



**Logan City Council & Ors –
Application for authorisation AA1000437
Interim authorisation decision
29 March 2019**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000437, lodged by Logan City Council, Ipswich City Council, Redland City Council, Lockyer Valley Regional Council and Somerset Regional Council (the **Councils**) on 13 February 2019.
2. Interim authorisation is granted to enable the Councils to undertake an expression of interest process in relation to possible joint procurement of waste processing services while the ACCC completes its assessment of the substantive application for authorisation. Interim authorisation does not extend to entering into any contracts for waste processing services.
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 Councils are all located in South East Queensland region and each is adjacent to one or more of the other Councils.



Map of South East Queensland with the applicant Councils highlighted

5. The Councils seek authorisation until 31 December 2050 to collectively tender for waste processing services (the **Proposed Conduct**).

6. The services will be limited to the processing or disposal of resources and/or waste, and will not include any collection services, or the operation of existing waste transfer stations and tip shops. The waste streams involved are:
 - residual waste – being waste that has not been sorted for recycling or beneficial reuse
 - recyclable waste – being items and materials that have been collected for the purposes of recycling or other forms of beneficial reuse
 - organic waste – being garden and/or food waste collected for the purposes of beneficial reuse
 - regulated waste – wastes as defined in Schedule 7 of the Environmental Protection Regulation 2008 (Qld) of primarily domestic origin, and
 - problematic waste – being items that are currently not recovered that have a potential resource value for recycling or beneficial reuse.
7. The Councils plan to commence the procurement process with a public invitation for Expressions of Interest (EOI). The invitation for EOIs will seek responses for a broad range of resource recovery and/or waste disposal services, for any one or more resources and/or waste types, and for services for any one or more of the Councils.
8. The EOIs will be evaluated by a committee comprising a representative from each Council. Following the EOI process, the Councils may invite shortlisted EOI respondents to engage in an Early Tenderer Involvement (ETI) process, followed by a Request for Tenders (RFT) process.
9. The Councils will decide whether to invite respondents to provide regional services for all Councils, for more than one of the Councils, or for their individual local government area. One or more Councils may also decide to have no further participation in the procurement.

The authorisation process

10. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

11. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct, or part of it, while the ACCC is considering the substantive application.
12. The Councils requested interim authorisation on the basis that a number of key waste and recycling related contracts are due to expire in mid to late 2019, and it is imperative that the invitation be released to the market as planned to ensure that adequate time is available to complete the expression of interest stage and then undertake the next stage of the procurement process, in order to ensure the Councils maintain continuity of services to their communities.

Consultation

13. The ACCC invited submissions from a range of potentially interested parties including waste disposal companies, industry associations, and government bodies.¹
14. A number of concerns have been raised by interested parties in relation to the proposed arrangements. The ACCC will consider these issues as part of its substantive assessment of the likely benefits and detriments of the proposed arrangements. The ACCC considers these concerns are not relevant to its decision as to whether to grant interim authorisation to allow the commencement of an EOI process.
15. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

16. In granting interim authorisation, the ACCC considers that:
 - given interim authorisation is requested only for the commencement of the expression of interest process, it is unlikely that granting interim authorisation will result in any changes which could not be reversed should substantive authorisation ultimately be denied
 - the expiration of current contracts, and the time frames involved in running the tender process, constitute a level of urgency for the Councils to be able to commence the expression of interest process, and
 - there may be harm to the Councils should interim authorisation not be granted (in the form of a gap in the provision of waste processing services for some of the Councils).

Reconsideration of interim authorisation

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

¹ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.