



10 June 2022

Mr Gavin Jones  
General Manager  
Competition Exemptions  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 3131

**General Counsel** Dan Pearce

**Direct Line** [REDACTED]

**Email** [REDACTED]

**Our Ref** DSP: 19480084

**By email** exemptions@accc.gov.au

Dear Mr Jones

**Metropolitan Waste and Resource Recovery Group – Application for Revocation and Substitution of Authorisation for Advanced Waste Processing Services**

We act on behalf of Metropolitan Waste and Resource Recovery Group (**MWRRG**), a Victorian state statutory body established under the *Environment Protection Act 2017* (Vic).

MWRRG is managing a proposal for procurement of advanced waste processing services in the South Eastern Melbourne metropolitan area that was the subject of an Application for Authorisation made in July 2019 (**Original Application**) and on which the Commission made a Final Determination in December 2019, number AA1000448 (**Original Authorisation**).

In support of this application, we enclose and refer you to:

1. public and confidential versions of MWRRG's Application for Revocation and Substitution (**Application**);
2. a signed declaration on behalf of MWRRG (included in the Application);
3. confirmation that the application fee of \$2,500 has been waived in full.

**Request to exclude confidential information from the public register**

We request that paragraph 5.3 of the Application be excluded from the public register, as it includes details of machinery of government changes, certain details of which remain confidential and sensitive.

We request that the detail of interested parties at Annexure A be excluded from the public register as it contains personal contact information, and the release of identities of potential participants could adversely affect the conduct of the procurement.

In accordance with the 'Guide for Excluding Confidential Information from the Public Register for Authorisation (Merger and Non-Merger) and Notification Processes', the words 'Restriction of

Publication of Part Claimed' appear in red at the top of the pages over which a restriction of publication is requested. The confidential sections have been highlighted on these pages.

### **Interim Authorisation**

MWRRG seeks Interim Authorisation in order to continue with the tender process for the procurement past the date on which that process was due to be completed under the Original Authorisation. The alternative would be to halt the tender process whilst this Application is considered, which would delay, and be disruptive to, the overall procurement. It is also noted in this regard that the **total** period authorised in the Original Authorisation extends well beyond the 8 July 2022 date that had been allowed for the tender process part of the overall project, and the impact on participants in the market should be negligible. Accordingly, it is requested that the decision on this request be provided as soon as possible within the 28 day period referred to in the Commission's Guidelines for Authorisation of Conduct (non-merger), March 2019.

No binding contract with any suppliers will be entered into until a formal determination is provided by the Commission, and the request for Interim Authorisation is only to allow the tender process to not be disrupted. The granting of an Interim Authorisation should not affect the existing market for the provision of the services involved in this matter.

If you require further information with respect to this application, please contact Dan Pearce.

Yours sincerely

A rectangular grey box used to redact the signature of the sender.

**Holding Redlich**



Your ref: 19480084  
Contact officer: Tom Lyle  
Contact phone: (03) 9290 1879

23 Marcus Clarke Street  
Canberra ACT 2601  
GPO Box 3131  
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tel: (02) 6243 1111

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10/06/2022

Mr Dan Pearce  
Partner  
Holding Redlich

Dear Mr Pearce

### Fee waiver request

I refer to your letter of 6 June 2022 to the Australian Competition and Consumer Commission (**ACCC**) in respect of a proposed application for revocation and substitution.

In your letter, you have requested that the fee to be paid in relation to an application for revocation and substitution to be lodged by the Metropolitan Waste and Resource Recovery Group (**MWRRG**) be waived by the ACCC in whole or to a reduced amount.

In support of your request, you submitted that:

- (a) The changes to the existing authorisation AA1000448 are limited, with essentially only an extension to the contracting period being requested. In addition, the parties have not engaged in any substantive conduct under the existing authorisation as the tendering process has been delayed due to changes in government policy.
- (b) MWRRG is government-funded.
- (c) The procurements to be undertaken by MWRRG will be solely on behalf of local councils.

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 related application fee to be paid by MWRRG has been waived **in whole**. No application fee will apply with respect to the application for revocation and substitution to be lodged by MWRRG.

This decision will remain in force for a period of three months. The three-month period will expire on 9 September 2022.

A copy of this letter should accompany the application for revocation and substitution to be lodged by MWRRG. 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 revocation and substitution is lodged by the MWRGG after 10 September 2022, a full application fee of \$2,500 will apply, unless you make, and the ACCC approves, another fee waiver.

Should you have any queries in relation to this matter, please do not hesitate to contact Tom Lyle on 03 9290 1879 or at [tom.lyle@accc.gov.au](mailto:tom.lyle@accc.gov.au), or Darrell Channing at [Darrell.Channing@accc.gov.au](mailto:Darrell.Channing@accc.gov.au).

Yours sincerely

A handwritten signature in dark ink, appearing to read 'L. Camilleri', is positioned above the printed name.

Lyn Camilleri  
General Manager  
Competition Exemptions

- Clause 5.3
- Annexure A - Potential Interested parties

Dated 10 June 2022

**Metropolitan Waste and Resource Recovery Group**

**Application for Revocation and Substitution of  
Authorisation – Advanced Waste Processing  
Services for South East Melbourne Metropolitan  
Region**

**Declaration by Applicant**

The undersigned declares that, to the best of her knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the Australian Competition and Consumer Commission immediately of any material change in circumstances relating to the Application.

The undersigned is aware that giving false or misleading information is a serious offence and is aware of the provisions of section 137.1 and 149.1 of the *Criminal Code* (Cth)



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Signature of authorised person

Dan Pearce

Solicitor, authorised by Metropolitan Waste and Resource Recovery Group

## 1. Applicant

### 1.1 Details of the Applicant

**Metropolitan Waste and Resource Recovery Group (ABN 64 460 279 309)** of Level 4, Tower 4, World Trade Centre, 18-38 Siddeley Street Melbourne, VIC 3005

This application is made by Metropolitan Waste and Resource Recovery Group (**MWRRG**) on behalf of itself and the following councils:

- (a) **City of Bayside (ABN 65 486 719 651)**  
76 Royal Avenue  
Sandringham VIC 3191  
Telephone no: 03 9599 4444
- (b) **City of Boroondara (ABN 83 441 314 965)**  
8 Inglesby Road  
Camberwell VIC 3124  
Telephone no: 03 9278 4444
- (c) **Cardinia Shire (ABN 32 210 906 807)**  
20 Siding Avenue  
Officer VIC 3809  
Telephone no: 1300 787 624
- (d) **City of Casey (ABN 43 320 295 742)**  
Bunjil Place  
2 Patrick Northeast Drive  
Narre Warren VIC 3805  
Telephone no: 03 9705 5200
- (e) **City of Frankston (ABN 49 454 768 065)**  
30 Davey Street  
Frankston VIC 3199  
Telephone no: 1300 322 322
- (f) **City of Glen Eira (ABN 65 952 882 314)**  
Corner Glen Eira and Hawthorn Roads  
Caulfield VIC 3162  
Telephone no: 03 9524 3333
- (g) **City of Greater Dandenong (ABN 41 205 538 060)**  
Level 2, 225 Lonsdale Street  
Dandenong VIC 3175  
Telephone no: 03 8571 1000
- (h) **City of Knox (ABN 24 477 480 661)**  
511 Burwood Highway  
Wantirna South VIC 3152  
Telephone no: 03 9298 8000
- (i) **City of Manningham (ABN 61 498 471 081)**  
699 Doncaster Road  
Doncaster VIC 3108  
Telephone no: 03 9840 9333

- (j) **City of Monash (ABN 23 118 071 457)**  
293 Springvale Road  
Glen Waverly VIC 3150  
Telephone no: 03 9518 3555
- (k) **Mornington Peninsula Shire (ABN 53 159 890 143)**  
90 Besgrove Street  
Rosebud VIC 3939  
Telephone no: 03 5950 1000
- (l) **City of Whitehorse (ABN 39 549 568 822)**  
379-397 Whitehorse Road  
Nunawading VIC 3131  
Telephone no: 03 9262 6333
- (m) **Shire of Yarra Ranges (ABN 21 973 226 012)**  
15 Anderson Street  
Lilydale VIC 3140  
Telephone no: 03 9205 5555
- (n) **City of Stonnington (ABN 67 688 032 530)**  
311 Glenferrie Road  
Malvern VIC 3144  
Telephone no: 03 8290 1333
- (o) **City of Kingston (ABN 80 640 377 247)**  
1230 Nepean Highway  
Cheltenham VIC 3192  
Telephone no: 1300 653 356
- (p) **City of Maroondah (ABN 98 606 522 719)**  
304A Maroondah Highway  
Ringwood VIC 3134  
Telephone no: 03 9298 4598

(collectively, the **Councils**).

## 1.2 Applicant descriptions

### (a) **MMRRG**

MWRRG is a Victorian state statutory body established under the *Environment Protection Act 2017* (Vic).

MWRRG is responsible for the strategic planning of waste management and resource recovery across metropolitan Melbourne. In this capacity, MWRRG works with 31 councils across metropolitan Melbourne to minimise waste, maximise resource recovery and reduce litter.

### (b) **The Councils**

The Councils are responsible for providing community services and facilities, and making and enforcing local rules and regulations, in the south eastern region of metropolitan Melbourne.



The Councils have responsibility for management of waste in their respective local government areas, and have a general commitment to minimising disposal of waste to landfill. The Councils wish to explore alternative waste treatment solutions which may benefit their communities, including advanced recovery technologies that are likely to require a regional approach in order to be viable.

### 1.3 Address in Australia for service of documents on the Applicant

Holding Redlich  
Level 8, 555 Bourke Street  
Melbourne, Victoria 3000

Attention: Dan Pearce

Tel: [REDACTED]

## 2. Confidentiality

The public version of this document excludes information provided to the Australian Competition and Consumer Commission (ACCC or Commission) on a confidential basis. Confidential information has been redacted. MWRRG consents to disclosure of confidential information to the ACCC's external advisors on a confidential basis or otherwise in accordance with section 155AAA of the Act.

## 3. Authorisation to be revoked

- 3.1 The Applicant seeks to revoke registration number: AA1000448, issued on 17 December 2019, and coming into effect on 8 January 2020 (the **Original Authorisation**).
- 3.2 The parties to the Original Authorisation are set out in section 1.
- 3.3 The City Councils of Boroondara, Glen Eira, Manningham, Maroondah, Monash and Stonnington have, since the Original Authorisation was granted, decided to not participate in the procurement, and do not object to this Application being made. Such a decision is consistent with the processes set out in the Management Deed that was attached to the application for the Original Authorisation, and the possible impact is discussed in more detail below.
- 3.4 The Councils of Frankston, Greater Dandenong and Mornington Peninsula are expected to continue in the procurement, but at this stage their participation in the Special Purpose Vehicle (SPV) incorporated for the procurement has not been finalised.

## 4. Basis for seeking revocation

- 4.1 The tender process contemplated by the Original Authorisation has been elongated due to changes in government policy and the consequent request from short listed bidders for more time to finalise their bids.
- 4.2 Since the Original Authorisation was granted, the Victorian Government updated its policy in relation to waste management in Victoria, with the release of its Circular Economy Policy, which has the aim of overhauling Victoria's waste management system. This, and related Commonwealth Government policy changes, have impacted the procurement of processing services, and MWRRG and various councils have been affected in the tender process originally proposed under the Original Authorisation.

**4.3** In particular, the Circular Economy Policy proposed a so-called “waste to energy cap”, which would impose a maximum on the amount of residual waste that could be used in thermal waste to energy facilities. Such facilities are one of the options that could be constructed as part of the Advanced Waste Processing project, and accordingly resolution of the details of this cap have been directly relevant to the companies bidding to provide processing services. The Government’s final position on this cap has not been clear for some time, and the latest policy paper was only released in November 2021. The bidders participating in the project have therefore indicated that they needed more time to finalise their submissions, including due to the changing regulatory landscape.

## **5. Authorisation to be substituted**

**5.1** The key change required is to the period proposed to complete the tender process with bidders, which it is requested to be extended by 24 months, to 8 July 2024. The 30 year period proposed for building and operating Advanced Waste Processing facilities would therefore be delayed in its commencement by the same 24 month period.

**5.2** It is also noted that The Victorian Government plans, from 1 July 2022, to introduce a new waste authority that is intended to perform the functions of the seven existing Waste and Resource Recovery Groups (**WRRGs**) throughout Victoria. Nonetheless, the Government has made clear that existing local connections and partnerships with councils, which are currently facilitated by the WRRGs, are to be maintained by the proposed new waste authority. Therefore, it is requested that any substituted Authorisation of the collaborative procurement referred to in this Application be granted so as to extend to any new waste authority or other successor entity of MWRRG.

**5.3**



## **6. Details of proposed conduct**

**6.1** The updated proposed conduct is essentially the same as that approved in the Original Authorisation, namely a collaborative procurement of waste processing services which may

otherwise attract the operation of the cartel provisions in Division 1 of Part IV of the Competition and Consumer Act 2010 (Cth) and section 45 of the Act.

**6.2** The differences between the existing Original Authorisation and the new requested Authorisation are:

- (a) the period for conducting the tender and contracting process is extended by 24 months, to 8 July 2024;
- (b) the conduct of the procurement is taken on by a new entity, with MWRRG being restructured from 1 July 2022.

## **7. Effect on competition and market participants, and public benefits**

**7.1** The proposed revocation and substitution should not affect competition in the market for processing of residual waste, where existing suppliers can continue to provide services as they have, now for a slightly longer period. Further, in the adjacent market for the provision of landfill services, the existing arrangements can continue and the authorisation relating to that conduct extends for 10 years which remains sufficient to allow for the transition proposed to AWP solutions without further extension.

**7.2** The public benefits identified in the Original Authorisation should all still be realised, and the only effect of a revocation and substitution may be that their realisation takes up to 24 months longer (which is immaterial in the context of the 30 year term).

**7.3** In relation to certain councils deciding not to proceed with the procurement, it is noted that the Original Authorisation extended to a greater number of councils and so a smaller number actually proceeding should leave scope for additional competition in serving their needs for processing of waste. At the same time, it is expected that the absence of their involvement will not invalidate any of the public benefits identified in the Original Authorisation. The volumes of waste that those councils were expected to contribute to an AWP facility total less than 30% of the total expected waste volumes. Even if the last 3 councils, which have not yet finalised the position regarding their shares in the SPV, also unexpectedly chose not to participate, the total volume of waste affected would still be less than 50%. Even if the project proceeded with only the 7 councils whose commitments have been formalised, the construction of an AWP facility would be viable, and all of the benefits associated with such a facility would remain. As it currently stands, the expectation is that those 3 councils will formalise their commitment soon, in which case more than 70% of the originally expected volume should be available, and the associated public benefits should be realised in full.

**7.4** It is possible that objections could be raised by bidders who participated in the initial stages of the tender process but who were not short-listed to proceed to later stages. Such suppliers may argue that allowing additional time to the short-listed bidders is somehow unfair. In response to such an argument, it is submitted as follows:

- (a) Such unsuccessful bidders did not make the short-list on the basis of the quality of their bids, which would have been the case irrespective of the subsequent extension of time to short-listed bidders.
- (b) An extension of time as requested is not a valid basis to re-open assessment of bids. Even if unsuccessful bidders' bids were re-admitted to the process (which could raise its own probity issues), there remains no certainty as to whether the participating councils will



ultimately commit their volumes of residual waste to such bidders in any event, as the final assessment is still to be undertaken.

- (c) Unsuccessful bidders remain free to offer services to other councils in the Melbourne metropolitan area and beyond.

## **8. Contact details of relevant market participants**

The details of the relevant market participants are set out in the attached Annexure A.

- ## Annexure A
- ### Potential interested parties

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## PUBLIC VERSION – RESTRICTION OF PUBLICATION OF PART CLAIMED

- Clause 5.3
- Annexure A - Potential interested parties

[illegible]

## PUBLIC VERSION – RESTRICTION OF PUBLICATION OF PART CLAIMED

- Clause 5.3

- Annexure A - Potential interested parties

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