



**Central Highlands Regional Council and Isaac Regional Council –  
Application for authorisation AA1000430  
Interim authorisation decision  
24 October 2018**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation lodged by Central Highlands Regional Council and Isaac Regional Council (the **Applicants**) on 28 September 2018.
2. Interim authorisation is granted to enable the Applicants to begin preparations for a collective tender process for waste collection services, including preparing and advertising tender documentation, evaluating responses, and negotiating and communicating with prospective bidders. Interim authorisation does not extend to entering into, or giving effect to, any waste collection contracts.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation**

4. The Applicants are two local government councils in Central Queensland located adjacent to each other:
  - Central Highlands Regional Council has a resident population of 28,783 and an area of about 54,000km<sup>2</sup>
  - Isaac Regional Council has a resident population of 24,275 and an area of almost 60,000km<sup>2</sup>.
5. The Applicants seek authorisation to jointly procure services for the collection of kerbside and bulk bin waste and recyclables for domestic and commercial premises; the collection of public waste and recyclables; and the collection of waste located at Council facilities (the **Proposed Conduct**).
6. The Applicants' collective tender proposal does not involve waste processing services.
7. Application for authorisation AA1000430 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (the **CCA**). Under this provision, the ACCC can grant authorisation which provides businesses with an exemption from competition law for arrangements that may otherwise risk breaching the law, provided they are likely to result in a net public benefit, or are unlikely to substantially lessen competition.
8. In this case, the participating councils may be considered to be each other's competitors when seeking to procure waste collection services. By conducting their tender process jointly rather than individually, they risk breaching competition laws. Accordingly, the Applicants have sought authorisation from the ACCC, which would give them legal protection to collaboratively tender and contract.

9. The Applicants are seeking authorisation for a period of ten years, comprising a seven year contract term and three extension options each of one year.
10. The Applicants propose to jointly prepare and advertise a Request for Tender (**RFT**) that will invite tenders to supply services to one or both of the Council areas. As such, the RFT will consist of the following separable portions:
  - 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.
11. The Applicants will develop a single evaluation panel comprised of representatives of both councils to assess tender responses. The evaluation panel may select one waste collection contractor to supply services to both local government areas or may select two different contractors, based on the evaluation criteria.
12. In 2008, the ACCC granted authorisation to the Central Queensland Local Government Association on behalf of four regional councils, including Central Highlands and Isaac Regional Council, to collectively tender for the provision of waste, recyclables and ancillary waste services (including waste collection services) in their combined local government areas and offer contracts to the successful tenderers until 31 December 2018.<sup>1</sup> The Applicants' current waste collection contract, which is held by a single service provider, was entered into under this authorisation.

### **Interim authorisation**

13. Section 91 of the CCA allows the ACCC, where it considers it appropriate, to grant interim authorisation to allow parties to engage in the proposed conduct while the ACCC is considering the substantive application for authorisation.
14. The Applicants have requested interim authorisation in order to commence the preparation of tender documentation as soon as possible, in anticipation of advertising the RFT in January 2019 and entering into contracts by October 2019. This coincides with the end of the Applicants' current contract.
15. The Applicants requested interim authorisation on the basis that the preparation of materials associated with the procurement process is time consuming and it is necessary to commence the process as soon as possible. Consequently, the Applicants have requested interim authorisation to engage in the following conduct:
  - preparation and advertising of the RFT
  - evaluation of responses by the evaluation panel; and
  - negotiations and communications with prospective bidders.
16. Table 1 below summarises the Applicants' anticipated timeframes:

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<sup>1</sup> ACCC Determination in relation to application for authorisation A91087 lodged by the Central Queensland Local Government Association on behalf of the Regional Councils of Rockhampton, Gladstone, Central Highlands and Isaac, 13 August 2008.

**Table 1: Applicants' indicative timetable for proposed procurement process**

<b>Event</b>	<b>Timing</b>
Application to ACCC	28 September 2018
Advise industry participants of the impending RFT (if interim authorisation granted)	November – December 2018
Advertise RFT	January 2019
Close tender	March 2019
Award tender(s)	April – May 2019
Commence contract(s)	October 2019

### **Consultation**

17. The ACCC contacted nine potentially interested parties, including a number of waste service providers and industry associations, inviting them to comment on the application for authorisation and request for interim authorisation.
18. To date, the ACCC has not received any public submissions in relation to the application.
19. Further information in relation to the application for authorisation, including any public submissions received by the ACCC and an indicative timetable for the ACCC's assessment of the application, may be obtained from the ACCC's [Public Register](#). The ACCC has invited submissions regarding the substantive application for authorisation by 31 October, and will also invite a further round of submissions on its draft determination, which is expected to be published in November.

### **Reasons for decision**

20. When considering applications for interim authorisation, the ACCC has regard to a number of factors, including<sup>2</sup>:
  - A. The extent to which the relevant market will change if interim authorisation is granted. Interim authorisation is more likely to be granted when it will maintain the market status quo.
  - B. The urgency of the need for interim authorisation.
  - C. The possible harm, if any, to the applicant and other interested parties if interim authorisation is granted or denied.
  - D. Any likely benefit or detriment to the public from the proposed conduct that the ACCC could assess at the time of considering the request for interim authorisation.

### **Impact on the status quo**

21. The ACCC notes that interim authorisation is not sought to enter into, or give effect to, any contracts. Therefore, the conduct to be engaged in under interim authorisation is

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<sup>2</sup> A number of these factors were described by the Tribunal in *Re Queensland Timber Board* (1975), ATPR 40-005 at 17,122-123.

unlikely to have a significant impact on the market and would not prevent it from returning to its initial position if authorisation is ultimately denied.

### **Urgency**

22. The Applicants submit their request for interim authorisation is urgent as they intend to advertise the tender in January 2019 and enter into a contract by October 2019. The ACCC considers that interim authorisation will avoid delay in commencing preparations for the proposed joint procurement process and better enable the Applicants to have a contract in place by October 2019 should the substantive authorisation be granted.

### **Harm to the applicant and interested parties if interim authorisation is granted or denied**

23. Denying interim authorisation may impact the Applicants' ability to prepare for, and run, the tender process before their existing contract expires. A shorter tender process may also limit the ability of prospective service providers to participate in the tender.
24. The ACCC has not identified any likely harm to any party from granting interim authorisation.

### **Possible benefits and detriments**

25. The ACCC will continue its assessment of the Proposed Conduct, including taking into account any submissions from interested parties. Based on the information received so far, the ACCC has not identified any likely detriment from the Proposed Conduct, and considers it is likely to result in the following public benefits:
- Transaction cost savings for the two councils by combining resources and creating a more efficient procurement process.
  - Transaction cost savings for potential service providers that will only need to respond to a single RFT rather than participate in multiple tender processes.

### **Reconsideration of interim authorisation**

26. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.