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Your Ref: Sophie Mitchell



26 September 2018

Australian Competition & Consumer Commission

**ATTENTION: SOPHIE MITCHELL**  
**By Email: adjudication@acc.gov.au**

Dear Ms Mitchell

**Central Highlands Regional Council and Isaac Regional Council - Application for Authorisation**

We refer to your letter of 13 September 2018.

Please find **enclosed** an Application for Authorisation dated 26 September 2018. We also **attach** a copy of your fee waiver request approval.

If you have any queries please do not hesitate to contact Andrew Kerr on telephone 07 4052 0710 or Julian Bodenmann on telephone 07 4052 0717.

Yours faithfully

A handwritten signature in blue ink, appearing to read "AK", written over a light blue circular stamp.

**Andrew Kerr**  
Partner  
for **PRESTON LAW**

**Enc**

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## APPLICATION

1. Provide details of the applicants for authorisation, including:
  - 1.1. name, address (registered office), telephone number and ACN
  - 1.2. contact person's name, position, telephone number and email address
  - 1.3. a description of business activities
  - 1.4. email address for service of documents in Australia

The Applicants are:

Central Highlands Regional Council  
PO Box 21  
EMERALD QLD 4720  
Contact: Mr Kent Worsley  
Email [kworsley@chrc.qld.gov.au](mailto:kworsley@chrc.qld.gov.au)  
Telephone 1300 242 686

Isaac Regional Council  
PO Box 97  
MORANBAH QLD 4744  
Contact: Ms Katrina Jones  
Email [Katrina.Jones@isaac.qld.gov.au](mailto:Katrina.Jones@isaac.qld.gov.au)  
Telephone 1300 472 227

The Applicants are both represented in this matter by:

Preston Law  
PO Box 707N  
NORTH CAIRNS QLD 4870  
Contact: Mr Julian Bodenmann  
Email [jbodenmann@prestonlaw.com.au](mailto:jbodenmann@prestonlaw.com.au)  
Telephone 07 4052 0717

The Applicants consent to the ACCC communicating to the Applicants via their solicitors Preston Law.

The Applicants are both local governments in rural Queensland. The Applicants have a relatively small rate base and service significant landmasses that include several discrete communities. Specifically:

- Central Highlands Regional Council has a resident population of 28,783, and an area of 53,677km<sup>2</sup>, which includes centres such as Emerald, Blackwater and Tieri, as well as several smaller centres throughout the local government area;<sup>1</sup>

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<sup>1</sup> Central Highlands Regional Council, 2016-17 Annual Report.

- Isaac Regional Council has a permanent population of 20,940, and an area of 58,870 km<sup>2</sup>, which includes centres such as Moranbah, Dysart and Middlemount, as well as several smaller centres throughout the local government area.<sup>2</sup>

The Applicants are located adjacent to each other in central Queensland, as shown on the below map:



2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:
  - 2.1. name, address (registered office), telephone number and ACN
  - 2.2. contact person's name, telephone number and email address
  - 2.3. a description of business activities.

Not applicable.

<sup>2</sup> Isaac Regional Council, 2016-17 Annual Report.

## The Proposed Conduct

3. Provide details of the proposed conduct, including:
  - 3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct
  - 3.2. the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) to which the proposed conduct would or might apply, ie:
    - cartels (s. 45)
    - anticompetitive agreements (s. 45)
    - concerted practices (s. 45)
    - secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)
    - misuse of market power (s. 46)
    - exclusive dealing (s.47)
    - resale price maintenance (s. 48) and/or
    - a dual listed company arrangement (s. 49)
  - 3.3. the rationale for the proposed conduct
  - 3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

### Description of the proposed Conduct

The Applicants propose to jointly procure kerbside waste collection services ("**the Conduct**").

In carrying out the Conduct, the Applicants will jointly prepare and advertise a Request for Tender ("**RFT**") to seek responses from relevant industry participants.

The waste collection services that will be procured are as follows:

<b>Local government</b>	<b>Waste collection service to be procured</b>
Central Highlands	Kerbside and bulk bin waste and recycling
Isaac	Kerbside and bulk bin waste and recycling

The RFT will invite respondents to submit a tender to deliver the services to both local governments, or to one or the other of them. In other words, the RFT has been prepared in separable portions, which are anticipated to be as follows:

- waste collection services for Central Highlands Regional Council and Isaac Regional Council;

- waste collection services for Central Highlands Regional Council only;
- waste collection services for Isaac Regional Council only.

To assess responses, the Applicants will develop a single tender evaluation panel, which will be comprised of representatives of each Applicant. The evaluation panel may select one respondent to deliver services to both local government areas, or may select two different respondents for the two local government areas, based on the evaluation criteria.

#### Relevant provisions of the Act

- cartels (s. 45)
- anticompetitive agreements (s. 45).

#### Rationale for the proposed Conduct

The proposed Conduct will:

- allow the Applicants to carry out the procurement process with the highest level of efficiencies in both financial and human resources;
- increase the likelihood of savings in the contract itself, by bidders developing “economies of scale” and thereby offering services at a cheaper rate;
- increase the likelihood of higher quality and more diverse bids, which in turn may sound in improved environmental outcomes;
- increase the likelihood of other efficiencies, not directly related to the contract itself, being generated for the benefit of the Applicants and its constituent ratepayers.

Each item listed above is explained further in Item 10 of this application, under the heading “Public Benefit”.

#### Term of authorisation

10 years

4. Provide documents submitted to the applicant’s board or prepared by or for the applicant’s senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.

No specific documents are enclosed, but the Applicants can provide specific documents if requested by the ACCC.

The RFT is still being developed and so a copy is not available to be provided to accompany the application. The contents of the RFT will obviously be heavily dependent on the outcome of the application.

5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Participants in the waste industry may be directly impacted.

The Applicants submit that the ACCC need not determine with precision the names of entities who will be directly impacted by the Conduct to consider the application.

### **Market Information and Concentration**

6. Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).
7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

The Applicants submit that the market is at least as wide as the Queensland market for the supply of waste collection services to residential and commercial premises and street bin locations. In any case, the Applicants submit that the ACCC need not determine with precision the estimated market share and generally the market itself to consider the application.

As to these Items 6, 7 and 8, the ACCC may be assisted by the Applicants' submissions provided in response to Item 3 of this Application.

9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:
  - 9.1. existing or potential competitors
  - 9.2. the likelihood of entry by new competitors
  - 9.3. any countervailing power of customers and/or suppliers
  - 9.4. any other relevant factors

The Applicants submit that there are no likely competitive constraints to the Conduct.

As explained in Item 3, the RFT will invite respondents to bid to deliver services for both, or only one, local government. In other words, the procurement process does not of itself disadvantage smaller bidders, who may elect to simply bid to deliver services to only one local government, given the separable nature of the RFT.

In any case, for the reasons explained in Item 10 of this application, the Applicants consider that if any competitive constraints arise, these competitive constraints are significantly outweighed by the important public benefits associated with proceeding with the procurement process in the manner proposed. As explained in Item 10, these public benefits also extend to potential benefits to

participants in the industry, which would further outweigh any competitive constraints (to the extent that such constraints may arise).

## Public Benefit

10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The Applicants note that the term "public benefit" is not defined in the Act, but decisions of the Trade Practices Tribunal have tended to give that term a wide meaning. The Applicants note the Tribunal's decision of *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012, which defined "public benefit" as including:

*anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements [...] the achievement of the economic goals of efficiency and progress.*

The Applicants submit that a number of important public benefits will arise as a result of the Conduct.

These public benefits include:

- **Increased efficiencies and cost savings as part of the procurement process.** There will be clear cost savings for both local governments if it were to conduct the procurement process jointly. These cost savings directly benefit the ratepayers of the Applicants' respective local government areas, as those cost savings will be able to be applied to other important community projects.

The cost of undertaking a procurement process is substantial, and includes preparing the RFT and associated documents, advertising the RFT, effectively managing an open and transparent procurement process in accordance with the highest principles of probity, evaluating responses, negotiating with a successful bidder and finalising a contract. Given the small rate base of both Applicants, carrying out a procurement process represents a significant undertaking at the best of times, and that is particularly the case where the services being sought are of a specialised nature such as waste management. The Applicants' expenditure of both financial and human resources in conducting the procurement process will be substantially reduced if the Conduct were to be approved.

There will also be increased efficiencies and enhancements by the Applicants being able to "pool" human resources and technical expertise, which should in turn give rise to a more effective and efficient procurement process.

It follows that these transactional cost savings will also be realised by those entities that bid for the services. The process of preparing tender responses involves significant expenditure of financial and human resources, and if the Conduct were to proceed, entities will be required to prepare one bid, rather than two.

- **Increased likelihood of savings in the contract itself.** By conducting the procurement

process in a way that offers some likelihood of bidders developing “economies of scale”, the Applicants may have the opportunity to consider more favourable bids, whose price is reduced by virtue of that economy of scale, than what might have otherwise been submitted had the Applicants invited tenders separately.

- **Increased likelihood of higher quality and more diverse bids.** By allowing bidders the opportunity to bid to deliver services to both local government areas, the Applicants anticipate that a wider range and higher quality of bids will be received, given the broader options available for prospective respondents. It is unlikely that the Applicants could attract the same range and quality of bids if the Applicants sought tenders individually.

Both Applicants are local governments with a small population but a large area. The Applicants in their individual capacities consider it unlikely that they will be able to attract a high number of good quality bids if they were unable to at least offer the opportunity for bidders to develop an “economy of scale” in servicing both local governments.

The opportunity to receive higher quality and more diverse bids may also sound in improved environmental outcomes. By creating an “economy of scale”, the Applicants may be able to access enhanced or improved services from an environmental perspective (and it may be more readily economically justifiable to pursue those enhanced or improved services) than if the Applicants were required to individually seek tenders for the services.

A joint procurement process is also considered to be attractive to participants in the industry, who will be able to themselves lower cost in delivering a contract for both local governments than just for one (for example, by allowing the opportunity to optimise collection routes and deploy unused vehicles, equipment and staff across the two local government areas where there is a particular deficiency in another part of the serviced area).

- **Increased efficiencies for the Applicants, for aspects not directly related to the Conduct.** It is foreseeable that the Conduct will result in increased efficiencies for the Applicants for aspects not directly related to the Conduct. For example, if one service provider were engaged for both local government areas, the Applicants and the single service provider could collaborate more efficiently on matters such as community education programs and enforcement of laws and regulations associated with waste management (for example, illegal dumping).

A joint approach is consistent with the Queensland Waste Avoidance and Resource Productivity Strategy (2014-2024), published by the Queensland Government. The Strategy places emphasis on regional collaboration, including shared services, infrastructure and expertise (at page 8). This broad principle is met by the procurement process proposed by the Applicants and which is the subject of this application.

A copy of the Strategy is available here:

<https://www.ehp.qld.gov.au/waste/pdf/qld-waste-strategy.pdf>

There is precedent for the grant of approvals largely identical to the approval being sought by this application, and there has been no evidence at all that the Conduct associated with those approvals has resulted in poor outcomes from a competition and consumer perspective.

If the approval were not granted and the Conduct did not proceed, the outcome would be that both



Applicants would individually be required to invite tenders for the services. That is a suboptimal outcome for both Applicants (and its constituent ratepayers), for the reasons explained in this Item 10.

### **Public Detriment (Including Likely Competitive Effects)**

11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

The Applicants submit that there is unlikely to be a public detriment arising from the Conduct.

The procurement process is being conducted in a way that enables respondents who may not have the capacity to deliver services to both local governments to nevertheless competitively bid for the services, by bidding for one of the separable portions of the services requested.

To the extent there is a public detriment arising, the Applicants submit that the clear and demonstrable public benefits outlined in Item 10 of this application would outweigh the public detriment.

**The Applicants submit that for the reasons explained in Items 10 and 11 of this application, and read in the context of this application as a whole, the only reasonable conclusion that is open to the ACCC is that, in all the circumstances, the Conduct is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the Conduct.**

### **Contact Details of Relevant Market Participants**

12. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

The Applicants submit that the relevant market participants will be any participants in the waste industry who have the capacity to service the Applicants.

The industry peak body in Queensland is Waste Recycling Industry Queensland: <https://wriq.com.au/contact-us/>.

### **Additional Information**

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

### **Request for Urgent Interim Authorisation**

The Applicants intend to advertise requests for tenders in **January 2019**.

The preparation of materials associated with the procurement process is time consuming, and so there is a need to commence the process as soon as possible. In view of that, the Applicants request urgent interim authorisation for the following aspects of the Conduct:

- preparation and advertising of the RFT;
- the evaluation of responses by the evaluation panel;
- negotiations and communications with prospective bidders.

A contract is expected to be entered into by **October 2019**.

The Applicants submit that the grant of urgent interim authorisation will not result in any public detriment at all. Notwithstanding the submissions made in Item 9, if any competitive constraint arises, it will only arise after a contract has been entered into.

#### Fee waiver

The fee waiver granted by the ACCC by its letter dated 13<sup>th</sup> of September 2018 is **enclosed** with this application.

#### Further information

The Applicants can provide any further information requested by the ACCC.





Contact officer: Sophie Mitchell  
Contact phone: (03) 9290 1822

13 September 2018

Julian Bodenmann  
Associate  
Preston Law

**By email:** [jbodenmann@prestonlaw.com.au](mailto:jbodenmann@prestonlaw.com.au)

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Canberra ACT 2601  
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[www.accc.gov.au](http://www.accc.gov.au)

Dear Mr Bodenmann

**Fee waiver request – proposed application for authorisation**

I refer to your letter to the Australian Competition and Consumer Commission (ACCC), dated 7 September 2018, in respect of a proposed application for authorisation. In your letter, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Central Highlands Regional Council (CHRC) and Isaac Regional Council (IRC) be waived by the ACCC.

In support of your request, among other things, you submitted that:

- (a) the required fee of \$7500 is substantial relative to the size and ratepayer base of CHRC and IRC
- (b) payment of the application fee would impose an unduly onerous burden on CHRC and IRC having regard to other activities they are required to spend revenue on in their respective areas and
- (c) the fee will be borne by the ratepayers of CHRC and IRC.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by CHRC and IRC has been waived in part. An application fee of \$2500 will apply to the application for authorisation.

This decision will remain in force for a period of three months. The three month period will expire on 12 December 2018.

A copy of this letter should accompany the application for authorisation to be lodged by CHRC and IRC. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by CHRC and IRC after 13 December 2018, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Sophie Mitchell on (03) 9290 1822 or by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', is positioned above the typed name.

David Jones  
General Manager  
Adjudication