

6 December 2021

Ms Miriam Kolacz
Acting Assistant Director
Competition Exemptions/Mergers, Exemptions and Digital
Australian Competition & Consumer Commission
Level 4, 271 Spring Street
MELBOURNE 3000

Dear Ms Kolacz

EMRC Ors Application for Authorisation (AA1000587)

Thank you for the feedback in your email of 24 November 2021 and a copy of the five submissions received from interested parties.

In relation to the questions in your email:

1 Public benefit claim:

The original public benefit claim was on the basis of:

- A cost-effective service – particularly for additional services such as wheel in - wheel out services, bulk collection and sorting service, public place bin collection, litter control and illegal dumping collection, event waste management, non-rateable property service collections, bin repairs, new services and other responsive services that are more costly to service and hence generally charged at a higher lift rate or a per service rate (e.g. event bin delivery). Because the resources would be shared between the participant Councils, those services were likely to be able to be consolidated to optimise any service runs, staff time and resources and maintain a range of well utilised fleet vehicles optimised for all the various services.
- Efficiency of housing the trucks at the waste disposal location (Hazelmere Resource Recovery Park) which is located closer to the majority of the participating councils than the other waste company service depots.
- Education and customer service benefit through consistent messaging across the region.
- Integration of waste education services currently provided by the EMRC and the Proposed Conduct.
- Flexibility to respond to future subdivisions and developments and to carry out trials as the public expectations and regulations change.

Since Talis provided its initial business case in 2019 the following considerations have changed:

- 3 Councils have removed themselves from the proposed arrangement, therefore the economies of scale have changed.
- The City of Swan were going to be the original Council to join – providing the initial base fleet and support services to transition with experienced drivers and supervisors. They provided the economy of scale for the mechanics services and repairs, customer services, management etc to build on with other councils. To commence the service with a different council will mean that the initial council/s will absorb a significant proportion of the set-up costs and there is a staffing risk with recruiting new drivers and supervisors if they aren't already experienced in the region.

As a result of the 3 Councils non-participation at this stage, the lift rates are not as cost competitive for the regular collection services (general waste, recycling and FOGO) or for the additional services such as public place bins, event waste management, illegal dumping collection etc.

However, there are non-monetary benefits to the public as a result of the Proposed Conduct. The EMRC would:

- (a) Be collecting a greater range of information for reporting, data analysis and feedback on trends, education, identification of changes that can improve efficiency;
- (b) Using the additional data for reviews for innovation, value adds and maximising performances between councils; and
- (c) Conducting waste audits across the Participant Councils to monitor household behaviour and behaviour change.

As part of the Proposed Conduct, collection vehicles would be able to service more than one participating Council in any run. The ability for collection vehicles to cross LGA borders will assist to optimise collection routes across the region, maximising the use of the vehicles. The Proposed Conduct will allow vehicles currently out on collection runs across the region to be able to attend missed services in another part of the region without the need to send out another vehicle creating efficiencies in the service.

In addition, with a reduction in the number of vehicles required overall from the Proposed Conduct (compared to the three participant Councils contracting separately with the private sector) and through optimisation of the truck routes and the disposal location (Hazelmere Resource Recovery Park) which is located closer to the majority of the participating Councils, there will be fewer waste vehicles sharing the road. Less trucks and more efficient routes should also lead to reduced traffic congestion and air and noise pollution. Both a reduced number of vehicles and a higher level of services through new, safer technology on vehicles should deliver improved public safety.

The efficiency of housing the trucks at the Hazelmere site (depot) is still likely to stand, however the shared depot management costs such as mechanical support services may not be optimised in the same way as if they were housed with a larger fleet.

2 Please clarify what the EMRC considers that the future without the Proposed Conduct would be (for example, whether the status quo would be maintained, or something else).

EMRC Response

The future without the Proposed Conduct could be the status quo with participating Councils seeking their own contracts via the WALGA preferred supplier panel. Alternatively, the EMRC could manage and Expressions of Interest and tender process to benchmark the outsourcing of the combined three Council collections against the revised EMRC (three Council) in-house model.

- 3 What mechanisms or checks are in place to ensure that the services proposed to be provided by the EMRC over the life of the proposal are competitive, cost effective and will drive improved service improvement?**

EMRC Response

The model is based on the efficient service provided by City of Swan, which has been achieved by implementing incremental service efficiencies and adoption of technologies. For the EMRC to manage a regional collection service and stay competitive it would need to continue to adopt these incremental changes to remain cost competitive with waste management companies.

This includes modernising fleet, which EMRC can access cost competitively through the WALGA preferred supplier agreements; use of the latest Route Optimisation software and independent market reviews every 5 years to ensure the service is cost competitive, in the same way that many other councils that provide an in-house waste service currently check their cost competitiveness.

The EMRC has shown a proactive response to government policy direction and service improvements including the circular economy and FOGO processing. Having an in-house waste service would allow for constant review, trials and improvements which align with the region and State's objectives. The EMRC would be providing regular service reports to each of the participating councils in the same way that contractors do – regarding bin presentation rates, missed services, number of customer service enquiries, new services, damaged bins etc.

- 4 Please respond to concerns raised that EMRC's proposal does not satisfy the 'executive functions test' for local governments under Local Government Act 1995 (WA) section 3.18(3) because it would result in the duplication of services already provided, and able to be provided, by private sector entities.**

EMRC Response

Please see the response provided below on this issue. The EMRC has met the "executive functions test" as confirmed by legal opinion.

- 5 When is it intended that each of the Participating Councils will commence their service agreements with the EMRC? Specifically:**

- (a) For Bassendean and Bayswater, will this be in 2022 and 2023 respectively when their current contracts are due to expire; or are they likely to exercise their options to extend for 5 years, such that their service agreements would commence in 2027 and 2028 respectively?

EMRC Response

For the Town of Bassendean, the service agreement could commence in the second half of 2022 if the EMRC was ready, otherwise a 2023 service commencement would occur whereby the Town would exercise a 1-year extension option to their current contract. For the City of Bayswater, a 2023 service agreement is achievable.

- (b) Mundaring's existing contracts for general waste, bulk verge and street litter expire in 2023, but its recycling contract expires in 2028. Will Mundaring enter the service agreement in 2023 for the former three services and then add the recycling service stream in 2028?

EMRC Response

Yes that would be the intention, a service agreement for the collection of general waste, bulk verge and street litter in 2023 and add the recycling service to the service agreement in 2028.

- 6 If, based on Question 5, one/more of the Participating Councils' 10-year service agreements will expire before the period of authorisation ends in 2040, will those Councils, at that stage, have a choice between renewing their EMRC service agreement (for however long a period is left until 2040) or procuring services individually e.g. from the private sector?

EMRC Response

The participating Councils will have an option to extend their 10-year EMRC service agreement. However, before the expiry of the service agreement, the EMRC would conduct an independent market review to ensure the service is cost competitive, in the same way that many other councils that provide an in-house waste service currently check their cost competitiveness.

Our response to the issues raised in these submissions is detailed below.

1 Anonymous Interested Party

"The application creates the potential for the EMRC to operate in the commercial and industrial space, based on a track record of a number of local governments in Perth already doing so, at a continual loss of around ~\$1M each year, by using rate payer funds to compete with the private sector, well below the market rate for commercial service provision. (For example the provision of a new FOGO commercial business bin service, free of charge from March 2021 from a EMRC member council: <https://www.bayswater.wa.gov.au/home-and-property/waste,-rubbish-and-recycling/fogo/fogo-for-businesses>)

- Residents in new developments (whether residential or new commercial developments) cannot opt out of being charged for waste services via local government rates, even if they secure a supplier from the private sector (businesses will pay council waste rates even if no local government commercial waste service is provided). A solution would be to allow such new developments to opt out of paying for government rates for services that they do not receive; allowing them to obtain services from the private sector under the free market economy. Or preferably, not allow regional governments to push the private sector out of these new developing markets in the first place. Private sector suppliers can offer a wider range of services and logistical benefits under commercial free market agreements compared to the local government's mandated but limited service provision and their limited access to a varied fleet of truck sizes."

EMRC Response

The City of Swan which has an extensive in-house waste collection system, has a waste levy charge which includes not only the household bin collection and disposal but also the bulk waste collection/disposal, all City litter control and illegal dumping control, all parks and street bins, all community bins and public event bins plus waste education programs. Most other Councils have the same or similar charge arrangement. All residential properties share the cost of these services including the household waste, recycling collection disposal.

The EMRC has been operating a major metropolitan landfill facility at Red Hill Waste Management Facility and a Resource Recovery Park at Hazelmere for over twenty years and providing competitive waste disposal and resource recovery services for member Councils, other local governments and the private sector. So the EMRC is already in the commercial space and competes with private operators for waste disposal services and the sale of recovered products but does so under the constraints of the Local Government Act. The EMRC does not run its operations at a loss and then have to impose on its member Councils to subsidise the business although this is provided for in the EMRC's Establishment Agreement but has never been used.

The EMRC runs surplus budgets and accumulates these surpluses in designated reserves to fund future developments, capital replacement, future landfill closure costs and returns accumulated funds to member Councils when appropriate. For example, in 2019/2020, the EMRC distributed \$5,000,000 to member Councils as a Covid-19 dividend plus \$13,789,200 to assist the six-member Councils prepare for the implementation of a food organics and garden organics (FOGO) waste collection system. In 2020/2021 the EMRC provided a General Distribution to

member Councils of \$4,985,988. In the private sector, these budget surpluses would represent profits to be distributed to staff under incentive schemes and dividends to Australian and overseas owners and shareholders.

In terms of the comment about the provision of these services by local or regional governments, the service offering is very similar or better than the private operators which is why numerous metropolitan councils have chosen to keep the service in-house. Collection truck sizes are the same.

"It notes that the Strategic Waste Infrastructure Planning Project Investigation Report 2014 (pages 9 and 10) found that the Waste Planning Policy & Procurement (WPPPA) model was the most favourable governance model. Under that model, while members were generally supportive of the potential for the State Government to plan and own strategic waste precincts, there was not support for the Government to own or operate facilities developed on those sites. The SWIP working group notes the importance of procuring and protecting sites and making them available to the market through long term leases.

- It sees a significant conflict of interest in allowing local governments (like the councils within the EMRC) to grow a commercial arm that will involve them establishing or controlling where new waste infrastructure should be built. Disadvantaging proposals by private sector providers during local government planning approvals to purchase land for state government licencing under the Department of Water and Environmental Regulation, which requires local government planning approval, prior to any future waste and recycling facilities being built or licenced. The EMRC entity or its member councils could therefore deny planning approval to other competing waste facilities within its own area of influence and effectively control the ability of private sector providers to expand or develop their business.

EMRC Response

We note that the SWIP report was never adopted by the State Government.

Under the WPPPA model, the SWIPWG did not make comment, as is suggested, in relation to local governments establishing or controlling where new waste infrastructure should be built. The SWIP June 2014 report states on pages 9 and 10:

"As with the above models, the Waste Planning Policy & Procurement (WPPPA) model allows the state government to influence the collection and processing outcomes and implement measures that will assist it to achieve the Waste Strategy targets. However, the SWIPWG feels that this model is more favourable as it also facilitates making suitable sites available for waste infrastructure development purposes, which is likely to encourage additional investment. The SWIPWG supports the fact that it integrates planning for infrastructure with complementary policy development processes. The SWIPWG notes the importance of procuring and protecting sites and making them available to the market through long term leases. While there was general support for the potential for the State Government to plan and own strategic waste precincts, there was not support for the Government to own or operate facilities developed on those sites. Most members expressed a general preference for the WPPPA governance model. Members noted that the role of regional local governments and local governments would remain unchanged under this model. Members of the SWIPWG consider that this model is compatible with and could be implemented in conjunction with the model for local and regional local governments as set out in 'WALGA's vision for waste management in the metropolitan region."

On page 18 of the report, it states: "the most appropriate role for the State Government in relation to waste management and waste and recycling infrastructure planning is to:

- Secure strategic sites for waste infrastructure purposes within the planning system, procure these, where necessary, and make these available to infrastructure providers/operators on long- term leases. Where public acquisition is not necessary, sites could be secured via appropriate local scheme planning controls, noting that operators will not be prevented from purchasing their own sites."

- “It sees no limits on the EMRC seeking to change its commercial offering into the construction and demolition or the commercial and industrial space, or engaging with councils outside of EMRC’s member councils, as other privately-owned landfills run out of space. This means the EMRC would become vertically integrated via its Red Hill landfill site and other recycling processing sites, gaining market control of a collection fleet for commercial services and would be developing a monopoly of the municipal solid waste it collects. It would become too large a competitor and one that owns sole rights of collection of the large amount of waste municipal waste stream under the WARR Act.”

EMRC Response

The SWIPWG report makes no such observations. The EMRC is a business set up by its member Councils and governed under an Establishment Agreement to provide waste management services and regional development opportunities for the member Councils.

The EMRC already has several waste and recycling facilities in its region which compete with the private sector. The EMRC does not regulate planning approvals in its region, that is a matter for the member Councils and there is an appeal process.

This application is not about the EMRC expanding its commercial offering into the C&D or C&I space, it is about providing the participating Councils an alternative to the private sector waste collection of household municipal waste.

2 Melanie Reid, City of Belmont

“On behalf of the City as an interested third party I make the following comments from an operational perspective only and please note the feedback below has not been presented to Council for endorsement:

- Within the Perth metropolitan area, regional waste collection services are provided efficiently and effectively through multiple private sector entities.
- The services in question could be secured through a contracted private sector service provider. Therefore, it is our opinion that the provision of this service does not satisfy the criteria of the executive functions test for Local Governments (LG) under Section 3.18(3) of the *Local Government Act 1995*.
- Considering the executive functions test, the provision of waste collection services is well provided for within the private sector and submission AA1000587 by the EMRC would result in the duplication of services provided by private sector entities.
- The City is of the opinion that economies of scale and their anticipated financial benefits for participating member Councils could just as easily be realised through a tender process that combines the volumes and needs of all three organisations; awarded to a suitable, conforming contractor from the private sector.

If this submission were to be approved, the EMRC may also extend their waste collection services to other interested Local Governments which one could argue is outside the purpose of a regional council and would also potentially further impact private sector entities.

As noted above, the City believes the proposed service by the EMRC does not meet the executive functions test under the *Local Government Act 1995* and the approval of this submission could have a significant financial impact on local businesses providing a similar service, and on this basis it should not be supported.”

EMRC Response

We note that this response from Melanie Reid has not been endorsed by their Council and so does not necessarily represent the Council's view and is not even endorsed by their CEO. Ms Reid was privy to commercial-in-confidence information on the proposed regional waste collection service during the period the City of Belmont was a member Council and therefore this submission should be regarded as prejudiced and dismissed.

The provision of waste collection services within the Perth metropolitan area is also provided efficiently and effectively by numerous individual local governments. For example, in Perth's eastern region, the City of Swan services its residents and businesses. Among the Mindarie Regional Council member Councils, the Cities of Perth, Stirling and Wanneroo provide waste collection services and in the Southern Metropolitan Regional Council catchment, the Cities of Canning, Melville, Fremantle and Cockburn have their own waste collection services. Note that these Councils providing their in-house service are typically large metropolitan Councils, especially Swan, Stirling, Wanneroo and Cockburn.

The suggestion that providing a waste collection service is outside the purpose of a regional Council is incorrect. The EMRC's Establishment Agreement provides for the EMRC to undertake activities including the removal, processing, treatment and disposal of waste. See also the commentary below in refuting the point about the executive functions test.

The EMRC obtained legal opinion on the executive functions test for Local Governments (LG) under Section 3.18(3) of the *Local Government Act 1995*. This opinion is set out below:

"Section 3.18(3) of the LG Act

Section 3.18 of the LG Act provides the following:

3.18. Performing executive functions

- (1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.
- (2) In performing its executive functions, a local government may provide services and facilities.
- (3) A local government is to satisfy itself that services and facilities that it provides —
 - (a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and
 - (b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and
 - (c) are managed efficiently and effectively.

The EMRC is a Regional Council (and deemed to be a local government under the LG Act). You have asked for the EMRC's comment as to whether the EMRC waste collection proposal satisfies the 'executive functions test' for local governments under s.3.18(3) of the LG Act because it would result in the duplication of services already provided, and able to be provided by private sector entities.

In Western Australia the infrastructure required to process Municipal solid waste is primarily coordinated by local governments and Regional Councils.

Provision of waste services for ratepayers is a function of local government. Each local government in WA is responsible for its own waste management services. If a local government wishes to outsource waste services, they may engage another local government. This is currently a very common practice, particularly with regard to waste disposal and local government owned landfills. Local governments may also choose to outsource waste collection services and invite both private industry and other local Councils to bid for these services.

It is also common in WA for several local governments to form a regional council (such as the EMRC) to develop, coordinate and manage the waste collection and waste infrastructure facilities for the member councils.

Our legal advice is that the requirement under s.3.18(3) of the LG Act is similar to (and should be read with) EMRC's competitive neutrality obligations under the National Competition Policy (NCP), which were adopted by the Commonwealth, State, and Territory governments in 1996. The Western Australian government introduced and incorporated the NCP principles through the Competition Policy Reform (Western Australia) Act 1996, the WA Competition Neutrality Policy, and the Local Government Statement. These continue to have legislative effect in WA and are binding on local governments and the EMRC.

Section 3.18(3) and the NCP seek to avoid EMRC wasting ratepayer funds in the duplication of services already provided by the State or Commonwealth governments, or competing with private service providers on an unfair basis. In the current case the relevant waste collection services are not provided by State or Commonwealth governments.

Certain private operators in Perth do provide waste collection services, however s.3.18(3) and the NCP do not prohibit EMRC from providing the proposed waste collection services. If this was the case, then very few local governments in WA would be permitted to provide and operate a Community Aquatic Centre (with pool and fitness/gym facilities), or a community bus service, or aged care facilities, parks and gardens servicing, road maintenance or similar.

Section 3.18(3) and the NCP do not constitute a prohibition on EMRC providing the proposed waste collection services, merely because of the existence of private waste collection operators:

The relevant requirement under s.3.18(3)(b) is that the EMRC is to satisfy itself that the proposed waste collection service will not duplicate, to an extent EMRC deems inappropriate, waste collection services provided by private waste collection operators.

The EMRC is satisfied that the proposed waste collection service is appropriate and meets the requirements of s.3.18. EMRC is a leader in innovative waste management and resource recovery strategy to bring service and cost benefits to its member councils and their ratepayers. The waste collection service proposed by the EMRC is part of an integrated waste management system and EMRC's proposed waste collection service will bring service and cost benefits to its 3 participating member Councils in Perth's eastern region. The Private waste collection service operators have 24 other Perth Metropolitan Councils to service.

The NCP is not a prohibition on a local (or regional) government providing a facility or service that private businesses or operators also provide. The primary objective of the NCP is the elimination of resource allocation distortions arising out of public ownership of entities engaged in business activities. Local government owned and operated businesses should not enjoy any net competitive advantage over private operators simply as a result of their public sector ownership (i.e. low rent, no local government rates etc). The requirement under the NCP is that the local government must neutralise the net competitive advantage it has as a result of government ownership. This is done through appropriate cost and pricing strategies etc.

The EMRC has met the requirements of s.3.18 of the LG Act and of the NCP."

In regard to the opinion that economies of scale and their anticipated financial benefits for participating member Councils could just as easily be realised through a tender process that combines the volumes and needs of all three organisations this is an opinion from an officer of a former member Council and should be disregarded for reasons stated above.

The EMRC has been investigating the opportunities for a regional waste collection service since 2007. As a part of these previous investigations and from discussions with private sector contractors and local government in-house teams, the indications were that the scope of savings by consolidating contracts is actually quite small, and that the bulk of the observed saving is due to highly efficient operations being run in-house.

3 Suez

1. SUEZ is concerned that the Applicants seek to circumvent existing competitive tendering processes by taking total control of waste streams from three individual local governments for up to 30 years, and removing the opportunity for these services to be provided by private sector operators such as SUEZ following a competitive process.

EMRC Response

The authorisation sought now is until 2040, that is for a period of up to 18 years starting from 2022. Suez and other private sector operators will still be able to compete for the waste collection services of 24 other metropolitan local governments through the existing tendering processes.

As Suez would know, a reasonable contract term is required in order to recover the cost of capital invested in waste collection services, and typically these contracts are 5 years plus extension options of up to another 5 years (ie a 10-year total term).

2. The Application fails to substantiate any real net public benefit. SUEZ specifically questions the Applicants' claims regarding the Proposed Conduct delivering better efficiencies, cost savings, economies of scale, or environmental benefits.

EMRC Response

The EMRC believes that the Proposed Conduct will result in improved customer service based on the premise that the customer is always right, the ability to swap drivers around from the different collection services, and better management of union issues. If one section is short of drivers on a particular day, drivers can be directed from services with less immediate needs for that day, thus reducing the number of drivers required. If all services are in-house, a close relationship is formed with the workshop for dealing with truck repair requirements and servicing the collection trucks and also the fleet efficiency. The EMRC believes that overall the efficiencies will be similar to the private sector and will be benchmarked against the private sector offering from time to time.

The Waste vehicles plus the fuel, lubricants and vehicle parts and systems required can be all purchased using the WALGA local government and state government contract arrangements. The EMRC is in a good position to do long term accurate forecasts on population changes and growth enabling improved planning of the whole domestic waste requirements for the Councils involved.

3. The Local Government Act 1995 (WA) provides that a local government must satisfy itself that services and facilities do not duplicate (to an inappropriate extent) services or facilities provided by others, including private industry. As noted above SUEZ provides collection services to one of the three Council Applicants and there are numerous other private sector providers identified in the Application as being able to provide these services.

EMRC Response:

Not all of the other private sector providers are on the WALGA preferred supplier panel.

In relation to the Local Government Act 1995, we repeat the response provided to Melanie Reid's submission above:

"Section 3.18(3) of the LG Act

Section 3.18 of the LG Act provides the following:

3.18. Performing executive functions

- (1) A local government is to administer its local laws and may do all other things that are necessary or convenient to be done for, or in connection with, performing its functions under this Act.*
- (2) In performing its executive functions, a local government may provide services and facilities.*
- (3) A local government is to satisfy itself that services and facilities that it provides -*
 - (a) integrate and coordinate, so far as practicable, with any provided by the Commonwealth, the State or any public body; and*
 - (b) do not duplicate, to an extent that the local government considers inappropriate, services or facilities provided by the Commonwealth, the State or any other body or person, whether public or private; and*
 - (c) are managed efficiently and effectively.*

The EMRC is a Regional Council (and deemed to be a local government under the LG Act). You have asked for the EMRC's comment as to whether the EMRC waste collection proposal satisfies the 'executive functions test' for local governments under s.3.18(3) of the LG Act because it would result in the duplication of services already provided, and able to be provided by private sector entities.

In Western Australia the infrastructure required to process Municipal solid waste is primarily coordinated by local governments and Regional Councils.

Provision of waste services for ratepayers is a function of local government. Each local government in WA is responsible for its own waste management services. If a local government wishes to outsource waste services, they may engage another local government. This is currently a very common practice, particularly with regard to waste disposal and local government owned landfills. Local governments may also choose to outsource waste collection services and invite both private industry and other local Councils to bid for these services.

It is also common in WA for several local governments to form a regional council (such as the EMRC) to develop, coordinate and manage the waste collection and waste infrastructure facilities for the member councils.

Our legal advice is that the requirement under s.3.18(3) of the LG Act is similar to (and should be read with) EMRC's competitive neutrality obligations under the National Competition Policy (NCP), which were adopted by the Commonwealth, State, and Territory governments in 1996. The Western Australian government introduced and incorporated the NCP principles through the Competition Policy Reform (Western Australia) Act 1996, the WA Competition Neutrality Policy, and the Local Government Statement. These continue to have legislative effect in WA and are binding on local governments and the EMRC.

Section 3.18(3) and the NCP seek to avoid EMRC wasting ratepayer funds in the duplication of services already provided by the State or Commonwealth governments, or competing with private service providers

on an unfair basis. In the current case the relevant waste collection services are not provided by State or Commonwealth governments.

Certain private operators in Perth do provide waste collection services, however s.3.18(3) and the NCP do not prohibit EMRC from providing the proposed waste collection services. If this was the case, then very few local governments in WA would be permitted to provide and operate a Community Aquatic Centre (with pool and fitness/gym facilities), or a community bus service, or aged care facilities, parks and gardens servicing, road maintenance or similar.

Section 3.18(3) and the NCP do not constitute a prohibition on EMRC providing the proposed waste collection services, merely because of the existence of private waste collection operators:

The relevant requirement under s.3.18(3)(b) is that the EMRC is to satisfy itself that the proposed waste collection service will not duplicate, to an extent EMRC deems inappropriate, waste collection services provided by private waste collection operators.

The EMRC is satisfied that the proposed waste collection service is appropriate and meets the requirements of s.3.18. EMRC is a leader in innovative waste management and resource recovery strategy to bring service and cost benefits to its member councils and their ratepayers. The waste collection service proposed by the EMRC is part of an integrated waste management system and EMRC's proposed waste collection service will bring service and cost benefits to its 3 participating member Councils in Perth's eastern region. The Private waste collection service operators have 24 other Perth Metropolitan Councils to service.

The NCP is not a prohibition on a local (or regional) government) providing a facility or service that private businesses or operators also provide. The primary objective of the NCP is the elimination of resource allocation distortions arising out of public ownership of entities engaged in business activities. Local government owned and operated businesses should not enjoy any net competitive advantage over private operators simply as a result of their public sector ownership (i.e. low rent, no local government rates etc). The requirement under the NCP is that the local government must neutralise the net competitive advantage it has as a result of government ownership. This is done through appropriate cost and pricing strategies etc.

The EMRC has met the requirements of s.3.18 of the LG Act and of the NCP."

4. The Application fails to explain why the Applicants consider the Proposed Conduct will not result in a substantial lessening of competition in the relevant market(s) (which markets are not clearly defined).

EMRC Response

EMRC's proposed waste collection service will bring service and cost benefits to its 3 participating member Councils in Perth's eastern region. The Private waste collection service operators have 24 other Perth Metropolitan Councils to service so the Proposed Conduct is not a substantial lessening of competition.

If the takeover of Suez by Veolia comes into effect soon, this will significantly reduce competition in the Perth market.

5. EMRC's annual reports state that it supports the principle of competitive neutrality. SUEZ questions whether a competitive neutrality review has been conducted in respect of the Proposed Conduct.

EMRC Response

EMRC is a Regional Council and is deemed to be a local government under the *Local Government Act 1995* (LG Act).

In Western Australia the infrastructure required to process municipal solid waste is primarily coordinated by local governments and Regional Councils.

Provision of waste services for ratepayers is a function of local government. Each local government in WA is responsible for its own waste management services. A local government may own and operate its own waste collection trucks and service. If a local government wishes to outsource waste services, they may engage another local government. This is currently a very common practice, particularly with regard to waste disposal and local government owned landfills. Local governments may also choose to outsource waste collection services and invite both private industry and other local Councils to bid for these services.

It is also common in WA for several local governments to form a regional council (such as the EMRC) to develop, coordinate and manage the waste collection and waste infrastructure facilities for the member councils.

EMRC has competitive neutrality obligations under the National Competition Policy (NCP), which were adopted by the Commonwealth, State, and Territory governments in 1996. Western Australia government introduced and incorporated the NCP principles through the Competition Policy Reform (Western Australia) Act 1996, the WA Competition Neutrality Policy, and the Local Government Statement. These continue to have legislative effect in WA and are binding on local governments and the EMRC.

The NCP seeks to avoid EMRC competing with private service providers on an unfair basis.

Certain private operators in Perth do provide waste collection services, however the NCP does not prohibit EMRC from providing the proposed waste collection services. If this was the case, then very few local governments in WA would be permitted to provide and operate a Community Aquatic Centre (with pool and fitness/gym facilities), or a community bus service, or aged care facilities, or similar.

Section 3.18(3) and the NCP do not constitute a prohibition on EMRC providing the proposed waste collection services, merely because of the existence of private waste collection operators:

The relevant requirement under s.3.18(3)(b) is that the EMRC is to satisfy itself that the proposed waste collection service will not duplicate, to an extent EMRC deems inappropriate, waste collection services provided by private waste collection operators.

The EMRC is a leader in innovative waste management and resource recovery strategy to bring service and cost benefits to its member councils and their ratepayers. The waste collection service proposed by the EMRC is part of an integrated waste management system and EMRC's proposed waste collection service will bring service and cost benefits its 3 participating member Councils in Perth's eastern region. The Private waste collection service operators have 24 other Perth Metropolitan Councils to service.

The NCP is not a prohibition on a local (or regional) government) providing a facility or service that private businesses or operators also provide. The primary objective of the NCP is the elimination of resource allocation distortions arising out of public ownership of entities engaged in business activities. Local government owned and operates businesses should not enjoy any net competitive advantage over private operators simply as a result of their public sector ownership (i.e. low rent, no local government rates etc). The requirement under the NCP is that the local government must neutralise the net competitive advantage it has as a result of government ownership. This is done through appropriate cost and pricing strategies etc.

The EMRC has met the requirements of the NCP.

6. SUEZ considers that the Application contains unsubstantiated statements and at least one inaccurate statement, in relation to the accessibility of EMRC's Hazelmere Resource Recovery Park.

SUEZ is concerned about the following statement, at page 19 of the Application: "At the EMRC's Hazelmere Resource Recovery Park, member Councils can dispose of bulk verge waste for sorting and recovery." SUEZ has provided bulk verge collections to the Town of Bassendean for four years and we have never been directed to deliver bulk verge waste to the Hazelmere Resource Recovery Park for sorting and recovery.

EMRC Response

The EMRC's Hazelmere Resource Recovery Park is available for member Councils to dispose of bulk verge waste for sorting and recovery but it is at the member Council's option. When the waste sorting plant at Hazelmere was completed in 2016, bulk verge waste from some member Councils and some commercial operators "dry commercial waste" was accepted for sorting. Unfortunately, there were issues with contamination of the commercial waste loads with green waste and putrescible waste which the facility is not designed or licenced for. With member Council bulk verge waste, the recovery and value of materials was low and when considered with the cost of disposal of residual waste at Red Hill it was a marginal operation. Member Councils were not directed to deliver their bulk verge waste to Hazelmere, they always had the option of doing so and they needed to direct their collection contractor to deliver to Hazelmere.

- 4 JJ Richards & Sons Pty Ltd

1. JJ's Waste specialises in providing competitive and efficient waste collection services to Local Government and has invested heavily in establishing operations in Perth to provide these services.

EMRC Response

JJ Richards is a recent entrant to the Perth market and are not currently in the business of providing kerbside household waste collection service, only commercial waste services.

2. JJ's Waste has recently purchased land and commenced building of modern facilities in the City of Bayswater as a logistically convenient depot for its Perth based fleet, and as an operating base for anticipated future municipal contracts.

EMRC Response

That's a matter for JJ Richards and their risk.

3. The EMRC proposal will preclude JJ's Waste from tendering for significant proportion of the Perth municipal waste market represented by the three participating Councils in the near vicinity of our depot. Furthermore, the application does not rule out future participation by the other two member Councils.

EMRC Response

Three councils do not represent a significant proportion of the Perth municipal waste market, there are 24 other metropolitan Councils JJ Richards can compete for. The application and Proposed Conduct are restricted to the three participant EMRC Councils.

4. In JJ's Waste experience, even if the EMRC proposal is for the moment restricted to domestic waste only, there is a risk of "creep" into provision of services to the Commercial & Industrial sector, thereby impacting on JJ's Waste and the waste industry even further.

EMRC Response

As correctly stated, the EMRC proposal is restricted to domestic waste from three participant Councils. With the takeover of Suez by Veolia, JJ Richards will have less competition in the Commercial & Industrial sector.

5. The implementation of EMRC's proposal for the next 20 years, serves only to block out competitors which can lead to inefficiencies in the delivery of services. Without contestability for such a long period of time, EMRC will inevitably face no competitive pressure to reduce cost and improve service performance.

EMRC Response

The Proposed Conduct authorisation sought is for 18 years not 20 years. As stated elsewhere in this response, the EMRC would conduct independent market reviews every 5 years to ensure the service is cost competitive, in the same way that many other councils that provide an in-house waste service currently check their cost competitiveness.

6. JJ's Waste have no objection to corporatized Council owned entities competing for provision of municipal services under the National Competition Policy protocols but establishing precedents for the growth of uncontested services is unlikely to result in efficient outcomes for the community.

EMRC Response

The EMRC is not a corporatized entity, it is a regional local government operating under the Local Government Act 1995 and under the EMRC's Establishment Agreement the EMRC can undertake activities including the removal, processing, treatment and disposal of waste. As discussed in the Application and above, the EMRC believes it can provide better customer service than private operators and a competitive collection service.

4. Department of Water and Environment Regulation

Competition can play an important role in confirming the suitability of services, including waste collection services, and the value they are providing.

Collaboration between local governments that leads to improved coordination of services, either through group contracting to private sector providers, or through the provision of services 'in-house' as proposed by the EMRC in its application may warrant a reduced level of open market competition.

Individual 'in-house' services provided by any one local government may lack the financial or technical responsiveness of commercial operations and can suffer from a general reluctance to invest when this impacts on rates and charges or borrowings.

Given this, it may be appropriate that 'in-house' services provided by local governments are tested on the open market at regular intervals to ensure they continue to provide best value for money and meet all the needs of the customer – in this case the community to which the local government is providing services.

Given the proposed duration of the authorisation extends to 2052, it is important that the authorisation, if approved, is contingent on the delivery of waste services that are consistent with State policy as it exists from time to time, including local government waste plans required under the Waste Avoidance and Resource Recovery Act 2007.

It will be important that the authorisation, if approved, provides for periodic reviews to confirm the authorisation continues to deliver a net benefit to the community.

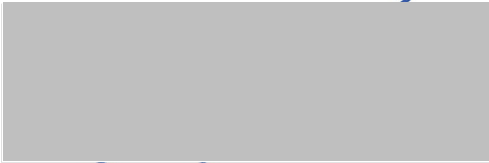
EMRC Response

The EMRC has adopted the principles of the Waste Avoidance and Resource Recovery Strategy 2030 and Action Plan and has prepared a local government waste plan and assisted some of the member Councils to prepare their waste plans.

The proposed duration of the authorisation has been amended to 2040 and as referred to in other responses above, the

EMRC would conduct independent market reviews every 5 years to ensure the service is cost competitive, in the same way that many other councils that provide an in-house waste service currently check their cost competitiveness.

Yours sincerely



Marcus Geisler
Chief Executive Officer