

---

# Notification of proposed collective bargaining

**Ballina Shire Council**

**Byron Shire Council**

**Richmond Valley Council**



Richmond  
Valley  
Council



---

## INFORMATION

### NOTIFYING PARTY

#### 1. PROVIDE DETAILS OF THE NOTIFYING PARTY, INCLUDING:

1.1 **Name:** Byron Shire Council, on behalf of itself, Ballina Shire Council and Richmond Valley Council (together the Councils).

**Address:** 70-90 Station Street, Mullumbimby, NSW 2482

**Telephone Number:** 02 6626 7000

**ABN:** 14 472 131 473

1.2 Contact person's name: Lloyd Isaacson

Telephone number: (02) 6626 7084

Email address: Lloyd.isaacson@byron.nsw.gov.au

#### 1.3 A description of its business activities

The Councils are local government authorities as defined under the Local Government Act 1993 (NSW) (**Local Government Act**). Under the Local Government Act, the Councils may provide services and facilities and carry out various activities that are appropriate to the current and future needs of its local community and the wider public. The Local Government Act requires the Councils to maintain the environment. The business activities of the Councils include the provision of services relating to management and operation of waste removal, treatment and disposal services and facilities.

1.4 **Email address for service:** Lloyd.isaacson@byron.nsw.gov.au

### DETAILS OF THE NOTIFIED CONTACT

#### 2. INDICATE WHETHER THE NOTIFIED CONDUCT IS FOR:

2.1 Not applicable

2.2 Not applicable

2.3 The notified conduct is for collective bargaining (s. 93AB) that does not include a collective boycott.

---

### 3. PROVIDE DETAILS OF THE NOTIFIED CONTACT INCLUDING:

#### 3.1 a description of the notified conduct:

3.1.1 The Councils propose to engage in:

- a) a joint Request for Tender process (**RFT**) to engage an appropriately experienced contractor to provide the following services for their respective local government areas:
  - 3.1.1.a.1 to receive, sort, recover, process co-mingled recyclables from the Council's respective collection services;
  - 3.1.1.a.2 to provide any additional services as agreed by the Councils and the successful tenderer
- b) collective negotiation of individual contracts with the successful tenderer for the receipt and processing of recyclables from the Council's respective collection services;
- c) collective administration of the individual contracts referred to above during the terms of those contracts.

(together, the **Processing Services**)

3.1.2 The intended outcome of the RFT process is for each council to enter into a separate contract for the performance of the Processing Services.

3.1.3 The services will not include kerbside waste and recycling collection services or the operation of existing waste transfer stations and tip shops.

#### 3.2 any relevant documents detailing the terms of the notified conduct

3.2.1 A copy of the Memorandum of Understanding executed on 7 February 2019 is attached to this notification application.

3.2.2 The Councils are in the process of preparing the tender documents. These will consist of the following:

- a) Part A
  - Background
  - Invitation to tender
  - Standard conditions of tender
  - Statement of requirements
  - Form of contract

- 
- b) Part B
    - Compliance assessment
    - Price
    - Capability assessment

### 3.3 the rationale for the notified conduct

- 3.3.1 The Councils each manage waste in their respective local government areas. Each Council is currently utilising a combination of landfill, recycling processing and materials recovery facilities for resource recovery and disposal.
- 3.3.2 Currently, co-mingled “yellow bin” waste for recycling for each Council is transported to the Lismore Materials Recycling Facility (**Lismore MRF**).
- 3.3.3 On 13 April the Councils notified the ACCC of their intention to collectively bargain with Lismore City Council being the current provider of co-mingled recycling services for the Councils. The Councils commenced collective negotiation of individual processing contracts with Lismore Material Recycling Facility (**MRF**), and individual refund sharing agreements with the Lismore MRF. After a period of bargaining no agreement was reached on co-mingled recycling services contracts (however refund sharing agreements were finalised). The Councils now wish to call for tenders from the open market for co-mingled recycling services.
- 3.3.4 The intention of the Councils is that the Processing Services will be provided across all local government areas of the Councils by the same contractor under separate contracts with each Council. All Councils are in close geographical proximity, provide similar waste collection services to the community and will have similar requirements under the agreement.
- 3.3.5 The Councils have a history of cooperation between them and they consider it to be efficient and cost effective to work together. The Councils are also members of North East Waste, a group of Councils on the North Coast of New South Wales working together towards cost-effective waste management solutions.

### 3.4 any time period relevant to the notified conduct

- 3.4.1 The contract terms will be for a period of 3 years with two 1 year options exercisable by the Council. Contract periods for waste contracts can vary. The 3 year period is representative of a shorter term contract.

---

3.4.2 The following timetable provides an indicative timeline for the request for tender process:

- a) 1 April 2019 – Tender opened
- b) 1 May 2019 – Tender closes
- c) 30 May 2019 – Tender awarded

3.4.3 Accordingly the Councils wish to notify of the conduct for a period of 6 years.

**4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to notified conduct and any minutes or record of the decision made.**

- 4.1 The attached Memorandum of Understanding has been signed by the Councils.
- 4.2 The joint request for tender process for the Processing Services has been developed in accordance with the Tendering Guidelines for NSW Government (October 2009). The Councils are conducting the request for tender for the Processing Services in accordance with the requirements of the Local Government Act. In addition, the NSW waste Avoidance and Resource Recovery Strategy 2014-21 (NSW EPA 2014) has a strong emphasis on using regional solutions to achieve waste management objectives and resource recovery targets.

**5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.**

- 5.1 Lismore City Council is likely to be directly impacted by the notified conduct, being the owner and operator of the Lismore MRF. Lismore City Council currently provides resource recovery services to the Councils. Lismore City Council will be entitled to participate in the RFT process.
- 5.2 The Councils consider that the notified conduct as described in this document will provide significant benefits to ratepayers in each Council's local government area. Details of the benefits are described in section 10 of this application.
- 5.3 Contractors who are likely to be interested in the RFT and therefore may be impacted are listed in section 12 of this application.

---

## **MARKET INFORMATION AND CONCENTRATION**

**6. Describe the products and/or services supplied, and the geographic areas supplied, by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (complete with each other) or have a vertical relationship (eg supplier-customer).**

- 6.1 The Processing Services are described in section 3.1 of this notification application. The Councils currently collect waste and recyclable material from households within their respective local government areas and transport the co-mingled recyclables to the Lismore MRF for processing.
- 6.2 While currently the co-mingled recyclables are transported and processed at the Lismore MRF, the Councils consider that the market for the provision of the Processing Services is a national market or at least a state wide market.
- 6.3 The intention of the Councils is that the Processing Services will be provided across the local government areas of all three Councils by one contractor under separate contracts.
- 6.4 The Processing Services would be similar, if not the same, for each Council. Specifically, the specific waste that is relevant for the purpose of the Processing Services is kerbside collected co-mingled recyclables, including paper, cardboard, glass, plastic and aluminium.

**7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains or any products or services involved, and the manufacturing process.**

- 7.1 The relevant industry or industries relevant to the notified conduct is the domestic waste recycling industry which involves the following (in chronological order):
- 7.1.1 collection of co-mingled recyclables from households;
  - 7.1.2 transport of recyclables to the MRF;
  - 7.1.3 processing of co-mingled recyclables by the MRF;
  - 7.1.4 transport of some material processed recyclables for further recycling;

The Processing Services concern only 7.1.3 above.

**8. In respect of overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

- 8.1 Each Council collects waste from households within their own respective local government areas.

- 
- 8.2 The Councils consider the relevant area of competition is at least as large as the market for the receiving and processing and disposing of waste services in and around the geographical area within which the Councils are located.
- 8.3 Ballina Shire Council LGA covers an area of 487 square kilometres and has a population of 40,000 residents. Byron Shire Council LGA is adjacent to the Ballina LGA and covers an area of 556 square kilometres and has a population of 32,000 residents. Richmond Valley Council LGA covers an area of 3050 square kilometres and has a total population of 22,000.
- 8.4 Ballina Shire Council currently collects a total of 5,100 tonnes of comingled recyclables per annum. Byron Shire Council currently collects a total of 6,100 tonnes of comingled recyclables per annum and Richmond Valley Council collects 2,133 tonnes.
- 8.5 These figures have been calculated based on weighbridge data.

**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**

In acquiring the Processing Services, the Councils compete with other potential acquirers of such services including other local councils across NSW and Australia. The Councils consider the potential suppliers of these services to the Councils are also likely to offer similar services to other local councils across Australia. The Councils do not consider that there will be any change in competitive constraints as a result of the proposed conduct.

**9.2 The likelihood of entry of new competitors**

The Councils consider the proposed conduct will not have any impact on the number of competitors for the supply of the Processing Services as such contractors would potentially be able to supply multiple customers. There are many potential customers for the provision of Processing Services including other local councils in NSW and Australia and potentially private waste contractors. In addition, there is limited likelihood of entry to the market by new local governments, given the local government areas require proclamation under legislation.

**9.3 Any countervailing power of customers and/or suppliers**

The Lismore MRF is the only MRF within the immediate local area.

**9.4 Any other relevant factors**

No other relevant factors.

---

## **PUBLIC BENEFIT**

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

10.1 The Councils consider that the notified conduct as described in this application will result in significant public benefits as follows:

#### 10.1.1 Improved environmental outcomes

- a) The Processing Services will provide the Councils with the ability to more efficiently and effectively recycle material that has been collected from the Council's respective local government areas.

#### 10.1.2 Improved economic outcomes and cost efficiency

- a) The joint RFT process between the Councils will be cost-efficient by reducing the negotiating, contracting and administrative costs for each of the Councils. This will lead to cost savings to the Councils. The costs saved will result in cost savings for rate payers in the Council areas.
- b) In particular the Councils expect savings in respect of administration, legal, preparation and evaluation costs. The time and costs saved will allow the Councils to focus their efforts on other Council responsibilities and functions to better serve the public.
- c) A contract term of 3 years, with 2 x 1 year options exercisable by the Councils will allow the contractor the opportunity to make an investment in recycling services which in turn will benefit the region.

#### 10.1.3 Improved social outcomes

Regional Councils traditionally experience difficulty with providing best practice waste collection and waste management services due to the lower rate base in comparison with larger, urban Councils. The collective negotiation for contracts relating to receipt of recyclables from each Council's collection areas improves the ability of the Councils to provide best practice waste collection and management services.



---

## **PUBLIC DETRIMENT INCLUDING ANY COMPETITION EFFECTS**

**11. Describe any detriments to the public that are likely to result from the notified 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.**

- 11.1 The Councils consider that the notified conduct is not likely to result in any public detriment from any reduction in competition between the Councils to acquire the Processing Services or from alternative contractors to bid for the Council's business for the reasons described in section 9 of this application.
- 11.2 As already stated above, the request for tender process is being conducted in accordance with the requirements of the Local Government Act, including the Tendering Guidelines for NSW Local Government (October 2009).
- 11.3 If there is a public detriment, it is likely to be insignificant and outweighed by the public benefit.
- 11.4 The intention of the notified conduct is economic and is not to limit competition.

## **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, customers and suppliers, trade or industry associations and regulators.**

Lismore Recycling and Recovery Centre  
Address: 313 Wryallah Road, East Lismore, NSW 2480  
Phone: 1300 87 83 87  
Email: [council@lismore.nsw.gov.au](mailto:council@lismore.nsw.gov.au)  
Attention: Commercial Services Business Manager

Waste Contractors and Recyclers Association of NSW (WCRA)  
Address: Suite 2, 1st Floor, 12-16 Daniel Street, Wetherill Park NSW 2168  
Phone: (02) 9604 7206  
Email: [memberservices@wcra.com.au](mailto:memberservices@wcra.com.au)  
Attention: Commercial Services Business Manager

---

VISY Recycling Material Recovery Facility and Wastepaper  
Address: 168 Paringa Road, Gibson Island, QLD 4172  
Phone: (07) 3259 2466

VISY Recycling MRF, Glass and Wastepaper  
Address: 110 Eastlake Street, Carrara, QLD 4211  
Phone: (07) 5530 6974

Polytrade Recycling  
Address: 35 Morton Street, Chinderah, NSW 2487  
Phone: +612 6674 8295  
Email: admin@polytrade.com.au

Polytrade Recycling  
Address: 704 Armidale Road, Grafton NSW 2460  
Phone: +612 6642 5875  
Email: grafton@polytrade.com.au

#### **ANY OTHER INFORMATION**

- 13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.**

Not applicable

#### **ADDITIONAL INFORMATION FOR COLLECTIVE BARGAINING (WITH OR WITHOUT A COLLECTIVE BOYCOTT) CONDUCT ONLY**

- 14. Confirm that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.**

The notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.

---

**15. Provide details (name, phone number, email address) of the persons who are current members of the group (contracting entities) on whose behalf the notification is lodged. If relevant, identify the classes of persons who may become contracting parties in the future and on whose behalf the notification is lodged.**

15.1 Ballina Shire Council

ABN: 53 9298 873 69

Phone: 1300 864 444

Email: [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au)

15.2 Byron Shire Council

ABN: 14 4721 314 73

Phone: (02) 6626 7000

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)

15.3 Richmond Valley Council

ABN: 54 1459 070 09

Phone: (02) 6660 0300

Email: [council@richmondvalley.nsw.gov.au](mailto:council@richmondvalley.nsw.gov.au)

**16. Confirm each contracting party reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period. Provide details of the basis for that expectation.**

16.1 The Councils confirm that they each reasonably expect to make one contract with the successful tenderer for the supply of the Processing Services, and that each of these contracts will not exceed A\$3 million in any 12 month period.

16.2 The expectation described above is based on calculations of the volumes of recyclables in the 2017/18 financial year and the gate fees for the Lismore MRF which are known to the Councils.

**17. If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:**

**17.1 The event/s that would trigger a collective boycott**

Not applicable

---

17.2 **The process that would be followed**

Not applicable

17.3 **Any proposed notice to be given to the target/s prior to commencing a collective boycott**

Not applicable

17.4 **Any proposed dispute resolution procedure between the contracting parties and the targets**

Not applicable

---

**Declaration by the notifying party**

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their 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 are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

*J. Haam*

Signature of authorised person for Byron Shire Council

*Lloyd Isaacson*

Name of authorised person

*Team Leader Resource Recovery & Quarry*

Office held

Signature of authorised person for Ballina Shire Council

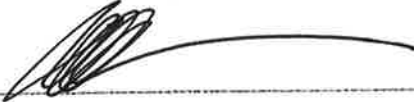
*John Trueman*

Name of authorised person

*Director Civil Services*

Office held

---



Signature of authorised person for Richmond  
Valley Council

DAVID TIMMS  
Name of authorised person

MANAGER INFRASTRUCTURE SERVICES  
Office held

This 14<sup>th</sup> day of MARCH 2019

---

**Executed Memorandum of Understanding**

---

**Memorandum of Understanding**

**Collective tender and administration of contracts for processing of co-mingled recyclables**

**Ballina Shire Council (ABN 53 929 887 369)**

**Byron Shire Council (ABN 14 472 131 473)**

**Richmond Valley Council (ABN 54 145 907 009)**





---

## 1. Introduction

- 1.1 Ballina Shire Council, Byron Shire Council and Richmond Valley Council (the **Councils**) have a common interest in calling for tenders for contracts to receive and process co-mingled recyclables from their respective collection services (the **Recycling Contracts**).
- 1.2 As part of the Recycling Contracts, the Councils also have a common interest in entering into refund sharing agreements with the successful tenderer(s) to be entitled to a share of refunds from eligible containers from kerbside collections under the NSW Container Deposit Scheme.
- 1.3 By working together, the Councils will be able to more efficiently and cost-effectively call for tenders and administer their individual contracts and refund sharing agreements.

## 2. Purpose

Through the implementation of this Memorandum of Understanding (**MOU**) the parties aim to work together to:

- 2.1 collectively call for tenders for the Recycling Contracts;
- 2.2 individually enter into contracts with the successful tenderer(s); and
- 2.3 where practical and appropriate, collectively administer their individual contracts.

## 3. Objectives

This MOU is based on the following objectives:

- 3.1 improving commercial outcomes for the Councils by ensuring that the contracts for the receipt of recyclables, and refund sharing agreements, are effective, implementable, financially sustainable, proportionate to risk and support economic stability;
  - 3.2 improving cost effectiveness in the contract negotiation and administration processes;
  - 3.3 ensuring information sharing between the Councils to achieve mutually beneficial outcomes;  
and
  - 3.4 ensuring that clear governance arrangements are put in place to achieve outcomes.
-

---

**4. Roles and responsibilities**

It is agreed that:

- 4.1 The Councils will appoint persons as key contacts with regard to this MOU and the matters contained within;
- 4.2 The Councils will share information relevant to achieving the objectives; and
- 4.3 The Councils will share equally the costs of achieving the objectives.

**5. Status of this Memorandum of Understanding**

- 5.1 The Councils acknowledge that the MOU is not legally enforceable but rely on the spirit of cooperation.
- 5.2 The MOU is not intended to remove power from any Council or to make policy decisions.
- 5.3 The MOU is not intended to create an entity for the purpose of s358 of the *Local Government Act 1993*.
- 5.4 This MOU supersedes the MOU titled *Negotiation and Administration of Contracts for the Supply of Recyclables* which took effect on 16 March 2018.

**6. Review of this Memorandum of Understanding**

This MOU will be reviewed every year. The MOU may be amended at any time by agreement in writing of the parties.

**7. Dispute resolution**

Where any dispute arises under this MOU, the Councils will take all necessary steps to resolve the dispute by mutual agreement with as much efficiency as possible.

**8. Commencement**

This MOU commences on the date on which a copy of it is executed by all of the Councils.

**9. Confidentiality**

All confidential information belonging to a Council is the sole and exclusive property of the Council. A Council may only use another Council's confidential information in connection with performing this

---

---

MOU according to its objectives, unless the Party that the confidential information belongs to agrees otherwise in writing.

Executed by Ballina Shire Council by an authorised delegate



Signature of delegate

*John Truman Group Manager Civil Services*

Name of delegate

*6.2.19*

Date

Executed by Byron Shire Council by an authorised delegate

Signature of delegate



Name of delegate

*Phillip Holloway, Director Infrastructure Services*

Date

*12/2/19*

Executed by Richmond Valley Council by an authorised delegate



Signature of delegate

*DAVID TIMMS - MANAGER INFRASTRUCTURE SERVICES*

Name of delegate

*07/02/19*

Date

---