



**City of Hobart Council & Ors –  
Application for authorisation AA1000584  
Interim authorisation decision  
10 November 2021**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000584, lodged by the City of Hobart Council on behalf of itself and 11 participating councils in southern Tasmania listed at paragraph 5 below (the **Participating Councils**) on 14 October 2021.
2. Interim authorisation is granted to enable the Participating Councils to progress a collective tender process for recycling waste processing services, including acceptance, sorting and processing, with a view to identifying the preferred tenderer(s), commencing the negotiation process with the preferred tenderer(s) and preparing the ensuing contractual documents. Interim authorisation does not extend to entry into any contract arising from the tender process.
3. The ACCC grants interim authorisation in relation to Division 1 of Part IV, and section 45 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
4. Interim authorisation commences immediately and remains in place until it is revoked, or the date which the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

**The application for authorisation**

5. Authorisation has been sought by the City of Hobart Council on behalf of itself and:
  - Clarence City Council
  - Glenorchy City Council
  - Kingborough Council
  - Glamorgan Spring Bay Council
  - Tasman Council
  - Brighton Council
  - Huon Valley Council
  - Central Highlands Council
  - Southern Midlands Council
  - Sorell Council
  - Derwent Valley Council

**The Proposed Conduct**

6. The City of Hobart Council seeks authorisation to enable the Participating Councils to collectively tender and contract for recycling waste processing services, including

acceptance, sorting, and processing. In particular, the City of Hobart Council seeks authorisation to enable the Participating Councils to negotiate on a joint basis with the preferred tenderer(s), including entering into and giving effect to a procurement contract with the ultimate service provider and the ultimate management of the contract (the **Proposed Conduct**).

7. The City of Hobart Council also requests that any authorisation granted applies to the proposed Joint Authority that the Participating Councils may establish to administer the waste agreements, and to the successful tenderer(s).
8. In broad terms, competition laws require businesses to operate independently of their competitors when making decisions about the prices they charge or are willing to pay, which businesses they deal with, and the terms and conditions on which they do business. Because the Participating Councils may be in competition with each other to acquire waste services, without the legal protection provided by authorisation an agreement between them about the matters described at paragraph 6 may be a risk of breaching competition laws.
9. The City of Hobart Council is seeking authorisation for 15 years and 6 months.

### **Background**

10. On 4 June 2014, the ACCC granted authorisation A91408 to three of the Participating Councils (the City of Hobart Council, Clarence City Council and Glenorchy City Council) to jointly tender and individually contract for recycling waste processing services until 26 December 2023.
11. The three councils contracted with the successful tenderer SKM Recycling until the company was placed into administration in late 2019. Cleanaway, the acquirer of SKM Recycling's assets, including the sole recycling facility in southern Tasmania, entered into separate two-year interim contracts with the three councils on 1 December 2019. The additional eight councils that are also the subject of this application have established independent arrangements (either directly or through another council) with Cleanaway. Several of these contracts with Cleanaway are due to expire in December 2021. The City of Hobart Council has submitted that if the current substantive application for authorisation is granted, itself, Glenorchy City Council and Clarence City Council would not engage in conduct under authorisation A91408, and would instead act in accordance with the Proposed Conduct under the new authorisation (AA1000584).

### **The authorisation process**

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows parties to engage in conduct while the ACCC is considering the substantive application for authorisation.
14. The City of Hobart Council requested interim authorisation on the basis that several of the contracts governing existing arrangement are set to expire in December 2021, and that they have needed to factor in recent state and federal government regulatory

changes that will impact the tender process<sup>1</sup>. The City of Hobart Council acknowledges that transitioning from the existing individual arrangements to a new collective contract is not possible prior to the expiry of the existing contracts, however interim authorisation would expedite the selection and negotiation process and reduce the need for, and scope of, transitional arrangements.

### **Consultation**

15. The ACCC invited submissions from a range of potentially interested parties including potential tenderers, waste management industry associations, state and federal government bodies, and the participating councils. The ACCC received a submission in favour of the substantive application for authorisation from an interested party, Re.Group, and two supportive submissions from Participating Councils, the City of Hobart Council and Glamorgan Spring Bay Council. The ACCC received no submissions in respect of the application for interim authorisation.
16. Further information in relation to the application for authorisation, including a list of the parties consulted and any public submissions received by the ACCC as this matter progresses, is available on the [ACCC's public register](#).

### **Reasons for decision**

17. The ACCC has granted interim authorisation with respect to the conduct described at paragraph 2 of this decision document. The ACCC considers it appropriate to grant interim authorisation, noting:
  - That there is a need for the Participating Councils to progress the joint tender process in order to minimise the need for transitional arrangements. These transitional arrangements are likely to be needed if long term arrangements for recycling waste processing are not in place when the Participating Councils' existing contracts expire
  - Competition between Participating Councils for the acquisition of waste services and between waste providers for the supply of waste services, is unlikely to be permanently altered if interim authorisation is granted to progress the tender process, but not enter into contracts, and
  - Participation in the tender process and proposed joint arrangements is voluntary for each Participating Council. A council that does not opt-in to the arrangements may choose to proceed independently and continue to individually procure its own recycling waste processing services.

### **Reconsideration of interim authorisation**

18. The ACCC may review the interim authorisation at any time, including in response to feedback raised following interim authorisation.
19. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

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<sup>1</sup> On 27 October 2021, Tasmania's Minister for Environment introduced the Waste and Recovery Bill 2021 to the Tasmanian Parliament. The Bill is intended to disincentivise use of landfill through introducing a levy on all landfill from mid-2021. (see: <https://dpipwe.tas.gov.au/environmental-management/waste-and-resource-recovery-bill>). In addition, the *Recycling and Waste Reduction Act 2020* (Cth) has prohibited the export of mixed (unsorted) plastics overseas from 1 July 2021.