

From: [Stephen Fitzpatrick](#)
To: [Kolacz, Miriam](#)
Cc: [Staltari, Danielle](#); [Black, Susie](#)
Subject: RE: ACCC further queries - EMRC application for authorisation [SEC=UNOFFICIAL] [ACCC-ACCCANDAER.FID3007910]
Date: Monday, 15 November 2021 5:18:09 PM

From: Kolacz, Miriam <miriam.kolacz@accc.gov.au>
Sent: Tuesday, November 9, 2021 12:50 PM
To: Stephen Fitzpatrick [REDACTED]
Cc: Staltari, Danielle <Danielle.Staltari@accc.gov.au>; Black, Susie <Susie.Black@accc.gov.au>
Subject: ACCC further queries - EMRC application for authorisation [SEC=UNOFFICIAL] [ACCC-ACCCANDAER.FID3007910]

Hi Stephen

There are a few further points in EMRC's application for authorisation (**attached**) that we wanted to clarify with you. In relation to questions 1 and 2, apologies that we only picked these up after you had lodged; but we think it is still best to ensure the version on our public register is accurate.

1. **Some references, Figures (pie charts) and numbers cited do not appear to have been updated** – that is, they still seem to include the Cities of Kalamunda and Swan as participating Councils. In particular: **All addressed in updated Application.**
 - a. Section 2.1: There are three references to 'Member Councils' which should presumably read 'Participating Councils' (as defined in section 1).
 - b. Section 4: We understand section 4 describes the services currently provided to all 5 Member Councils, but is supplemented by public Appendix A (2 of 6) which details the current contractors for all councils, including Participating Councils. If this is correct and Appendix A (2 of 6) is up to date, we do not think section 4 needs amendment.
 - c. Section 5: The references to 'five Participating Councils' (page 11) and 'five as local governments...' (page 10) require amendment and Figure 5-1 may no longer be accurate.
 - d. Section 7: The estimated market shares require updating, specifically:
 - i. 'Of the 29 Perth Metropolitan Councils, the member Councils represent an estimated 19% of all households...'
 - ii. Figure 7-1, Figure 7-2, Figure 7-3 and Figure 7-4; and mirror references in the body that state the Proposed Conduct constitutes approximately 17% of each of general waste, recycling, garden organics/FOGO and bulk waste collections, leaving 83% of the market open to competitive tender. It appears from Appendix C that the three Participating Councils hold around 7% market share.
 - e. Section 8 (page 19): States that 'Beside the Participating Councils, there are a **further 23** Councils across the Perth Metropolitan Area...'
1. **Length of authorisation:** Section 2.4 notes that one reason for seeking authorisation until October 2052 is 'A rolling start across Participating Councils as waste service contracts expire, with the last service contract due to expire **in 2039**'. Please clarify which council's contract is due to expire in 2039, given that

confidential attachments 1-3 suggest all Participating Councils' contracts will expire in 2022/2023. **Addressed in updated Application – now amended that authorisation be granted until 2040.**

2. **Acquisition from other suppliers:** Section 2.1 states 'The EMRC may allow Participating Councils to acquire some waste services from alternative suppliers but this would only be by exception and require the EMRC's approval.' Please provide further details about:
 - a. What is meant by 'some waste services'. **Addressed in updated Application.**
 - b. The process EMRC would undertake, and factors it would consider, in determining whether to approve a council's request to acquire some waste services from alternative suppliers. Ideally, an example of a situation in which EMRC would approve such a request would be useful. For example, a minor adjustment to one Council's services (e.g. altering the number of bulk waste collections per year) would be an adjustment to that Council's individual service agreement by mutual agreement. It wouldn't require the agreement of all Participants.
3. **Section 10:** Please explain what is meant by '...any adjustment to services would require agreement from all Participating Councils' and 'This would be done via the service agreement'. **If it was an across the board adjustment to services it would need agreement from all Participating Councils.**
 - a. For example, does this mean that a minor adjustment to one council's services (e.g. altering the number of bulk waste collections per year) would require each council to agree and their service agreement to be amended? **For example, a minor adjustment to one Council's services (e.g. altering the number of bulk waste collections per year) would be an adjustment to that Council's individual service agreement by mutual agreement. It wouldn't require the agreement of all Participants.**
 - b. In May 2021 you advised that there was no service agreement at that time. Is there now a service agreement (even in draft form) that you can provide us with? **All waste and resource management services currently provided to member councils are governed under our Establishment Agreement. KPI's and financial planning are managed and monitored through our budgeting and financial/operational reporting. As this regional collection activity only applies to 3 member councils the activity will be managed as a separate cost centre under a service agreement (to be developed) similar to other confidential supply agreements EMRC has in place with member Councils.**
5. **Prices:** If known, how will pricing be structured under the service agreement? Will the EMRC have the ability to increase prices during the 10-year term, and if so, under what circumstances? **Pricing is not known at this stage but will be based on a first principles cost build up commercial lift rates at contract commencement with provision for rate reviews at designated intervals which are similar to commercial operators and using similar relevant price indices.**
6. **Termination of service agreement:** In what circumstances could a Participating Council terminate its service agreement with EMRC during the 10-year term?

Circumstance would include a long term Force Majeure event; if the EMRC was unable to meet certain KPI's imbedded in the contract, if there was metropolitan local government amalgamation or in the event of the wind up of the EMRC.

In response, could you please provide:

- **As soon as possible:** an amended version of the application which includes any corrections in response to question 1 or question 2? It would be helpful if you could provide one copy with changes tracked, and one clean copy with changes accepted, so we can identify the changes when we re-publish it on our public register.
- **By Monday 15 November:** a response to the remaining questions (3-6), which can be via email or letter. As we intend to publish this response on the public register, please indicate whether you consent to its publication or whether there is certain information that you would like to request be excluded from publication (and why).

Please feel free to contact me if you wish to clarify any of the above.

Kind regards
Miriam

Miriam Kolacz

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