

10.7. URM China Sword

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ATTACHMENTS: Nil

PURPOSE:

The purpose of the report is to obtain Council's approval to provide financial compensation to URM as a result of unforeseen losses following China's ban of recyclables imported from the Australian market in 2018.

A separate report has been provided to Council on a confidential basis for consideration.

EXECUTIVE SUMMARY:

In March 2019, under the previous Waste and Recycling Collection contract with Council, Council's contractor, URM, requested financial assistance due to unforeseen losses resulting from significant change in the global recyclables market following the introduction of the China Sword Policy in early 2018. The effect of this policy was that China closed the market to Australian processors of recyclables. URM's processing subcontractor, Visy, as a result, increased local processing fees and passed these costs through to URM.

URM were requested by Council to provide a copy of their original agreement with Visy to authenticate a claim. URM elected not to provide this information at the time, as Council were in the process of finalising the current contract with URM.

In August 2021, URM provided the outstanding information for Council to consider a claim in its entirety. External legal advice was obtained from Maddocks. Maddocks advised Council, that URM had no contractual entitlement to seek reimbursement for increased costs.

FINANCIAL IMPLICATIONS:

There are available funds in the Domestic Waste Management Reserve derived from the Container Deposit Refund payment.

RECOMMENDATION:

1. **THAT** the report be received.
2. **THAT** the meeting be closed to the public in accordance with Section 10A(2) (d) commercial information of a confidential nature that would, if disclosed;
 - (i) confer a commercial advantage on a competitor of the Council, and because consideration of the matter in open Council would be, on balance, contrary to the public interest.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.1 Protected and enhanced natural environment and biodiversity

5. Our Civic Leadership

5.4 Council's service delivery is well supported

BACKGROUND

On 1 July 2010, Council and URM entered in a Waste Collection Contract (Contract). The Contract required URM to provide services to Council, which relevantly included:

- (i) weekly collection of recyclables from residential properties; and
- (ii) processing of the collected recyclables at the Materials Recovery Facility (MRF) operated by Visy at Smithfield

The Contract expired on 30 June 2019. Following a request for tender process, Council and URM subsequently entered into a new contract on 1 July 2019 for the provision of substantially the same services as were required under the Contract and expires 30 June 2026 with an option to extend for an additional three (3) year term.

On 1 January 2018 the People's Republic of China (China) introduced import restrictions on recyclables, known as the China Sword Policy. The effect of these restrictions has been to substantially close the China market to Australian processors of recyclables (including Visy).

China announced it would no longer accept recyclable materials from around the globe including Australia because of the contamination levels of the materials exported to China. Quality standards were tightened which required imported materials to meet their stringent 0.5% contamination threshold on all recyclable materials. This rate was regarded as a virtual ban, because it was considered to be unachievable when processing household waste like plastics. For example, a plastic bottle with a lid or label are rejected under the new restrictions.

This caused price increases to all operators of Material Recovery Facilities (MRF) to upgrade their infrastructure and processes to meet the higher quality specification. The costs were passed on to recycling collectors and Councils. MRFs receives the recyclable materials where it is sorted and baled for re-manufacture and all were globally reliant on the export to China of their baled products, having done so in the last 25 years preceding the ban. This affected the global recycling industry resulting in a significant downturn in the recycling market.

Under the contract, URM owns the recyclables that are collected from Council's residences and are processed by Visy.

URM wrote to Council and advised that as a consequence of the Chinese import restrictions, Visy had required an increased rate be paid by URM to Visy for the acceptance and processing of recyclables collected under the Contract, with effect from 1 July 2018: and requested that as a consequence Council provide URM with funding compensation.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

In March 2019, under the Previous Contract, URM requested financial compensation from Council due to unforeseen losses experienced as a result of the downturn of the recyclables market following the introduction of the China Sword Policy in early 2018. URM's processing subcontractor, Visy, increased processing fees to reduce the impact of the downturn and passed these costs through to URM. Instead of receiving an income for the recyclables delivered from North Sydney they were charged a gate fee. URM was entitled to the income associated with the marketing of recyclables.

URM were requested to provide a copy of the original agreement with Visy should they wish to submit a formal claim to authenticate their subsequent increase in processing fees and the revenue loss. URM elected not to provide this information at the time, as NSC were in the process of finalising the current Contract with URM.

In August 2021, URM provided the outstanding information (being remittance and invoicing slips) for Council to consider their claim in its entirety. Legal advice was sought from Maddocks on whether Council is obligated to financially assist URM and the potential risks to Council if it refuses the request under the previous Contract.

Maddocks advised that URM had no legal entitlement to the additional payment as result of the Chinese regulatory changes or Visy's increase in processing fees and advised that to a large extent the position that Council takes in response to URM will be based on commercial or policy considerations rather than legal considerations.

Considerations such as:

- The legitimate changes that occurred with respect to the recyclable market since the Chinese regulatory change
- The container deposit scheme refunds that Council received in the period in which the financial loss occurred – 1 July 2018 to 30 June 2019
- Council's historical and ongoing relationship with URM

Whilst recognising that URM has no contractual entitlement to seek reimbursement, it is recommended financial support be provided based on acknowledgement that URM has suffered unforeseen loss resulting from China banning the importation of recyclables. A number of other Councils have agreed to provide some form of financial compensation.

The situation resulting from China banning the importation of certain classes of recyclables under its China Sword policy was an issue that was unforeseeable and should possibly be shared across the waste industry. If recyclables could not be commercially processed, this would result in the community lacking confidence in long established recycling practices.

It was important that the residents who make an effort to sort out their recyclables had the confidence that those products were being processed and recycled by our processors.

An unrelated event, the introduction of the Waste Avoidance and Resource Recovery Regulations (WARR) by the NSW government provided for a Container Deposit Scheme (CDS) Refund Sharing Agreement negotiated between a Materials Recovery Facility (MRF) operator and a Council regarding Eligible Containers (EC) from their residential recycling collections. Council subsequently entered into a Refund Share Agreement (RSA) with Visy.