

AUST. COMPETITION &
CONSUMER COMMISSION

25 MAY 2015

CANBERRA

19 May 2015

File No: **WM Planning BCC Regional Investigation**
Contact: Paula Kemplay 3829 8597

Australian Competition and Consumer Competition
23 Marcus Clarke Street
Canberra ACT 2601

Dear Sir/Madam

REQUEST FOR AUTHORISATION: WASTE MANAGEMENT: POTENTIAL REGIONAL COLLABORATION OPPORTUNITY BETWEEN BRISBANE CITY COUNCIL (BCC) AND REDLAND CITY COUNCIL (RCC)

Redland City Council (RCC) and Brisbane City Council (BCC) are interested in exploring whether there are any public benefits to be gained through a combined tender for waste and recycling collection services.

RCC wrote to the Australian Competition & Consumer Competition (ACCC) on 12th February 2015 as the first step in the process, to request a fee waiver. The ACCC responded on 27th February offering a partial fee waiver, and requesting a copy of that letter to accompany the application.

Attached is the entire application for authorisation from RCC, acting on behalf of RCC and BCC, which includes.

- Form B of the Application
- Supporting Information Attachment with confidential Appendix 1
- A letter from the ACCC granting a partial fee waiver in this matter
- A cheque for \$2,500 as application fee

Yours faithfully



Nick Clarke
Acting Chief Executive Officer
Redland City Council

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.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:

(Refer to direction 2)

This application is made by Redland City Council on behalf of itself and Brisbane City Council (together, the Councils).

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

(Refer to direction 3)

Redland City Council (RCC) is a local government constituted by the *Local Government Act 2009* (LGA). Brisbane City Council (BCC) is a local government constituted by the *City of Brisbane Act 2010*.

The Councils have statutory responsibilities for providing a range of services to their respective communities, including the provision of waste and recyclable collection services.

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

Redland City Council

PO Box 21

Cleveland

QLD 4163

Attention Paula Kemplay

Email: paula.kemplay@redland.qld.gov.au

2. Contract, arrangement or understanding

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

(Refer to direction 4)

The Councils propose to jointly procure, negotiate and contract for the supply of waste and recycling collection services. Brisbane City Council proposes to act on the Councils' behalf and facilitate the procurement, negotiation and contracting process in relation to the acquisition of the collection services.

Refer section 3 of the supporting attachment for more information.

- (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:

(Refer to direction 4)

The Councils propose to jointly issue a single tender for the collection of waste and recyclable materials. Tenderers will be invited to submit proposals for each of the relevant local government areas and also a price for the combined areas. If advantageous to the Councils a single supplier may be selected to provide the services to both RCC and BCC.

Refer to the supporting attachment for more information.

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

The proposed contract relates to the provision of waste and recycling collection services.

Refer to the supporting attachment for more information.

- (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:

Authorisation is sought for a period of 19 years, comprising:

- a three year period for the joint procurement process; and
- a 16 year contract term.

Refer to the supporting attachment for more information.

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:

The suppliers of waste and recycling collection services, that are selected as a result of the competitive tender that is proposed to be issued by the Councils as part of the proposed joint procurement process.

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

Name	Address	Description of Business
Redland City Council	PO Box 21 Cleveland QLD 4163	Local Government
Brisbane City Council	GPO Box 1434 Brisbane Qld 4001	Local Government

Refer to the supporting attachment for more information on the waste and recycling collection services provided by each organisation which are relevant to this application.

Refer to the supporting attachment for more information on a confidential memorandum of understanding (MoU) that has been signed by the Councils. This MoU contains a statement under 4(e) to recognise that RCC will apply for ACCC approval.

4. Public benefit claims

- (a) Arguments in support of authorisation:

(Refer to direction 6)

This application is lodged on the premise that the overall public benefit will outweigh any potential anti-competitive detriment.

Refer to the supporting attachment for more information.

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

Refer to the supporting attachment for more information.

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):

(Refer to direction 7)

Refer section 5 of the supporting attachment for more information.

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:

(Refer to direction 8)

Refer to the supporting attachment for more information

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

Refer to the supporting attachment for more information

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

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not Applicable

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not Applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not Applicable

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

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

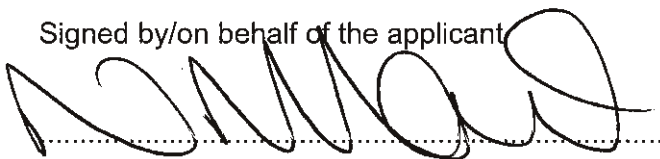
9. Further information

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

As per details in 1(c)

Dated 20/5/15

Signed by/on behalf of the applicant



Nick Clarke

Acting Chief Executive Officer

Redland City Council

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



**Australian
Competition &
Consumer
Commission**

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Canberra ACT 2601

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www.accc.gov.au

27 February 2015

Paula Kemplay
Redland City Council

By email: paula.kemplay@redland.qld.gov.au

Dear Ms Kemplay

Fee waiver request

I refer to your letter dated 12 February 2015, received by the Australian Competition and Consumer Commission (ACCC) on 17 February 2015, in respect of a proposed application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Redland City Council (RCC) on behalf of itself and Brisbane City Council (BCC) be waived.

In support of your request, among other things, you submitted that:

- RCC is a relatively small Council who is encountering cost pressures within its community; and
- the budget for this fee is derived from taxpayers and is not currently set in RCC's budget, meaning payment of the fee for authorisation would divert funds away from other valuable public activities.

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 application fee to be paid by RCC has been waived in part. An application fee of \$2500 will apply to the application for authorisation to be lodged by RCC.

This decision will remain in force for a period of three months. The three month period will expire on 27 May 2015.

A copy of this letter should accompany the application for authorisation to be lodged by RCC. 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 authorisation is lodged by RCC after 27 May 2015, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Georgina Brett on (03) 9658 6439 or by email to adjudication@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'R' followed by a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

Attachment - Supporting Information

1. Confidentiality

This supporting information includes information that has been provided to the Australian Competition and Consumer Commission's (ACCC) on a confidential basis. Confidential information has been entitled "CONFIDENTIAL". All of Appendix 1 to this attachment is confidential.

2. Background

The Councils are situated within the south-east Queensland (SEQ) area which is a rapidly growing region. They share a geographical boundary and their specific location is depicted in Figure 1 below.

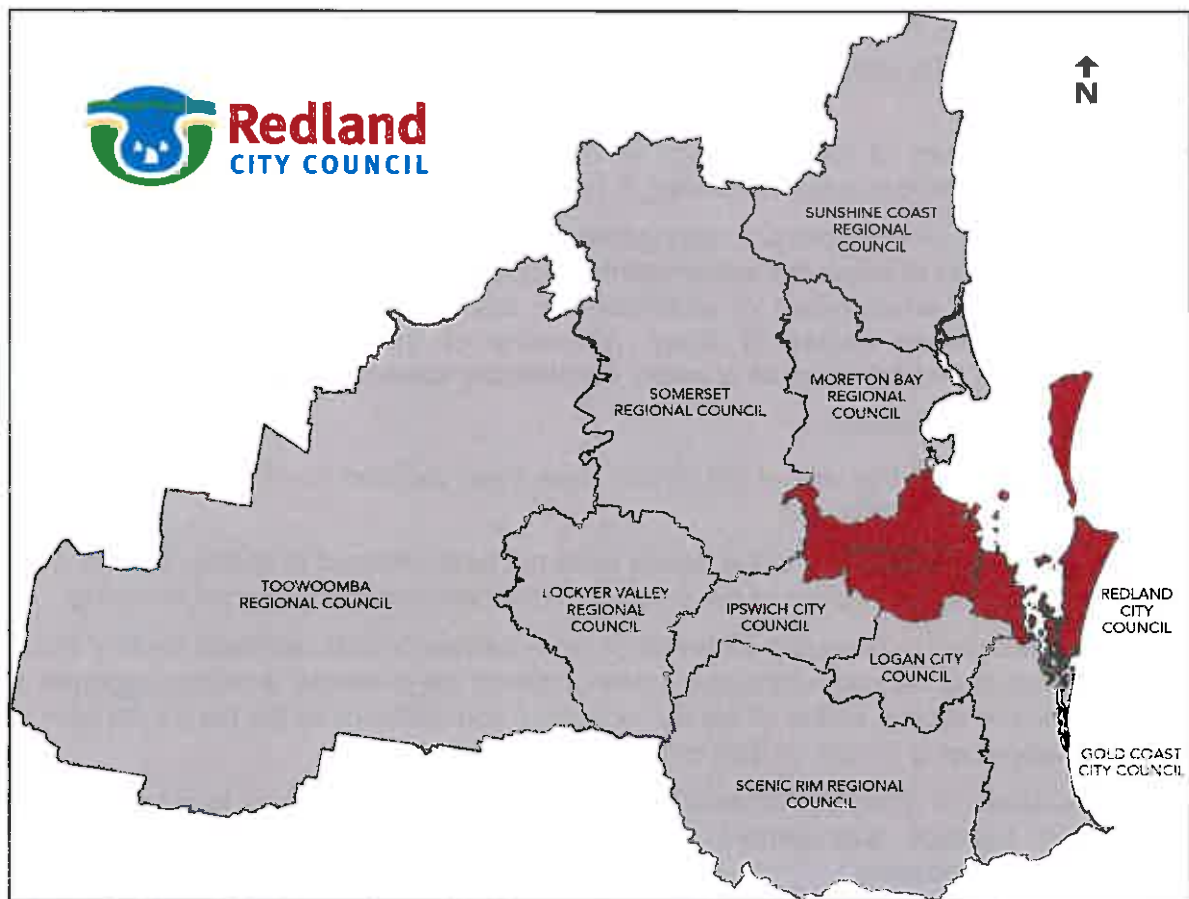


Figure 1: Map of the Councils within the greater south east Queensland region

The functions and powers of the Councils are set out in the *Local Government Act 2009* (LGA) for RCC and the *City of Brisbane Act 2010* (CBA) for BCC. Each Council is currently responsible for providing residential waste and recycling collection services, recyclables processing services and green waste collection services to their respective local communities.

Brisbane City Council Summary

Largest Council in Australia

1.1 million residents

Administers annual budget of +\$3 billion

1,400 km² in area

High density - 770 people per km²

434,000 rateable properties

Includes Moreton Island



Redland City Council Summary

150,000 residents

Administers annual budget of \$260 million

540 km² in Area

Medium density - 275 people per km²

Large island population – 6 populated islands in Moreton Bay



3. Contract, arrangement or understanding

3.1 Current waste collection contracts

BCC currently manages three contracts for waste collection services for the following receptacles:

- (i) mobile garbage bins,
- (ii) bulk bins and
- (iii) parks and footpath collection.

These contracts are aligned to be renewed on 1 July 2018 and will be combined into one contract.

RCC's waste and recycling contract expires on 29 June 2016 and RCC has recently awarded an interim contract following an open tendering process for two years until 30 June 2018 to align with the contract renewal timeframe for BCC.

3.2 The proposed tender

The Councils propose to jointly procure waste and recycling collection services. BCC proposes to act on the Councils' behalf to facilitate the procurement, negotiation and contracting process in relation to the acquisition of the collection LGA services. The Councils will conduct the tender in accordance with the requirements of the LGA and BCA.

The Councils have entered into a Memorandum of Understanding (refer Appendix 1) pursuant to which they set out the background on regional collaboration between the Councils to date, customer and business critical success factors.

It is anticipated that the tender will be comprised of three separable portions, being:

- (i) The provision of waste and recycling collection services within the BCC and RCC local government areas;
- (ii) The provision of waste and recycling collection services within the RCC local government area; and
- (iii) The provision of waste and recycling collection services within the BCC local government area.

This approach will allow the Councils to undertake an analysis to demonstrate the actual benefits that would be obtained as a result of a joint contract.

The Councils may pass separate resolutions independently approving the selection of the separable portion and recommended contractor.

3.3 Services included in the tender

The Councils propose to issue an open tender for waste collection services and other ancillary activities, including but not limited to manual collections and bin cleansing.

Waste collection services will involve kerbside collection, bulk bin collection, and parks and footpath services.

Kerbside collection includes collection of domestic waste, recyclables and green waste in each of the respective local government areas. Suppliers will be required to provide weekly and fortnightly services.

Bulk bin collection means the collection of waste from bulk bins which have been installed at multi dwelling premises where kerbside collection is not practicable. Suppliers will be required to provide this service at least weekly.

Park and footpath services involves the collection of waste and recyclable material from public and community spaces.

It is anticipated that the contract will not include the kerbside collection of bulky items, dead animal collections or mobile garbage bin supply and maintenance. The processing of waste and recyclables will also be excluded from the scope of the contract.

3.4 The authorisation application

The Councils seeks ACCC Authorisation for:

- (a) the Councils to participate in a joint procurement process with BCC conducting a tender based on each Council's waste and recycling collection requirements and to evaluate responses and recommend an preferred supplier to service the Councils;
- (b) BCC to negotiate on behalf of the Councils the contractual framework for the waste collection services; and
- (c) if a joint contract eventuates, the Councils to make joint decisions regarding the ongoing management of the contract for the waste and recycling collection services.

3.5 Anticipated timeframes and contract term

Due to the requirement to allocate a sufficient number of collection vehicles, a mobilisation period in excess of 12 months is targeted. BCC intends to publish the tender in mid-2016, with a market period of 6 months.

Market sounding is currently being conducted by BCC to determine the most appropriate contract term. The current BCC contract comprises 8 years. BCC may increase this up to an 8 year + 8 year arrangement based on its own assessment and industry feedback.

This extended contract term would be expected to assist the successful contractor to stagger the replacement of trucks as they exhaust their cost effective working asset life. The staggering of new trucks allows for their significant capital expenditure to be amortised in a smoother way over a greater period. This smoothing effect assists in minimising increases in the contract rates paid by the Councils, and therefore benefits the ratepayers.

ACCC Authorisation is therefore sought for a total period of 19 years comprising:

- A 3 year period for the joint procurement process, including negotiation/execution and mobilisation of the contract with an expected commencement of 1 July 2018
- A 16 year contract operating term

4. Public Benefit Claims

4.1 *Transaction cost savings*

Conducting a joint tender will allow the Councils to avoid the expenditure of significant time and resources involved in calling separate tenders in the manner dictated by the LGA and BCC. A joint tender is considered to be a more efficient process as it would reduce the replication of work undertaken by the Councils.

The efficiency benefits are expected to be realised as contract transaction cost savings for both Councils that are ultimately presented as cost savings to ratepayers via the waste and recycling utility charges.

4.2 *Improved purchasing power*

The aggregation of waste collection services will place the Councils in a stronger bargaining position which may allow the Councils to obtain a higher level of service at a lower price.

It is anticipated that the potential to be awarded a larger body of work will result in greater competition between potential suppliers seeking to provide the services.

Additionally, joint tendering will improve the ability for potential service providers to justify increased investment within SEQ, this may result in potential suppliers expanding their operations within the region.

4.3 *Increased efficiency and economies of scale*

A successful supplier under the joint contract will have a greater area to service, resulting in efficiencies and economies of scale in the delivery of the services.

Regional Collaboration is an emerging theme, with local governments increasingly expected to do more with less resources and budget. As the Councils share a common boundary there are geographical synergies together with similar kerbside collection service levels, there are significant opportunities to gain greater business efficiencies by sharing infrastructure. For example, RCC's existing vehicle depot could be used store trucks for an expanded catchment into the southern Brisbane area. There is also potential for the successful contractor to develop more efficient fleet maintenance programs than it could if the local government areas were serviced individually.

Additionally, there could be a range of minor but accumulated benefits such as streamlined contract administration, improved flexibility in fleet for bulk bin services including smaller trucks for narrow streets and litter bins.

5. Counterfactual

If ACCC authority is not granted it is unlikely that the Councils will be able to realise the cost savings and efficiencies sought by the proposed tender.

It is considered that the following outcomes will be likely if the joint tender cannot progress:

- (i) The Councils will issue individual tenders for the waste collection services, incurring additional expense and administrative burden;
- (ii) The potential suppliers will be required to submit separate tender responses increasing their individual administrative and resource burden, this additional cost will likely be reflected in the prices offered to the Councils; and
- (iii) Suppliers will not be able to achieve the efficiencies and economies of scale due to a potential lack of consistency between the separate Council contracts.

6. Market Definition

The Councils note that in previous determinations regarding local governments conducting joint tenders for waste management services the ACCC has not considered it necessary to specifically define the relevant market.

The Councils consider that the relevant area of competition is that for the collection of waste and recyclable materials within the south east Queensland region.

It is generally recognised that there are three main waste types in Queensland ie

- (i) municipal/household waste;
- (ii) commercial and industrial waste; and
- (iii) construction and demolition waste.

The first type, municipal waste is waste from households and other council waste, this waste is generally the responsibility of local government to manage. The latter two types of waste are predominantly managed by the private sector via separate contracts with generators of those waste types.

According to the *State of Waste and Recycling in Queensland 2014* published by the Queensland Department of Environment and Heritage, there was a combined total of 8.4 Million tonnes of the total three waste types stated above, in 2013/14. The municipal market comprised 31.5% of this total across the state. The SEQ region houses about 70% of Queenslanders according to the Queensland Waste Avoidance and Resource Productivity Strategy (2014-2024).

The RCC and BCC Councils operate in the south-east Queensland area which is a rapidly growing region in terms of population growth and associated new waste and recycling collection services. Eleven out of the twelve Councils in the SEQ region outsource their waste and recycling collection services through open public tender processes. The revenue that industry generates from these local government contracts is a very reliable income stream over the duration of the contract.

Expansion of council recycling programs and in particular the new optional greenwaste collection service, also stimulates growth in the waste industry and market overall.

The competitive tender process is open to all suitably qualified private companies to bid for the work. Both RCC and BCC have a tradition of competitively tendering out their waste and recycling services and this new joint contract will follow the same open competitive procurement processes. There are a number of competitors that operate within the region that have participated in the market sounding run by BCC to date. The companies that could provide these services include SITA Australia Pty Ltd, JJ Richards Pty Ltd, Transpacific Industries Group Ltd and Veolia Environmental Services (Australia) Pty Ltd.

The size of RCC is approximately 10% that of BCC in terms of number of services, and so the joint tender process is not expected to distort the market.

7. Public Detriments

The Councils expect that the proposed tender will not result in significant public detriment as the tender process will be an open and transparent process with a documented tender evaluation plan with weighted criteria and scoring methodology and panel of experienced officers overseen by an independent probity advisor. This competitive process will allow the greatest number of suppliers to provide responses.

Additionally, as the proposed tender is to be issued in separable portions smaller suppliers who lack the capacity to service both local government areas will not be precluded from entering a bid. Furthermore, this structure will allow the Councils to accept an individual supplier for its local government area if this is more favourable than the offers submitted for the regional area. The Councils participation in this joint contracting process is voluntary and they are both free to independently select a contractor that most benefits their respective organisation.

The Councils note that in previous applications for joint waste tenders, the ACCC has recognised that such a joint contract is unlikely to have significant public detriment.