

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Notifying Party Details

- (a) Name of person giving notice:

Sunshine Coast Regional Council ABN 37 876 973 913

- (b) Short description of business carried on by that person:

Local Government Authority for Sunshine Coast Region

- (c) Address in Australia for service of documents on that person:

Sunshine Coast Council

Locked Bag 72 Sunshine Coast Mail Centre Qld 4560

2. Notified Arrangement/Conduct

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The Sunshine Coast Regional Council (the **Council**) is the owner and developer of the Maroochydore City Centre pursuant to the Maroochydore City Centre Infrastructure Agreement 2017 (**IA**), a copy of which is annexed as Annexure A. The Maroochydore City Centre is a green field central business district development that amongst other objectives aims to deliver a ‘smart city’ platform.

Council is charged with providing services to the community including waste collection services. Council has elected to establish an Automated Waste Collection System (**AWCS**) as the waste collection service for the Maroochydore City Centre. Council is the first local government to establish an AWCS in a development precinct in Australia.

The AWCS consists of the Public Pneumatic Waste Infrastructure (**Public PWI**), which is to be established on public land by Council and the Private Pneumatic Waste Infrastructure (**Private PWI**) which, is to be established by

the property owner and/or developer on private land. Access to the Public PWI is conditional on the landowner and/or developer establishing their Private PWI connection to the Public PWI.

The AWCS chosen by Council is proprietary to Envac Co., Ltd (**Envac**). It is anticipated that Envac will initially be the only company with the capability to establish, operate, maintain and repair the AWCS within Australia due to factors including the following:

- i. Envac components are proprietary and not compatible with alternate suppliers; and
- ii. the market place within Australia for AWCS is in its infancy and no other suppliers are established.

Currently, Envac is the only manufacturer and supplier of Public and Private PWI in Australia (refer Table 3 at page 28 of the Prescribed Waste Infrastructure Standards dated 17 April 2019 ('the Standards') annexed as **Annexure A**).

Council has entered into a contract with Envac for Envac to design, build, operate and maintain the Public PWI for stage 1A and 1B of the Maroochydore City Centre including but not limited to pipe reticulation, the collection station and collection station equipment. Council procured Envac to Design, Build, Operate and Maintain the Public PWI through a publicly advertised Expression of Interest (EOI) procurement process undertaken in compliance with the *Local Government Act 2009*. Council envisages that it will engage Envac for similar services for the Public PWI pipe reticulation for future stages of the Maroochydore City Centre.

Council will engage Envac to operate and maintain the Public PWI in the Maroochydore City Centre for the first five (5) years of its operation. A five year term was chosen by council to provide sufficient time for the Public PWI to be constructed and become operational (inc future stages), manage any initial operational concerns/issues, commercial return/payback to the successful contractor and provide council with sufficient time to build up operational capacity/knowledge to potentially internalise the operation of the Public PWI. At the end of the five (5) year term of the operate and maintain contract, council will either publicly advertise the operation of the Public PWI or provide the service in-house.

With respect to the Private PWI, the certification of detailed design and specification, construction, commissioning, maintenance and repair will be undertaken by a contractor approved under the Standards who is engaged by the owner of the Private PWI. In some instances the Approved Contractor may be Envac. The cost of maintenance and repair will be borne by the owner of the Private PWI.

(b) Description of the conduct or proposed conduct:

Landowners and/or developers in the Maroochydore City Centre are to develop private land in accordance with the IA, which relevantly provides an obligation for the landowner and/or developer to establish and provide a Private PWI in accordance with the conditions of the IA. Council will provide a satisfaction notice when the landowner and or developer designs, constructs and installs the Private PWI in accordance with the IA. Council will not operate Private PWI that is not constructed and installed in accordance with the IA and as such has not been issued with a satisfaction notice.

Under the IA, the issue of a satisfaction notice by Council is conditional on the landowner and/or developer complying with the following:

- Detailed design and specification of their Private PWI being signed off by a Registered Professional Engineer of Queensland (RPEQ) who has been identified by council in a Notice as an Approved Contractor (which includes the requirement of successfully completing a Private PWI engineering design course provided by Envac).
- Detailed design and specification of their Private PWI being reviewed by Envac and receiving a Notice to certify the detailed design and specification is in compliance with the Standards and compatible with the Public PWI
- Where required using ENVAC proprietary products for the construction of their Private PWI;
- their (landowner, developer, body corporates and strata titled dwellings) Private PWI being operated, maintained and repaired in accordance with ENVAC specification and requirements; and
- their Private PWI being constructed, repaired and maintained by an Approved Contractor.

Under the Standards the definition of an ‘Approved Contractor’ for Private PWI is: ‘for the Private Pneumatic Waste Infrastructure’ is as follows:

(b) A person identified as an Approved Contractor in a Notice given by the Waste Infrastructure Authority to a Prescribed Proponent; and

(c) A person who has the following qualifications and endorsements:

1. AS/NZS ISO 9001:2016 (Quality management systems – Requirements) certification;
2. demonstrated experience in works of a similar nature; and
3. achieved competency in a relevant training course provided by Envac.
4. for detailed design and specification only, an appropriately qualified engineer who is registered with the Board of Professional Engineers Queensland.

Due to the highly specialised nature of the AWCS, proprietary products and infant Public and Private PWI industry, Council will require the Private PWI to be operated by ENVAC.

A landowner and or developer must engage a suitably qualified engineer who is registered with the Board of Professional Engineers Queensland to undertake the Private PWI design works. However, Council requires the landowner and or developer to:

- use Envac to certify the Private PWI has been designed in accordance with the requirements of the Standards and compatible with the Public PWI; and
- provide a notice from Envac (as an Approved Contractor) to Council identifying that the Private PWI has been constructed and installed in accordance with the Standards and with their Private PWI detailed design and specification documentation.

3. Persons, or Classes of Persons, Affected or Likely to be Affected by the Notified Conduct

(a) Class or classes of persons to which the conduct relates:

Landowners, developers, body corporates and strata titled property owners within the Maroochydore City Centre, developed under the Maroochydore City Centre Infrastructure Agreement 2017.

- (b) Number of those persons:
- (i) At present time:
Approximately 110 land lots available for sale over approximately twenty five years.
- (ii) Estimated within the next year:
Maroochydore City Centre estimated to be developed in stages over the next twenty-five years.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
Not Applicable.

4. Public benefit claims

- (a) Arguments in support of notification:
In accordance with the IA Council requires landowners, developers, body corporates and strata titled building owners to:
- utilise the proprietary infrastructure, products and systems of ENVAC for their Private PWI;
 - utilise the services of Envac to certify the detailed design and specification of a Private PWI has been designed in accordance with the requirements of the Standards and is compatible with the Public PWI;
 - utilise ENVAC to provide a notice to Council identifying that the Private PWI has been constructed and installed in accordance with the Standards and their Private PWI detailed design and specifications; and
 - operate, maintain and repair their Private PWI in accordance with a Council consent notice.

Council requires that Envac be utilised because:

- This company is in the business of supplying proprietary AWCS infrastructure, components and systems.
- No other company can provide Private PWI and systems that are compatible with the Public PWI.
- There is no other company in Australia that is in the business of AWCS. The company has expertise in the design, supply, installation, maintenance and operation` of AWCS.
- Council will enhance operation and maintenance (including infrastructure longevity) of its Public PWI by certifying Private PWI has

been designed, installed and operated in accordance with Envac and Council requirements.

- Avoidance of delays by decreasing the time frame for landowners, developers, body corporates and strata titled building owners obtaining certification of their design and construction of Private PWI from Council as Envac is an established, experienced and trusted company in design and installation of Private PWI. Envac will provide important quality assurance services to Council as construction of Private PWI may otherwise be undertaken by a contractor of the landowner/developers choice, who may not be experienced in the construction of a Private PWI.
- Ensuring performance standards claimed by Council in the IA can be achieved.
- Protecting Councils goodwill and reputation as a brand supporting competition in the supply and sale of land in the Maroochydore City Centre.
- Ensuring that Private PWI is constructed and installed utilising proprietary products (where necessary) to ensure the reliability and longevity of Private PWI and that it can be operated by the Public PWI.
- Ensuring the ongoing reliability and longevity of Private PWI by ensuring that all parts, products and services used within a Private PWI are of a proprietary nature (where applicable), sufficiently high quality and are suitable to the calibre and precise specifications required of a Private PWI.

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

- Waste collection is an essential service that Council provides and the operation of the AWCS is imperative to public health and vector control and prevention.
- Council has chosen an Envac AWCS for installation and operation to service the public realm of the Maroochydore City Centre.
- Councils review has identified that other AWCS supplier's infrastructure, parts, components and systems are not compatible.
- Council review has identified Envac has proprietary parts, components and systems.
- Council is unable to ensure the Public PWI will perform to the standard that it represents or not be damaged if parts of Private PWI of a sufficient

specification and quality are not used for design, installation, operation and repair of Private PWI.

- Council is unable to ensure that it can operate a Private PWI if not designed, installed, operated and maintained in a sufficient specification and quality are not used.
- Sunshine Coast Council is one of the fastest growing regions in Australia with a significant number of development sites on offer throughout the local government area and Council has been forthright with potential landowners and developers by placing the requirements of the Private PWI in the IA. Potential purchasers of land can choose alternate developments within the region that do not require the installation of a Private PWI.

5. Market Definition

Provide a description of the market(s) in which the goods or services described at 2 (a) 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):

Council has not attempted to precisely define the markets involved, as being the first AWCS in Australia the market is limited and the AWCS is being installed in a single development within the local government authority area. However, for the purpose of assessing this notification, the relevant markets may include:

- companies that provide conventional waste management collection services.
- other companies that are in the business of providing AWCS in Australia (if any).

6. Public Detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

Council considers there is little or no identifiable detriment to the public resulting from the proposed conduct.

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

Not applicable.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Attention: Alex Patissier

Coordinator Waste Diversion | Disposal

Sunshine Coast Council

Locked Bag 72 Sunshine Coast Mail Centre Qld 4560


Tel: (07) 54758 708

Email: alex.patissier@sunshinecoast.qld.gov.au

Declaration by Notifying Party:

The undersigned declares that, to the best of his knowledge and belief, the information given in response to the 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 is aware that giving false or misleading information is a serious offence and is aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code (Cth)*.



.....

Signature of authorised person

Michael Whittaker

Chief Executive Officer, Sunshine Coast Regional Council

This9..... day ofMay..... 2019.