrounding the stated cost of the land-fill site to the Council would have been avoided if the Council's officers had insisted that it be treated differently in the schedule of rates included in the contract.

Those involved in the tender assessment and negotiation process, although suitably qualified and experienced in their respective technical areas, had no previous

experience in negotiating a contract of this nature and magnitude. These officers regarded the negotiation process following the rejection of tenders as an extension of the tender process to the extent that they considered they would have to accept the proposed schedules of rates without question, as they would tendered costs. The Council points to the legal opinions it had obtained in support of this approach.

The meaning of the term "negotiation", as it appears in the ordinances, is open to interpretation; hence the question as to whether the proposed matter could have, or indeed should have, been the subject negotiation also remains open. It is noted that technical aspects of the contract underwent changes through the negotiation process, as did the structure of the contract, which differed significantly from the structure outlined in the original tender documents. The Council officers made demands and gained concessions in respect of technical aspects of the proposals for the contract. They may equally have demanded and gained concessions in respect of the financial aspects of the contract.

It must be noted, however, that even if the land-fill site costs had been absorbed over a number of years under different heads of the contract at the instigation of Council officers, as distinct from being accepted as part of the total "up-front" costs for the land-fill site, it would not necessarily have reduced the overall cost to the Council.

All objective evidence suggests that a good deal of time and expertise on the part of the Council's employees and external consultants was expended in refining the technical aspects of the contract and in dealing with planning and environmental issues. Financial evaluations in respect of the contract were conducted internally and the information for final analysis was only available from 7 January 1991. Whether sufficient critical attention was paid to the financial aspects of such a significant contract must remain open to question in the light of the limited time frame available for final financial evaluations and the less than robust approach adopted by the tender assessment group in negotiating the cost proposals.

It is axiomatic that Council employees charged with the responsibility of spending public funds must make every effort to ensure that value for money is obtained. The duty of care owed by them both to their employer and the community at large goes beyond the necessity merely to follow standard procedure, especially where the amounts involved are so large and the potential savings so great.

RECOMMENDATION

- **The Council administration should review the adequacy of financial resources applied to the evaluation of significant tenders and contract negotiations. Financial managers and suitably qualified consultants should be engaged whilst the process is still in its preliminary stages. The Council should also clarify, for the purposes of its negotiating officers, the practical differences between the tendering and negotiating processes in respect of financial matters when recourse is had to the procedure laid down under Ordinance 15(8).**

APPENDICES

APPENDICES

- Appendix 1 Letter to interested parties dated 19 March 1991 (sample)
- Appendix 2 Submission dated 5 February 1991 to the Criminal Justice Commission by Mr J Soorley. Note: The Appendices referred to therein are lengthy and have not been included. They are available for inspection upon application to the Commission.
- Appendix 3 Schedule of persons who provided statutory declarations to the Criminal Justice Commission during the course of the investigation
- Appendix 4 Schedule of documents referred to in statutory declarations and provided to the Criminal Justice Commission
- Appendix 5A Extract from the '1978' Town Plan for the City of Brisbane (superseded on 13 June 1987)
- Appendix 5B Extract from the proposed Town Plan for the City of Brisbane as publicly exhibited on 8 July 1986
- Appendix 5C Extract from the '1987' Town Plan for the City of Brisbane (gazetted on 13 June 1987)
- Appendix 6 Real Property description of Rochedale site



CRIMINAL JUSTICE COMMISSION
QUEENSLAND

Telephone: (07) 360 6060
Facsimile: (07) 360 6333

Your Ref.:
Our Ref: 502/06/01/025 RAM:asb
Contact Officer: Mr R A Marxson

19 March 1991

Mr J Soorley
4/2 Bright Street
KANGAROO POINT Q 4169

Dear Sir

Re: The Rochedale Dump Inquiry

As you are aware, this Commission has been investigating allegations of corruption and/or official misconduct made in particular by you concerning the circumstances surrounding the awarding of a contract for the disposal of waste by the Brisbane City Council.

Detailed investigations have been conducted into these allegations, the results of which were submitted to an independent Queen's Counsel for review.

The Commission is now in a position to advise you that it has not been able to substantiate the allegations of corruption and/or official misconduct made against the Council.

The Commission has, however, identified inadequacies in the administrative procedures adopted by the Council.

A report is being compiled, which will be delivered in due course. However, in the light of the imminent Local Government elections, I consider that interested parties should be advised of the result of the investigation at this time.

Yours faithfully

SIR MAX BINGHAM, QC
Chairman

ALP Submission
to
THE CRIMINAL JUSTICE COMMISSION
on the
ROCHEDALE DUMP

5 February 1991

By
JIM SCORLEY

OBJECTIVE

We call on the Criminal Justice Commission to investigate the circumstances surrounding the awarding of the Brisbane City Council's \$545 million 30-year waste disposal contract.

GROUNDS FOR OBJECTION

We object to the Rochedale dump and the Liberal City Council's financial mismanagement of the issue.

Specifically, we call on the Criminal Justice Commission to investigate:

1. The motive behind the Liberal City Council's financial mismanagement involved in the awarding of the contract.
2. The Liberal Council's amendments to the Town Plan in 1987 that removed residents rights to object to the placement of a dump in their area.

THE EVIDENCE

FINANCIAL MISMANAGEMENT

- THE FACTS

1. Land Purchase Agreement

The Liberal City Council has agreed to pay \$10 million more for the dump site than it was purchased for by the contractors little more than a year ago.

Pacific Waste Management purchased the 200 ha site on September 14, 1989 for \$4.5 million dollars 15 days before tenders closed.

The Liberal Council has agreed to purchase this same site for \$14,237,565. (see Appendix 1)

This agreement provides the contractors with close to 10 million dollars profit on the land. This represents a 316% increase in the value of the land in 15 months.

2. Amending the Town Plan

In 1987 the Liberal City Council amended the Town Plan in a manner which suggests that they knew they would be proceeding with the Rochedale dump.

The definition of "public utility undertaking" was altered in the plan on June 13, 1987 to include "an undertaking for the collection and removal of disposal refuse". (Appendix 2)

Most of the Rochedale dump site is zoned for extractive industry under which "public utility undertakings" are permitted without town planning approval and without a period for public objection.

This scheme effectively removed the democratic right of residents to object to the Rochedale dump proposal.

3. Land Price Rort

The Council knew in 1987 that it would be approving the Rochedale dump. At this time the land was worth \$2 million dollars.

The Council should have purchased the land at that time. This move would have saved the ratepayers of this City more than \$12 million.

4. Tender documents

The Liberal City Council's tender documents specifically state that the contractors cannot include tender costs in the agreed contract price. (Appendix 3)

Despite this the Liberal Council has agreed to pay the contractor their tender costs.

The Lord Mayor stated in the Courier Mail on February 1, 1991 that the price paid for the land included "the cost of preparing Pacific Waste's tender. (Appendix 4)

Health and Recreation Committee Chairman, Alderman Robert Mills stated on the ABC' Henshaw program on February 1, 1991 that he "would shudder at the thought that a winner of a contract couldn't seek to recover the costs that he had incurred trying to win that job". (Appendix 5)

5. Payment Scheme

Under the Liberal Council's contract the contractors will be paid a fee according to the amount of garbage they transport from the transfer stations to the Rochedale dump site.

Under this system the more garbage the contractors transfer the more money they make. (Appendix 6)

This is clearly a disincentive for the contractors to recycle or minimise waste.

It is much the same as the Council giving the contractors a blank cheque. At whose instigation was this open-ended commitment included in the contract?

6. No Negotiations

The Liberal City Council delayed the waste contract tenders in June 1990 because they wanted more information from the tenderers. (Appendix 7)

The Stores Board recommended the Council re-enter negotiations with the tenderers.

The unsuccessful tenderers have confirmed that since the delay was announced the Liberal Council made no attempt to renegotiate. The Liberal City Council sought no clarification of details nor any further information.

ARGUMENT

The blatant mismanagement of this issue by the Liberal City Council has exposed the Administration's secret plan to site the dump at Rochedale.

The Liberal Council's interaction with the contractors must be investigated in the public interest.

Specifically, the public should be made aware of all donations made by the contractors to the Liberal Party and to the Lord Mayor's own trust fund.

The Liberals knew they would be awarding the contract to the Rochedale tenderers in 1987. They could have purchased the site at this time for \$2 million. Instead they allowed the tenderer to purchase it just prior to the close of tenders in 1989 for \$4.5 million. The Liberal Council is now purchasing it for \$14.2 million.

The proof that the Liberal Council was fully aware that it would be awarding the contract to the Rochedale tenderer is in the amendments made to the Town Plan.

The Liberal Administration changed the Town Plan to suit their purposes and to remove the rights of residents to appeal the decision.

Liberal Alderman, Graham Quirk has already publicly admitted that the contract has been financially mismanaged.

This is damning evidence against the Administration. It must be investigated in order to put the truth on public record.

The ratepayers of this City are entitled to an explanation. The contract the Liberals are to sign is a licence to print money for the contractors. This can only mean that ratepayers will be paying the price in the form of higher rates and charges.

It would appear that since 1987, the Liberals have plotted, schemed and lied to the ratepayers of this City. They have kept up a facade to try to postpone what was a fait accompli all along.

The Liberals knew that the backlash from this decision would affect them electorally. The Liberals would have postponed this hard decision until after the election if they had the opportunity.

STATEMENTS

1. Leigh Elwin Ainsworth, Manager, Thiess Contractors Pty Ltd
2. Peter Clark Burrows, Director Waste Management, Brisbane City Council
3. John Leslie Thomas Butler, Director of Town Planning, Brisbane City Council
4. Dennis Charles Clements, Managing Director, Pacific Waste Management Pty Ltd
5. John Raymond Giffen, General Manager, Austral Bricks Pty Ltd
6. Jack George Grimm, Southside Action Group
7. Brenda Ann Homan, Secretary, City of Brisbane Benefit Fund
8. Derek Andrew Hume, General Secretary, Liberal Party
9. Michael Shaw Iliff, Manager, Cleanaway Pty Ltd, a division of Brambles Holding Pty Ltd
10. John Denman McHugh, Manager Finance, Brisbane City Council
11. Maurice John Page, Management Accountant, Brisbane City Council
12. Michael George Palmer, Sydney Earthmoving Pty Ltd

13. James Gerard Soorley, ALP Lord Mayoral Candidate
14. John Joseph Stankiewicz, Finance Director, Pacific Waste Management Pty Ltd
15. Geoffrey Allen Thompson, Engineer, Brisbane City Council
16. Ian Morrison Woods, Civil Engineer, Brisbane City Council

APPENDIX 4

SCHEDULE of DOCUMENTS

<u>Statement</u>	<u>Document</u>	<u>Date</u>	<u>Exhibit No</u>
Leigh Elwin Ainsworth	Letter - Thiess Contractors P/L to Brisbane City Council	7.1.91	LEA1
	Document - "6 Points of Clarification" Rail Waste Technology P/L	7.1.91	LEA2
	Diary Notes		LEA3
Peter Clark Burrows	Letter - Brisbane City Council to Thiess Contractors P/L	12.12.90	PCB1
	Letter - Thiess Contractors P/L to Brisbane City Council	12.12.90	PCB2
John Leslie Thomas Butler	Extract from 1971 Town Plan		JLTB1
	Extract from 1978 Town Plan		JLTB2
	Extract from proposed Town Plan exhibited 1986		JLTB3
	Extract from 1987 Town Plan		JLTB4
John Raymond Giffen	Letter - Austral Bricks Pty Ltd to Pioneer Concrete Pty Ltd	25.5.89	JRG1
	Document - "Summary of Proposals - Land Sale"		JRG2

Michael Shaw Iliff	Letter – Brisbane City Council to Brambles Holdings Ltd	18.10.90	MS11
	Letter – Brambles Holdings Ltd to Brisbane City Council	29.10.90	MSI2
Patrick Bernard McCallum	Document – "Financial Analysis"	13.3.91	PBMcC1
Maurice John Page	Document – "Financial Perspective"	14.1.91	MJP1
Michael George Palmer	Affidavit	21.2.91	MJP1
James Gerard Soorley	Media Release	5.2.91	JGS1
	Submission to Criminal Justice Commission		JGS2
John Joseph Stankiewicz	Contract – Brickworks Ltd to Pacific Waste Management P/L	14.9.89	JJS1
	Contract – Brickworks Ltd to Pacific Waste Management P/L		
	Letter – Pacific Waste Management P/L to Brisbane City Council	29.9.89	JJS2
	Letter – Brisbane City Council to Pacific Waste Management P/L	6.6.90	JJS3
	Letter – Pacific Waste Management P/L to Brisbane City Council	8.6.90	JJS3B
	Letter – Brisbane City Council to Pacific Waste Management P/L	16.10.90	JJS4
	Facsimile – Brisbane City Council to Pacific Waste Management P/L	22.10.90	JJS4B
	Diary Notes	24.10.90	JJS4C
	Document – "Indicative Pricing"	6.11.90	JJS4D

	Letter – Brisbane City Council to Pacific Waste Management P/L	28.11.90	JJS4E
	Facsimile – Brisbane City Council to Pacific Waste Management P/L	21.12.90	JJS4F
	Letter – Brisbane City Council to Pacific Waste Management P/L	27.12.90	JJS4G
	Document – "Pricing Schedule"		JJS4H
	Letter – Pacific Waste Management P/L to Brisbane City Council	30.1.91	JJS4I
	Letter – Pacific Waste Management P/L to Brisbane City Council	30.1.91	JJS5
	Document – "Working Papers"		
Ian Morrison Wood	Minute – Brisbane City Council	5.6.90	IMW1
	Letter – Brisbane City Council to Ace Waste Pty Ltd	6.6.90	IMW2A
	Letter – Brisbane City Council to Brambles Holdings Ltd	6.6.90	IMW2B
	Letter – Brisbane City Council to Duncanson and Brittain (Quarries) Pty Ltd	6.6.90	IMW2C
	Letter – Brisbane City Council to Pacific Waste Management P/L	6.6.90	IMW2D
	Letter – Brisbane City Council to Rail Waste Technology P/L	6.6.90	IMW2E
	Letter – Brisbane City Council to Roche Bros P/L	6.6.90	IMW2F
	Letter – Brisbane City Council to Xavier Investments Pty Ltd	6.6.90	IMW2G
	Brisbane City Council Ordinance 15(8)		IMW3

Letter – Brisbane City Council to Roche Bros Pty Ltd	21.8.90	IMW5A
Letter – Brisbane City Council to Duncanson and Brittain (Quarries) Pty Ltd	21.8.90	IMW5B
Letter – Brisbane City Council to Xavier Investments Pty Ltd	21.8.90	IMW5C
Letter – Brisbane City Council to Ace Waste Pty Ltd	21.8.90	IMW5D
Letter – Brisbane City Council to Brambles Holdings Ltd	18.10.90	IMW6
Schedules A and B of Draft Contract		
Letter – Brisbane City Council to Pacific Waste Management P/L	16.10.90	IMW7A
Letter – Brisbane City Council to Rail Waste Technology P/L	16.10.90	IMW7A
Facsimile – Brisbane City Council to Pacific Waste Management P/L	22.10.90	IMW7B
Facsimile – Brisbane City Council to Rail Waste Technology P/L	22.10.90	IMW7B
Document – "Indicative Pricing" Rail Waste Technology P/L	5.11.90	IMW7C
Document – "Indicative Pricing" Pacific Waste Management P/L	6.11.90	IMW7D
Letter – Brisbane City Council to Pacific Waste Management P/L	28.11.90	IMW7E
Letter – Brisbane City Council to Rail Waste Technology P/L	4.12.90	IMW7F
Facsimile – Brisbane City Council to Pacific Waste Management P/L	21.12.90	IMW7G

Facsimile – Brisbane City Council to Rail Waste Technology P/L	21.12.90	IMW7G
Letter – Brisbane City Council to Pacific Waste Management P/L	27.12.90	IMW7H
Letter – Brisbane City Council to Rail Waste Technology P/L	27.12.90	IMW7H
Document – "Final Prices" Pacific Waste Management P/L	7.1.91	IMW7I
Document – "Final Prices" Rail Waste Technology P/L	7.1.91	IMW7J
Facsimile – Rail Waste Technology P/L to Brisbane City Council	10.1.91	IMW7K
Letter – Pacific Waste Management P/L to Brisbane City Council	30.1.91	IMW8
Minute – Brisbane City Council	5.2.91	IMW9

**Extract from the '1978' Town Plan for the City of Brisbane
(superseded on 13 June 1987)**

"Public utility undertaking" means any of the following undertakings, namely:-

- (a) A railway, tramway, road transport, air transport, water transport, wharf, harbour or river undertaking;
- (b) An undertaking for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services;
- (c) An undertaking for the provision or maintenance of roads or traffic controls;
- (d) An undertaking for the provision of postal or telecommunications services.

**Extract from the proposed Town Plan for the City of Brisbane
as publicly exhibited on 8 July 1986**

"PUBLIC UTILITY UNDERTAKING" means -

- (a) a railway, tramway, road transport, air transport, water transport, wharf, harbour or river undertaking;
- (b) an undertaking for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services;
- (c) an undertaking for the collection, removal or disposal of refuse;
- (d) an undertaking for the provision or maintenance of roads or traffic controls;
- (e) an undertaking for the provision of postal or telecommunications services,

provided and maintained or caused to be provided and maintained -

- (i) under the authority of some Act or other law in that behalf by -
 - (A) the Council; or
 - (B) some statutory authority or corporation of a public character; or
- (ii) pursuant to, and by some person who is the holder of a franchise under, the Gas Act 1965-1981;

"UNDERTAKING" means a continuous service.

**Extract from the '1987' Town Plan for the City of Brisbane
(gazetted on 13 June 1987)**

"PUBLIC UTILITY UNDERTAKING" means -

- (a) a railway, tramway, road transport, air transport, water transport, wharf, harbour or river undertaking;
- (b) an undertaking for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services;
- (c) an undertaking for the collection, removal or disposal of refuse;
- (d) an undertaking for the provision or maintenance of roads or traffic controls;
- (e) an undertaking for the provision of postal or telecommunications services;

provided and maintained or caused to be provided and maintained -

- (i) under the authority of some law in that behalf by -
 - (A) the Council; or
 - (B) some statutory authority or corporation of a public character; or
- (ii) pursuant to, and by some person who is the holder of a franchise under, the Gas Act 1965-1985;

"UNDERTAKING" means a continuous service.

REAL PROPERTY DESCRIPTION OF ROCHEDALE SITE

Lot 2 on Registered Plan No. 89790

Lot 1 being part only of the land described as
Lot 44 on Registered Plan No. 207847

and containing a combined area of 98.5774ha

