



Executive Manager  
Dublin City Council  
Environment and Engineering Department  
Floor 4, Block 1  
Civic Offices, Wood Quay  
Dublin 8

Date 9<sup>th</sup> August 2007

**Re: Proposed variation of the Waste Management Plan for the Dublin Region 2005 - 2010**

Dear Sir/Madam,

I am writing to you on behalf of the Irish Waste Management Association (IWMA) in relation to Dublin City Councils recent notice of its intention to prepare a variation of the Waste Management Plan for the Dublin region, 2005-2010.

The IWMA is the recognised representative organisation for the private waste management industry in Ireland. The Association is affiliated to both IBEC and FEAD ([www.fead.be](http://www.fead.be)).

Please find attached comments from our Association for consideration by the Council. For the process to be meaningful and the consultation effective, we submit that a meeting between the Association and the Council together with its consultants, is necessary and we hereby formally request such a meeting at your earliest convenience.

We confirm that such a meeting can be attended at short notice by a small number of key IWMA officials and we await hearing from you with a mutually convenient time date and venue.

Regards

Erik O'Donovan  
Secretary  
IWMA



## **Submission on Proposed Variation of Dublin Waste Management Plan**

Date 9<sup>th</sup> August 2007

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## **1. Background**

The waste management industry has undergone dramatic change since the introduction of the Waste Management Act 1996. Local authorities are no longer the principal providers of waste management services and infrastructure in the State. The last decade has seen the rise of a professional consolidated private waste industry. National waste policy<sup>1</sup> now recognises the significant role that the private sector plays in both investment and the provision of waste management infrastructure and services.

Forfás estimates that the private sector collected 67% of municipal waste in 2006, with a further 5% collected by private operators under public contract, i.e. nearly all commercial and approximately half of household waste is collected by the private sector<sup>2</sup>. Up to 2005, an estimated €250 million has been invested in waste management infrastructure, most of which has been private investment<sup>3</sup>.

On 8<sup>th</sup> June, the Dublin Regional Waste Authority (the “Dublin Authority”) published a public notice of its intent to prepare a variation of the Dublin Regional Waste Management Plan 2005-2010 relative to the collection of household waste in the Dublin Region.

On 29<sup>th</sup> June 2007, IWMA met the Dublin Authority in relation to the notice. This process has been clearly flagged to us as raising very significant issues of concern for our members’ businesses. It is our understanding that the plan variation process will be used to implement proposals relative to the ownership of household waste flows. Subsequent to that meeting, the IWMA prepared this submission.

Our understanding is that this initial submission opportunity will be succeeded by a specific opportunity for a meeting. Our comments are made in that context and address high-level issues only as a result. We hope these initial comments prove constructive to the overall process.

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<sup>1</sup> DEHLG (2004) Circular WIR 06/04 (Review of Waste Management Plans) and Section 4.6 of DEHLG policy statement, *‘Taking Stock and Moving Forward’*

<sup>2</sup> Forfás (March, 2007) Waste Management in Ireland: Benchmarking Analysis and Policy Requirements

<sup>3</sup> Forfás (June, 2006) Waste Management Benchmarking Study

## 2. Process

The IWMA question both the timing and structure of the process in varying the plan.

IWMA and its membership have engaged with the Dublin Authority on a review of its regional waste collection permit regime since 15<sup>th</sup> January 2007. It is our understanding that the permit review process will be used to implement proposals relative to the direction of waste. The Association provided the Dublin Authority with its position in relation to this review on 16<sup>th</sup> March 2007.

On 8<sup>th</sup> June, the Dublin Authority published a public notice of its intent to prepare a variation of the Dublin Regional Waste Management Plan 2005-2010 relative to the collection of household waste in the Dublin Region. The notice stated that:

*“The variation may include an objective in the Plan that the collection of household waste from single dwelling households (other than those in purpose built apartment blocks) will be carried out by the local authorities or that the local authorities will make arrangements by way of a public tendering process for the collection of such household waste (which may be on a geographical or area basis).”*

IWMA view the ‘ownership of waste’ and ‘direction of waste flows’ as being intrinsically linked. The timing of the Dublin Authority’s intention to vary the Dublin waste plan is inappropriate at this time, given that:

- The related permit review process is still ongoing. IWMA questions how permits can be reviewed in advance of any plan variation considering that the outcome may preclude operators from a potential market opportunity.
- The ownership of waste is not entirely clear in law. Therefore, a variation to the waste plan, by the Dublin Authority that proposes to grant the Authority ownership of the waste, would, we submit, *ultra vires* the Authority’s powers. No decision should be taken until this matter is resolved definitively.
- Under Section 22(11) of the Waste Management Act 1996, the local authority in reviewing their plan must have regard to the proper planning and development of their functional area. There can be no pre-determination of issues by the local authority or its agents in advance of the review process. We are concerned that a recent report<sup>4</sup> commissioned by the Authority indicates a clear predetermination of this issue by the Authority and its agents. The report states that, ‘Dublin Local Authorities are currently undergoing a legal process of varying the Waste Plan to ensure the management of the service remains as a public sector function’.
- The DEHLG review of the Irish waste management market structure is ongoing<sup>5</sup>. An attempt by the Dublin Authority to vary the Dublin Waste Plan in a manner that predetermines, pre-empts or prescribes the outcome of a national

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<sup>4</sup> RPS (July, 2007) Dublin’s Waste Management Strategy and the Impact on Climate Change: Assessment Report

<sup>5</sup> DEHLG (3 August, 2006) Regulation of the Waste Management Sector

policy review would be viewed as *ultra vires* the Authority's powers and contrary to the standard rules of governance and accepted democratic procedures.

- DEHLG Circular WIR 09/07 (26<sup>th</sup> July 2007) informs local authorities of a forthcoming and significant change in waste management policy that would affect the delivery of waste management infrastructure and regulation that encourages such infrastructure. It is noteworthy that the circular requests that 'in the interim, local authorities should refrain from any action which would potentially compromise the effect of a direction along the above lines.' The IWMA submits that the proposed variation of the waste plan would constitute such an action and would be in contravention of the direction expressed by the Minister in this circular.
- The Dublin Regional Waste Management Plan 2005-2010 was only recently adopted in 2006. Certain market structures and environmental solutions are already in place on the basis of this plan and should be given time to operate as such.
- The private sector is already engaged in the collection of household waste in the Dublin area. A change to the area's waste plan with a specific objective of ending this activity would be considered a commercial challenge, which would be tested in the courts.
- The 'environmental' justification of the proposed variation is unclear.

Further to our meeting with the Dublin Authority on 29<sup>th</sup> June 2007, IWMA acknowledge and welcome the Authority's undertaking to drop the proposed direction of all waste flows, including commercial waste, to named facilities in the Dublin Region in its permit review process. The IWMA reiterates its stated position of the 16<sup>th</sup> March 2007 on the 'direction of waste flows'.

### 3. Ownership of Waste Flows

Our understanding is that the proposed plan variation process will be used to implement proposals relative to the ownership of waste. The current regulatory framework and the Waste Management Plan for the Dublin Region 2005 – 2010<sup>6</sup>, does not provide for the absolute ownership of household waste by a local authority, other than waste it has collected or recovered in accordance with Article 33(7) of the Waste Management Act 1996 as amended.

Uncertainty exists around the scope and extent of the power to own waste through regulation. IWMA has concerns around the competitive implications of the possible ownership of waste through command and control measures and has raised these concerns with the Authority.

IWMA concerns on promoting level competition were reflected in the Draft Plan Consultation Report on the region's current waste plan<sup>7</sup>. The Authority's consultants were at pains to frame the current waste plan in a manner that did not foreclose the market to private sector participation e.g.

On the principle of private sector involvement:

"The private sector waste industry will be encouraged to provide waste management infrastructure and services".

*Recommendation 18Q of Consultation Paper (RPS et al., April 2005) and Section 18.6 of Adopted Plan (RPS, November 2005)*

"The Private sector has responded positively and proactively towards achieving the recycling targets through provision of materials recovery facilities and collection systems. Several companies have invested in facilities and technologies aimed at extracting resources from waste and minimising landfill"

*Recommendation 8E of Consultation Paper (RPS et al., April 2005) and Section 8.1 of Adopted Plan (RPS, November 2005)*

"Assisted by innovation and progressive attitude of the private waste sector, there has been significant expansion in the number of Materials Recovery Facilities and in the standard of facility operation and management, which has shown a firm commitment to recycling and recovery in the Region."

*Recommendation 8I of Consultation Paper (RPS et al., April 2005) and Page xiii Executive Summary of Adopted Plan (RPS, November 2005)*

On the principle of competition and inter-regional movement of waste:

The Draft Plan does not create a monopoly situation for waste – movement of waste to other regions and other facilities is enabled (Draft Plan Policy 18.11) and it is anticipated that other facilities in the GDA will compete to treat the residual waste generated by commercial/industrial sectors. For example, it is noted that a WTE plant is proposed for County Meath (by the private company Indaver). (This will be included on the new Map 10, which presents existing and future capacity of facilities outside the Dublin Region).

*Issue 18F, Authority Response in Consultation Paper (RPS et al., April 2005)*

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<sup>6</sup> RPS, (November 2005) Waste Management Plan for the Dublin Region 2005 – 2010

<sup>7</sup> RPS et al. (April 2005) Review of Dublin Waste Management Plan 2005 – 2010: Draft Plan Consultation Report (RPS Consultants et al. November 2005). This report was prepared in response to consultation on the Draft Dublin Waste Management Plan 2005 – 2010

It should be noted that this Plan does not impose any restrictions on inter regional waste movement as such. The Plan does however aim for Dublin to become self reliant by developing an integrated network of facilities such that waste can be treated close to where it is generated as far as possible.

The objective to be self-reliant does not preclude waste movement for the purpose of competition between facilities or technologies. The current level of co-operation within the Dublin Region is strong, and implementation measures such as the Forum outlined in Section 22 will enable closer co-operation with the GDA counties.

*Issue 18S Authority Response in Consultation Paper (RPS et al., April 2005)*

On the control of waste flows:

The Dublin Local Authorities will if necessary and/or appropriate for environmental ~~or other~~ reasons, direct that certain waste streams must be delivered to a certain tier in the waste hierarchy (e.g. reuse, recycling, biological treatment, energy recovery ~~facility~~). This will be achieved by means of the Waste Collection Permit system or other appropriate regulatory or enforcement measures.

*Recommendation 18V in Consultation Paper, Section 18.15*

It is noteworthy that reference to command and control of waste streams by the Regional Authority for any reason, other than environmental, was removed from the plan on the recommendation of the Authority's consultants during the consultation process.

These recommendations were accepted and the recommended wording inserted in the final Plan.

The private sector currently manages nearly all commercial, industrial and hazardous waste streams. Forfás estimates that the private sector directly manages 67% of Ireland's municipal waste, with a further 5% under public contract. The private sector collects approximately half of national household waste arisings. IWMA has serious concerns about the broader competitive implications of the proposed plan variation in terms of the current Irish waste market structure, national and European economic and environmental objectives. The Association is opposed to any proposed command and control measure that threatens level competition in the sector and the substantial progress made by our membership in meeting national and EU environmental policy objectives.

In respect of competitive tendering, such arrangements generally exist only in commercial waste management and in niche areas. Regulatory supervision is unnecessary in as far as this process operates. The industry is opposed to an extension to areas where the market operates. However, competitive tendering would have a role where local authorities decide to exit waste collection and could provide the basis for a highly efficient industry to develop. Competitive tendering cannot be imposed where competition currently exists.

The IWMA has a continuing policy concern about the dual role of local authorities as both regulator and service provider and the potential for conflict of interest issues to arise as a result. IWMA considers that to avoid this potential, local authorities should have one of these two functions solely as pertains in the UK. While we can understand the principle of incentivising the sending of waste to an appropriate tier in the waste

management hierarchy, we are concerned that a command and control approach could be abused by local authorities, resulting in foreclosure of the market to the detriment of competitors and competition generally. Should the direction of waste flows or ownership of waste become an issue in this proposed planning process, IWMA require an assurance from the regional authority that it:

- (a) will not direct waste to named facilities
- (b) will not at any tier in the hierarchy, direct the flow of waste only to infrastructure within the region
- (c) will not direct or otherwise control waste for 'other reasons' (i.e. other than environmental) in line with its own consultant's recommendations above.
- (d) will not restrict or prevent the type and quantity of waste collected by the private sector in the region, including domestic waste.

EU Competition law will render unlawful any attempt by the local authority, directly or indirectly, to channel waste to its own facilities or to otherwise take control over waste and thus distort competition in the market in a manner disproportionate to EU Environmental objectives.

Furthermore in terms of regional self-reliance<sup>8</sup> and inter-regional movement<sup>9</sup> of waste flows, any incentivisation of waste flows higher up the waste management hierarchy must not interfere with national and European policy objectives on environmental protection, economic development and level competition.

The review process must be in line with the Section 60 policy direction from the DEHLG on the inter-regional movement of waste (3<sup>rd</sup> May 2005). The inter-regional movement of waste is necessary for effective waste management in the Dublin region and the Greater Dublin Area and it is essential that this principle be recognised by the Authority in a process such as this.

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<sup>8</sup> Waste Management Plan for the Dublin Region 2005 – 2010 (Published 11 November 2005), Part 4, Section 18.10, Page 145

<sup>9</sup> Waste Management Plan for the Dublin Region 2005 – 2010 (Published 11 November 2005), Part 4, Section 18.11, Page 145