

10 December 2019

Attention: Clare Hadley

Invercargill City Council  
101 Esk Street  
Invercargill 9840

**By email to:** clare.hadley@icc.govt.nz

**Copy to:** ian.evans@southlanddc.govt.nz

## INVERCARGILL CITY COUNCIL MEETING AND WASTENET TENDER INFORMATION

1. We act for Smart Environmental Limited (**Smart**).
2. As you know, Smart submitted a tender in response to WasteNet's request for proposal for recyclables acceptance services (**RFP**). Smart was advised last week that information relating to its tender would be discussed at an upcoming meeting of Invercargill City Council (**Council**).
3. That meeting is scheduled for 3:00pm today. A report provided with the meeting's agenda includes high-level information about Smart's tender. The report recommends that:
  - a. the Council requests that the Waste Advisory Group close the RFP and not award a contract; and
  - b. the Council delegates full authority to Council representatives to allow them to make a decision, in alignment with the Council's position on the RFP.
4. The purpose of this letter is outline Smart's expectation that no further information relating to its tender will be released (at the Council's meeting or otherwise) and confirm, in the event that the RFP is closed and no contract awarded, that Smart will consider all possible avenues to recover its costs associated with the process.

### Confidential information

5. Smart's tender contained a range of confidential and commercially sensitive information, which was provided in good faith for the purpose of the RFP process. Releasing that information publicly, including by publishing the tender document (or related documents) or discussing the tender at a public Council meeting would breach the Council's obligation to protect Smart's confidential or commercially sensitive information.
6. Smart acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987 (**LGOIMA**), however the LGOIMA does not provide justification for the release of Smart's information. On the contrary, there are good grounds for withholding the information (if requested), including:
  - a. Releasing the information will likely unreasonably prejudice Smart's commercial position and would potentially disclose trade secrets (including by

potentially releasing Smart's intellectual property to competitors and by prejudicing Smart's future negotiations) – section 7(2)(b) LGOIMA.

- b. The information was provided in confidence through the tender process. Its release will likely result in Smart and other tenderers providing less information to the Council or WasteNet in the future – section 7(2)(c) LGOIMA.
  - c. Releasing the information may prejudice the Council's ability to carry out commercial activities or negotiations without prejudice or disadvantage – section 7(2)(h) and (i).
7. If Smart's tender is to be discussed at a public meeting of the Council, the public should be excluded in accordance with section 48 LGOIMA.
  8. Given the above, Smart considers that there are no good grounds for releasing information associated with its tender. We therefore ask that you take all steps to guard that information against release, including at today's Council meeting.

### Recovery of costs

9. As noted above, a recommendation at today's meeting is to request that the RFP is closed without awarding a contract.
10. Smart has instructed us to formally put the Council on notice that if the RFP is closed without awarding a contract, Smart will consider every possible avenue to recover its costs and losses associated with the RFP from the Council.

Yours faithfully  
Wynn Williams

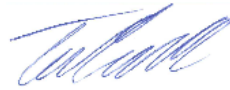


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