

## Information

### Notifying party

#### 1. Details

1.1 Name & Address: Byron Shire Council, 70-90 Station Street, Mullumbimby NSW 2482  
and also on behalf of Ballina Shire Council and Richmond Valley  
Council (**the Councils**).

ABN: 14 472 131 473.

Telephone: 02 6626 7000.

1.2 Contact Person: Team Leader Resource Recovery and Quarry.

Telephone: 02 6626 7000.

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

#### 1.3 Description of Business

Activities: Byron Shire Council and each of the Councils it proposes to  
collectively bargain with are local government authorities as defined  
under the *Local Government Act 1993* (NSW) (**the Act**). The Act  
requires Councils to maintain the environment which relates to the  
provision, management and operation of waste removal, treatment  
and disposal services and facilities.

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

### Details of the notified conduct

#### 2. The notified conduct is for:

2.1 N/A

2.2 N/A

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

#### 3. Details of the notified conduct:

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

3.1.1 The Councils propose to engage in:

3.1.1.1 collective negotiation of individual contracts with the Lismore Material  
Recycling Facility (**MRF**) for the receipt and processing of recyclables

- (including organic material) from each Council's respective collection services; and
- 3.1.1.2 collective negotiation of individual refund sharing agreements with the same MRF to be able to share refunds from eligible containers from kerbside collections under the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 NSW (the CDS Regulation)*; and
- 3.1.1.3 collective administration of the individual contracts above during the terms of those contracts.
- 3.2 relevant documents detailing the terms of the notified conduct:
- 3.2.1 Memorandum of Understanding signed 15 March 2018 (**attached**).
- 3.3 the rationale for the notified conduct:
- 3.3.1 Due to the common interest and in light of the history of cooperation between the Councils, in addition to geographical proximity, the Councils consider it efficient and cost effective to work together to negotiate a contract for the receipt of recyclables (including organic material) from respective collection services.
- 3.4 any time period relevant to the notified conduct:
- 3.4.1 The Councils wish to notify of the conduct for a period of up to 10 years.
4. Documents submitted to Council board and/or prepared by or for the Council senior management for purposes of assessing or making a decision:
- 4.1 Memorandum of Understanding signed 15 March 2018.
5. Persons/organisations who may be directly impacted by the notified conduct include:
- 5.1 Lismore City Council, who is the owner and operator of the MRF with currently used by the Councils.

#### **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 (compete with each other) or have a vertical relationship (eg supplier-customer).
- 6.1 Lismore City Council operates the MRF on a commercial basis offering recycling services to customers including government clients.

- 6.2 Currently, each Council collects waste and recyclable material from households within its own Local Government Area and transports it to the MRF for processing. Each Council has a separate contract with the MRF that it separately administers.
- 6.3 Lismore City Council collects its own material within its Local Government Area which it processes through the MRF.
- 6.4 The Lismore MRF is the geographically closest MRF in the region to the Councils which can provide the level of service required, in particular, the capacity to process a wide variety of recyclables.
7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
- 7.1 Waste collection, transport and processing, including collection and processing of recyclables and eligible containers under the CDS Regulation is a statutory function of the Councils.
8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.
- 8.1 Each council collects from households within its own LGA. Lismore City Council collects material from within its own LGA and processes it at the MRF.
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:
- 9.1.1 Given the geographic isolation of the Councils from similar MRF's, and the high investment cost to either the Councils or a 3<sup>rd</sup> party to set up and operate a MRF, that there are no existing direct competitors.
- 9.2 the likelihood of entry by new competitors:
- 9.2.1 It is unlikely that there would be an entry of a new competitor due to significant costs associated with building and operating a MRF in a regional area of NSW. In addition, the presence of the Lismore MRF is likely to deter new entrants.
- 9.3 any countervailing power of customers and/or suppliers:
- 9.3.1 As there are no other MRFs in the region, the current MRF has a greater degree of market power, than would otherwise be the case in a metropolitan area.
- 9.4 any other relevant factors:

- 9.4.1 The collective bargaining results in a significant benefit to Lismore City Council in being able to have one point of contact for the negotiation and administration of the contracts. In addition there is an opportunity to deliver operational efficiency through the coordination of delivery and processing of material.

### **Public benefit**

10. The Councils submit that any public detriment will be heavily outweighed by the overall public benefit, illustrated as follows:

10.1 Environmental:

- 10.1.1 The principal environmental benefit from collectively negotiating contracts with the same MRF at Lismore is the ability to more efficiently and effectively recycle material (including organics) collected from households within the Council's areas.
- 10.1.2 The environmental benefits that flow from the operation of the CDS Scheme provide a benefit to the public.

10.2 Economic:

- 10.2.1 The economic benefits include the cost savings to the Councils in being able to collectively negotiate and administer the contracts. This relates to cost savings for rates payers in each Council area. 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.
- 10.2.2 A contract term of over 1 year and up to 10 years would allow the Lismore MRF the opportunity to make a significant investment in recycling services to benefit the region in the MRF.

10.3 Social:

- 10.3.1 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 Councils collection areas and collective negotiation of a refund sharing agreement improves the ability of the Councils to provide best practice waste collection and management services.

### **Public detriment including any competition effects**

11. The Councils submit that any public detriment will be heavily outweighed by the overall public

benefit outlined above.

**Contact details of relevant market participants**

12. 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

**Any other information**

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.  
N/A

**Additional information for collective bargaining (with or without a collective boycott) conduct only**

14. It is confirmed that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.
15. Details of the current members of the group on whose behalf the notification is lodged:
- 15.1 Ballina Shire Council  
Phone: 1300 864 444  
Email: [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au)
- 15.2 Byron Shire Council  
Phone: (02) 6626 7000  
Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)
- 15.3 Richmond Valley Council  
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 \$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 the value of each contract will not exceed \$3 million in any 12 month period.
- 16.2 **Contracts for recyclables (including organics)** – The basis of the expectation are calculations based on the volume of recyclables in the 2016/17 Financial Year and the MRF's gate fees.
- 16.3 **Refund sharing from container deposit** – The basis of the expectation for each Council is the currently available audit data concerning number of eligible containers and the total value of the refund pool to be shared.
- 16.4 We note that even if contracts for processing and refund sharing are combined the total value for each Council will be below the \$3 million threshold.
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  
N/A
- 17.2 the process that would be followed  
N/A
- 17.3 any proposed notice period to be given to the target/s prior to commencing a collective boycott  
N/A
- 17.4 any proposed dispute resolution procedure between the contracting parties and the targets.  
N/A

**Declaration by 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).



Signature of Authorised Person



Position of Authorised Person



(Print) Name of authorised person

This 3 day of April 2018

Note: If the notifying party is a corporation, state the position occupied by the person signing. If signed by a solicitor on behalf of the notifying party, this fact must be stated.

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**Memorandum of Understanding**

**Collective negotiation and administration of contracts for supply of recyclables**

**Ballina Shire Council**

**Byron Shire Council**

**Richmond Valley Council**



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## 1. Introduction

- 1.1 Ballina Shire Council, Byron Shire Council and Richmond Valley Council (the **Councils**) have a common interest in each negotiating a contract with the same Materials Recycling Facility (**MRF**) for the receipt of recyclables from their respective collection services.
- 1.2 Further, the Councils have a common interest negotiating a refund sharing agreement with a MRF to be entitled to a share of refunds from eligible containers from kerbside collections under the NSW Container Deposit Scheme (**Container Deposit Scheme**).
- 1.3 By working together, the Councils will be able to more efficiently and cost effectively negotiate and administer their individual contracts and refund sharing agreements with the MRF.
- 1.4 Due to this common interest and in light of their history of cooperation and geographical proximity, the Councils wish to work together and to negotiate a contract for the receipt of recyclables from their respective collection services.

## 2. Purpose

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

- 2.1 negotiate individual contracts with a MRF for the receipt of recyclables from their respective collection services;
- 2.2 negotiate individual refund sharing agreements with a MRF for a share of the refunds from eligible containers under the NSW Container Deposit Scheme; and
- 2.3 administer their individual contracts during the term of the 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.

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#### **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*.

#### **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

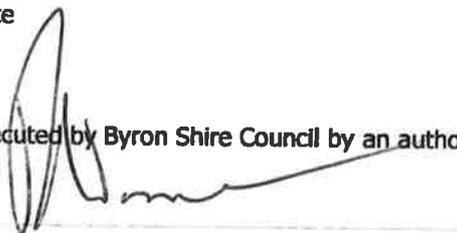
John Truman Group Manager Civil Services

Name of delegate

15 March 2018.

Date

Executed by Byron Shire Council by an authorised delegate



Signature of delegate

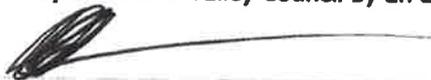
PHIL WARNER A/Director Infrastructure Services.

Name of delegate

16 March 2018

Date

Executed by Richmond Valley Council by an authorised delegate



Signature of delegate

DAVID TIMMS - MANAGER INFRASTRUCTURE SERVICES

Name of delegate

15/03/18

Date