

GCC File: ACCC Application for Authorisation  
Your Reference:  
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**GLENORCHY CITY**  
Where ideas happen.

28 January 2014

Mr Richard Chadwick,  
General Manager,  
Adjudications,  
Australian Competition and Consumer Commission,  
23 Marcus Street,  
Canberra, ACT 2601.

FILE No:
DOC:
MARS/PRISM:

Dear Mr Chadwick,

**Application for Authorisation of Joint Tender for Waste Management Services**

I, on behalf of the following Councils in Tasmania:

- Clarence City Council;
- Glenorchy City Council; and
- Hobart City Council

apply for Authorisation under the provisions of subsections 88(1A) and (1) of the *Competition and Consumer Act 2010* for the joint tendering arrangement for waste management services for the above Councils.

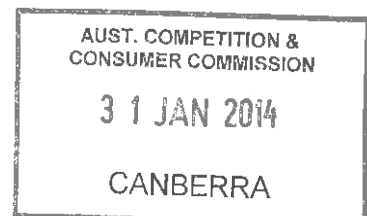
With this letter I *enclose*:

- 1) Application Form B for Authorisation;
- 2) A Request Letter for Interim Authorisation; and
- 3) A Cheque for \$7,500.00 for the Application Fee.

Please do not hesitate to contact me if you require any further information.

Yours sincerely,

Seva Iskandarli  
Manager Legal & Governance - Council Lawyer  
Glenorchy City Council  
Ph (03) 6216 6752  
[Siskandarli@gcc.tas.gov.au](mailto:Siskandarli@gcc.tas.gov.au)



# Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

## AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

### 1. Applicants

(a) Name of Applicants:

A91408

- Clarence City Council (CCC);
- Glenorchy City Council (GCC); and
- Hobart City Council (HCC).

(b) Short description of business carried on by Applicants:

The Applicants are local government authorities and bodies corporate incorporated under the provisions of the *Local Government Act 1993* (Tas) and the relevant business carried on by the Applicants is the collection, acceptance and sorting of kerbside/roadside recyclable materials from households within their respective municipal areas for either disposal or onward transfer for ultimate recycling.

(c) Address in Australia for service of documents on the Applicants:

374 Main Road, Glenorchy, Tasmania 7010,  
PO Box 103, Glenorchy, Tasmania 7010.

## 2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

The Applicants intend to jointly invite tenders and subsequently enter into individual contracts comprising common terms with the successful Tenderer under the provisions of the *Local Government Act 1993* (Tas) and *Local Government (General) Regulations 2005* (Tas) for collection, acceptance and sorting of kerbside/roadside recyclable materials from households within their respective municipal areas for either disposal or onward transfer for ultimate recycling.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

The Applicants intend to select a single successful Tenderer through the joint tendering process and enter into individual contracts as described in Section 2(a).

The Applicants submit that any potential breaches to the cartel provisions of the *Competition and Consumer Act 2010* that might arise from the joint tendering arrangement or understanding will be insignificant and will be outweighed by the public benefit as described in Section 4.

The joint tendering arrangement followed by individual contracts will not lessen the competition but in fact increase the competition and benefit the Applicants for the reasons described in Section 4 and for the following reasons:

- the arrangement will promote competition in Tasmania with the expectation that new service provider/s may enter into the market from the mainland due to the size of this joint tendering arrangement - currently there is only one main service provider for this service; and
- ensure efficient waste management for the municipalities; and
- reduce costs for the services; and
- provide a better service for the community.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The service to which the proposed contract, arrangement or understanding will relate is the collection, acceptance and sorting by the successful Tenderer (“**Contractor**”) of kerbside/roadside recyclable materials delivered to the Contractor’s receiving facility. The Contractor may sort the delivered material at the receiving facility before on-supplying it for recycling or it may bale all material delivered to it before on-forwarding it in a co-mingled state for sorting elsewhere before it is on-supplied for recycling.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The term of the proposed contract is for an initial term of five (5) years with the option of 2 x 2 year extensions. Therefore the Applicants are seeking Authorisation from the Commission for a minimum of nine (9) years.

### 3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Service Providers who will respond to the joint invitation to tender.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

Clarence City Council (CCC)

Address: 38 Bligh Street, Rosny Park, Tasmania 7018.

Glenorchy City Council (GCC)

Address: 374 Main Road, Glenorchy, Tasmania 7010.

Hobart City Council (HCC)

Address: 16 Elizabeth Street, Hobart, Tasmania 7000.

The Applicants are local government authorities, bodies corporate incorporated under the provisions of the *Local Government Act 1993* (Tas).

### 4. Public benefit claims

- (a) Arguments in support of authorisation:

The Applicants submit that the proposed joint tendering arrangement is more likely to have a public benefit which will outweigh any possible public detriment for the following reasons:

- 1) A public benefit will result from the proposed arrangement when it delivers the Applicants' desired outcome of an overall reduced fee for the relevant service which will be passed on to the rate payers in reduced service charges. Evidence available to each Applicant of the price of the equivalent service in other states, and of factors which impact on the delivery of the service, suggests that the current and main service provider can offer a more competitive price for the service, if subjected to additional competition which the Applicants believe is possible from the probable entry of a new mainland service provider;
- 2) A further benefit of the consolidated substantial volume from the 3 Applicants will be a major attraction for the new probable mainland service provider(s) which will increase competition because the Applicants will be in a stronger negotiating position, leading to a lower price for the service for the rate payers;
- 3) A potential nine (9) years Contract is also another incentive for a new service provider to enter into the Tasmanian market in which currently there is only one major service provider;
- 4) A benefit will accrue to rate payers as the proposed arrangement will have among its outcomes a more reasonable, fair and transparent mechanism;

- 5) Promotion of joint tendering arrangement in Tasmania will set a good precedent for other Councils to follow and participate in the future in other potential joint tendering opportunities for goods and services. This will undoubtedly reduce the costs to rate payers through reducing the charges for the service or goods;
- 6) Reduction of significant administrative and legal costs and time of people involved during the preparation and advertising of tenders, receipt and evaluation of the tenders, as required under the provisions of the *Local Government Act 1993 (Tas)* and *Local Government (General) Regulations 2005 (Tas)*, subsequent contract preparation and contract administration due to the elimination of each Applicant preparing its own tender documentation and contract individually. Such time and resources can be used for other Council functions which will benefit the rate payers.

(b) Facts and evidence relied upon in support of these claims:

As above.

## 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The Applicants define the relevant market as that for the acceptance and sorting of kerbside/roadside collected recyclable materials for either disposal or onward transfer for ultimate recycling. The current main service provider operates the only facility in southern Tasmania by which recyclable material is sorted prior to being transferred out of Tasmania for recycling or converted for use in other applications. No other operator operates a substitute service in the form of a facility for the acceptance and baling of co-mingled recyclables which might then be shipped out of Tasmania for sorting and on-supply.

The Applicants are situated in southern Tasmania and are adjacent to each other. The Applicants represent a significant geographical area and are three of the largest Councils in Tasmania.

A brief description of the Applicants is given in Table 1 below:

Description	CCC	HCC	GCC
Population	53,600	50,726	44,657
Households	23,150	19,420	20,445
Area	386 square kilometres	77 square kilometres	121 square kilometres
Tonnes Waste per annum	8,700 (kerbside collection)	11,160 (kerbside collection)	7,900 (kerbside collection)

Tonnes Recycling per annum	4,900 (kerbside collection estimated only)	7,500	3,900 (kerbside collection)
Eligible voters	38,693	34,745	31,522
Median age of persons	41	38	39

**Current Contractor:**

The Applicants are currently contracted to Veolia Environment Services (Australia) Pty Ltd.

Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584)

Address: PO Box 431 Rosny, Tasmania 7018;  
75 Mornington Road, Mornington, Tasmania 7018.

- Name, position and contact detail:

*Mr David Beard, General Manager  
Telephone number: (03) 6244 0062  
Mobile number: 0417 338 077*

- Description of Business:

*Waste and recycling solutions, industrial maintenance and cleaning services, and resource recovery solutions, operator of a materials recycling facility.*

**Possible Service Providers/Tenderers the Applicants are aware of:**

- 1) Tox Free (Launceston, Tasmania)  
Telephone: (03) 6341 2200
- 2) SKM Recycling (Melbourne, Victoria)  
Telephone: (03) 9309 8244
- 3) Poly Trade Recycling (Melbourne, Victoria)  
Telephone: (03) 9305 2215
- 4) VISY Recycling (Melbourne, Victoria)  
Telephone: (03) 13 8479
- 5) Transpacific Cleanaway  
Telephone: +61 7 3367 7800 (head office) or 13 13 39 (Australia –wide)
- 6) SITA Australia  
Telephone: (08) 9458 4644 (head office) or 13 13 35 (Australia –wide)
- 7) J R Richards and Sons  
Telephone: (02) 6555 7007 (head office) or 1300 579 278 (Australia –wide)

## **Other Related Authority**

- 1) Environment Protection Authority (EPA)  
Address: 134 Macquarie Street, Hobart, Tasmania 7000.  
Telephone: (03) 6233 6518.
- 2) Local Government Association of Tasmania (LGAT)  
Address: 326 Macquarie Street, Hobart, Tasmania 7000.  
Telephone: (03) 6233 5966.

## **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

The Applicants submit that there will be no public detriment from the joint tendering arrangement as the effect and intention of the Application for Authorisation is to increase competition in the market and reduce the costs of the services to the rate payers of the respective Councils as described in Section 4.

Participation of the Applicants in the joint tendering process is voluntary and accordingly applying for the Application for Authorisation is voluntary. The Applicants by this arrangement are not boycotting any potential service provider.

- (b) Facts and evidence relevant to these detriments:

As above.

## **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

## **8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

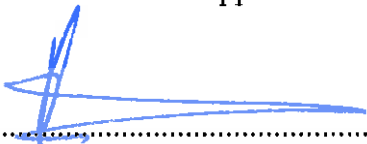
**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Seva Iskandarli,  
Manager Legal & Governance – Council Lawyer,  
Glenorchy City Council,  
374 Main Road, Glenorchy, Tasmania 7010,  
PO Box 103, Glenorchy, Tasmania 7010.  
Business: (03) 6216 6752  
Mobile: 0458 977 362  
Email: [siskandarli@gcc.tas.gov.au](mailto:siskandarli@gcc.tas.gov.au)

Dated..... 24th January 2014

Signed by/on behalf of the applicant

  
.....  
(Signature)

PETER BROOKS  
.....  
(Full Name)

GENERAL MANAGER  
.....  
(Position in Organisation)



JOINT TENDER FOR ACCEPTANCE OF RECYCLABLE MATERIALS  
GENERAL MANAGER'S CONSENT

I, Frank Barta, acting General Manager, Clarence City Council, hereby consent to Glenorchy City Council on behalf of itself, Hobart City Council and Clarence City Council lodging the following applications with the Australian Competition and Consumer Commission:

1. an application for authorisation of a contract , arrangement or understanding containing a cartel provision in respect of the proposed joint tender by the three councils for the service of acceptance of recyclable materials, and
2. an application for interim authorisation to enable the tender process referred to in 1 above to proceed to the point where the three councils are in a position to decide upon a successful tenderer but not to the point of letting the tender.

Dated : ... 15 JANUARY .....2014

Signed:  .....

Frank Barta

acting General Manager

CLARENCE CITY COUNCIL



Enquiries to: Glenn Doyle  
☎: 6278 0235  
✉: [doyleg@hobartcity.com.au](mailto:doyleg@hobartcity.com.au)  
Our Ref: PAJ:PAJ  
Your Ref:

19 December 2013

Australian Competition and Consumer Commission

Dear Sir

**COMPETITION AND CONSUMER ACT 2010  
SECTION 88(1A)/88(1)  
APPLICANT CONSENT TO APPLICATION FOR  
AUTHORISATION**

I consent to an application for authorisation to be made in respect to a proposed process of Clarence City Council, Glenorchy City Council and Hobart City Council jointly inviting tenders and subsequently entering into individual contracts comprising common terms with the successful tenderer for acceptance and disposal of kerbside/roadside collected recyclable materials.

I also confirm consent to the said application being signed on behalf of Hobart City Council by the General Manager of Glenorchy City Council or such person as is duly authorised by him who is to be the contract person for the purposes of the application.

Yours faithfully

  
(N.D. Heath)  
**GENERAL MANAGER**

GCC File: ACCC Application for Authorisation  
Your Reference:  
Enquiries: Seva Iskandarli  
Direct Phone: (03) 6216 6725  
Email: [siskandarli@gcc.tas.gov.au](mailto:siskandarli@gcc.tas.gov.au)



28 January 2014

Mr Richard Chadwick,  
General Manager,  
Adjudications,  
Australian Competition and Consumer Commission,  
23 Marcus Street,  
Canberra, ACT 2601.

Dear Mr Chadwick,

**Application for Authorisation of Joint Tender for Waste Management Services -  
Request for Interim Authorisation**

On behalf of Glenorchy City Council, Hobart City Council and Clarence City Council in Tasmania ('**the Councils**') I respectfully request that the ACCC grant an Interim Authorisation for the Councils in relation to the Application for Authorisation of Joint Tender for Waste Management Services under subsections 88(1A) and (1) of the *Competition and Consumer Act 2010* in order:

- 1) to allow the Councils to finalise the Tender and Contract documentation for invitation for tenders under section 333A of the *Local Government Act 1993* (Tas);
- 2) to advertise the tenders;
- 3) to receive the responses from the interested potential Tenderers;
- 4) to set up an evaluation team and subsequently evaluate the tender submissions; and
- 5) to prepare the recommendations to the respective senior management and for the respective Councils' tender panels for approval, subject to the Final Determination from the ACCC.

The Councils submit that at no stage will we enter into individual contracts prior to the Final Determination by the ACCC.

The reasons for seeking an Interim Authorisation are as follows:

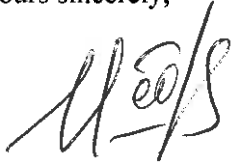
- 1) As described above the whole tender process might take a minimum of 3 or more months. Accordingly having an Interim Authorisation will allow the Councils to proceed with the process under the provisions of the *Local Government Act 1993* (Tas) and the *Local Government (General) Regulations 2005* (Tas) as soon as possible while awaiting the Final Determination.
- 2) The Councils are currently significantly disadvantaged with the current contractual arrangements as each Council's contract with the current service provider, Veolia Australia Pty Ltd, expired last year, 2013, and each Council is contracted on a monthly basis with this service provider.

- 3) Monthly arrangements with Veolia Australia Pty Ltd cause Councils loss of money, and obviously loss of money for rate payers, and considerable administrative time and challenges.

Accordingly I, on behalf of three Councils, respectfully request the Commission to consider and grant the Councils' Application for an Interim Authorisation as early as possible so the Councils can start jointly to invite tenders for the services of collection, acceptance and sorting of kerbside/roadside recyclable materials from households within their respective municipal areas for either disposal or onward transfer for ultimate recycling, but not to enter into contracts pending the ACCC's Final Determination.

If you have any questions please do not hesitate to contact me.

Yours sincerely,



Seva Iskandarli  
Manager Legal & Governance - Council Lawyer  
Glenorchy City Council  
Ph (03) 6216 6752  
[Siskandarli@gcc.tas.gov.au](mailto:Siskandarli@gcc.tas.gov.au)