

Our Ref: Julian Bodenmann:181454  
Direct line: 07 4052 0717  
Direct email: [jbodenmann@prestonlaw.com.au](mailto:jbodenmann@prestonlaw.com.au)  
Partner Responsible: Andrew Kerr



14 November 2018

Ms Susannah Black  
Director  
Merger & Authorisation Review Division  
Australian Competition & Consumer Commission

**By Email:** [susannah.black@acc.gov.au](mailto:susannah.black@acc.gov.au); [sophie.mitchell@acc.gov.au](mailto:sophie.mitchell@acc.gov.au)

Dear Susannah

**Central Highlands Regional Council and Isaac Regional Council - Application for Authorisation – Kerbside Waste Collection Services**

We refer to the telephone discussion between Michael Drake and Julian Bodenmann on 8 November 2018, and to Mr Drake's subsequent email on 9 November 2018.

**Request to extend authorisation for current contract**

The Applicants wish to amend application AA1000430 to also seek authorisation for Central Highlands Regional Council and Isaac Regional Council to continue to engage in the conduct authorised by the ACCC under application for authorisation A91087, from the expiry date of A91087 until the end of the current contracts with JJ Richards & Sons Pty Ltd on 4 October 2019.

In making this request and the following submissions, the Applicants make no admission about any breach of the *Competition and Consumer Act 2010* ("**CCA**") or authorisation A91087, and no such admission should be implied.

It is the Applicants' view that there has been no breach of the CCA in any aspect of their conduct under the existing contract, or pursuant to authorisation A91087.

Applicants' submission in support of request

The Applicants' submissions in support of their request are set out below. Again, these submissions should not be construed as making any admission or concession about breaches of the CCA or the authorisation:

- the current contract expires on 4 October 2019 and the effect of authorisation A91087 ends on 31 December 2018;
- in view of the preceding submission, if it is open to the ACCC to form a view that the Applicants could be in breach of the CCA if the current contract expires after the effect of authorisation A91087 ends, then the Applicants wish to resolve this by ensuring that an authorisation applies to the current contract between 1 January 2019 and 4 October 2019;

Liability limited by a scheme approved under Professional Standards Legislation.

**Notice** - If you receive this email by mistake, please notify us and do not make any use of the email. We do not waive any privilege, confidentiality or copyright associated with it.

Level 1, 15 Spence Street Cairns QLD 4870 • PO Box 707N North Cairns QLD 4870  
Phone +61 7 4052 0700 • Fax +61 7 4052 0777 • [info@prestonlaw.com.au](mailto:info@prestonlaw.com.au) • [www.prestonlaw.com.au](http://www.prestonlaw.com.au)

- the Applicants' current staff understand that the timeframe specified in authorisation A91087 was in contemplation of a contract term of 10 years. The actual term of the authorisation was approximately 10 years and four months. The Applicants' current staff assume that this was to enable the then-applicants to complete their procurement process and engage a contractor for a 10 year contract;
- the Applicants' current staff assume that the procurement process took longer than what had originally been contemplated, as the contract only commenced on 5 October 2009 (rather than on or before 1 January 2009);
- however, the term of the contract itself remained 10 years (or, to be more precise, 7 years, plus three options to renew for a further one year each);
- the Applicants concede that, by having exercised the options, the Applicants may be taken to be giving effect to a contract that was collectively negotiated;
- however, notwithstanding the preceding submission, the Applicants submit that no negative market impacts flowed from their exercise of the options, nor could any negative market impacts have reasonably been contemplated, and that there are, broadly speaking, advantages to the community and the market by the way in which the Applicants administered the contract. In support of this submission, the Applicants repeat and rely on the submissions that accompanied the application for authorisation A91087, and the submissions that accompanied application AA1000430.

#### **Isaac Regional Council – Waste Processing**

In our letter to ACCC of 16 October 2018, we advised that Isaac Regional Council *"is still considering whether processing of collected recycling waste at a Material Recycling Facility is a service to be tendered"*.

We are now instructed that Isaac Regional Council is no longer considering procuring this service as part of the joint procurement process with Central Highlands Regional Council, and will seek to procure this service separately.

Should you have any queries please do not hesitate to contact the writer.

Yours faithfully



**Julian Bodenmann**  
Associate  
for **PRESTON LAW**