



Draft Determination and interim authorisation

Application for authorisation AA1000419

lodged by

Council Solutions & Ors

in respect of

joint procurement, negotiation and contracting for
waste processing and disposal services

Date: 14 September 2018

Authorisation number: AA1000419

Commissioners:

Sims
Keogh
Rickard
Court

Summary

The ACCC proposes to grant authorisation until 30 June 2031 to Council Solutions, Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils) to jointly procure waste processing and disposal services.

The ACCC also grants interim authorisation for Councils Solutions and the Participating Councils to enable them to commence the tender and contract negotiation process. Interim authorisation does not extend to entering into or giving effect to any waste services contracts.

The ACCC will seek submissions in relation to this draft determination, and will hold a pre-decision conference if requested to do so, before making its final decision.

Council Solutions and the Participating Councils (together, the Applicants) are seeking authorisation to conduct a joint procurement process to appoint suppliers to the Participating Councils for the receiving and processing of waste service streams comprising:

- receiving and processing of recyclables
- receiving and processing of organics, and
- receiving and processing or disposal of residual waste

(together, Processing Services).

In the context of procuring these services, these councils may be considered to be each other's competitors. Therefore, by conducting their procurement jointly rather than individually, they risk breaching competition laws. Accordingly, the Applicants have sought authorisation from the ACCC, which would give them legal protection to conduct joint procurement. The ACCC can grant authorisation if it is satisfied that the likely public benefits outweigh the likely public detriments.

The Participating Councils' aim in jointly procuring Processing Services is to provide value for money for their ratepayers, improve waste management and reduce waste, and to achieve environmental and economic benefits for their communities.

Based on the information before it, the ACCC considers that the Participating Councils jointly procuring Processing Services will contribute to the achievement of these aims and is likely to result in lower prices and/or improved quality of waste management services for their ratepayers. Accordingly, the ACCC proposes to grant authorisation until 30 June 2031. This duration allows for the tender process, existing contracts to conclude and, where applicable, new infrastructure to be commissioned, and proposed contract lengths of up to 10 years.

It is common practice throughout Australia for local councils to collaborate to procure waste services to reduce transaction costs, pool resources and expertise, achieve economies of scale and improve their purchasing power. The ACCC has authorised 30 such arrangements, concluding they were likely to result in a net public benefit through improved service quality at lower cost. The joint procurement process for which the

Applicants have sought authorisation is similar to a number that the ACCC has authorised.

In 2016, the ACCC denied authorisation for Council Solutions and five Adelaide Councils (the four councils participating in the current process plus Tea Tree Gully) to jointly procure kerbside waste collection services, receipt and processing services and waste disposal services via a single Request For Proposal process. Under the Request for Proposal, each council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service stream and supplier combinations.

The ACCC was concerned that the size and scope of the 2016 proposed joint procurement, covering multiple waste service streams, and the uncertainty about the possible outcomes arising from the Request for Proposal process, would reduce or eliminate transaction cost savings and may mean that some businesses were unable to participate.

In 2018, in addition to the reduction in the number of participating councils, the Applicants have sought to address the issues associated with the 2016 application by:

- running separate tender processes for three service streams, which are the subject of three separate applications for authorisation; kerbside waste collection services, Processing Services (this application) and ancillary services
- issuing more tightly prescribed and separate Requests for Tender for each service stream, instead of a single Request for Proposal covering all service streams and all councils, and
- prescribing the number of suppliers that will be appointed: one or two suppliers for the receipt and processing of each of recyclables and organics and a single supplier for processing and disposal of residual waste.

The ACCC released a draft determination proposing to authorise the kerbside collection joint procurement proposal on 20 July 2018. Concurrent with the release of this draft determination, the ACCC has released a draft determination proposing to authorise the ancillary services joint procurement arrangements.

The ACCC acknowledges the many submissions from industry participants, both concerned about, and supporting, the proposed arrangements. The Applicants and other interested parties have given the ACCC an extensive amount of information, on a public and confidential basis.

A number of these submissions have expressed strong views about how the Participating Councils should structure their procurement arrangements and, in effect, called on the ACCC to play the role of arbiter about how the waste services industry in South Australia should be structured. However, as described above, the ACCC's role is limited to determining whether to grant authorisation (and on what terms). This involves assessing whether the likely public benefits of the specific proposal for which Council Solutions has sought authorisation outweigh the likely public detriments. Beyond that, it is not the ACCC's role to determine how the Participating Councils, or suppliers of waste services, should operate. In this respect, the Participating Councils are ultimately accountable to their ratepayers and communities.

The ACCC considers that the current application addresses the concerns identified in 2016 as they relate to joint procurement of Processing Services, primarily by simplifying the process and providing greater certainty for tenderers about the services the

Participating Councils are seeking to procure through each tender process and how their bids will be assessed.

The ACCC considers that the proposed conduct is likely to result in a public benefit through stimulation of competition to provide Processing Services to the Participating Councils.

The ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils in contracting for the supply of Processing Services. This increased purchasing power is likely to be reflected in the terms and conditions of agreements negotiated, resulting in lower prices and/or better quality of waste management services delivery to the Participating Councils ratepayers.

In particular, the Proposed Conduct is likely to offer potential suppliers transaction cost savings and other efficiencies that could be passed on in lower costs and improved services. Further, guaranteed contracts covering greater volumes of waste than any of the Participating Councils could offer individually are likely to provide greater incentives for suppliers to compete for the tenders, notwithstanding that the tender opportunities may not be commercially attractive to every current or potential service provider.

The ACCC also considers that the proposed conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting its own procurement process.

The ACCC also considers that the proposed conduct is likely to generate public benefits through improvements in:

- efficiency in managing Processing Services contracts, and
- efficiency in the supply of Processing Services.

The ACCC has considered concerns raised by some interested parties that the Proposed Conduct may, in the longer term, reduce competition to supply Processing Services to the Participating Councils and other councils in Adelaide. For example, concerns that unsuccessful tenderers would permanently leave the market, leaving a more concentrated and less competitive set of firms to compete for future contracts. However, the ACCC considers this concern is unlikely to be realised. There are current service providers who do not have contracts with the Participating Councils, and there will continue to be other opportunities for those suppliers who do not win the contracts with the Participating Councils to remain active in waste processing in South Australia. That is, the ACCC does not consider that having continued strong competition for the provision of these services is dependent on preventing these councils from engaging in joint procurement.

The ACCC considers that the public benefits of the proposed conduct are likely to outweigh any public detriment arising.

Next steps

The ACCC seeks submissions in relation to this draft determination before making its final decision. Submissions are due by 5 October 2018.

It is also open to Council Solutions or interested parties to request that the ACCC hold a pre-decision conference on the draft determination.

Contents

Summary	i
Contents	iv
The application for authorisation	1
The proposed conduct	1
The Applicants	5
Previous application for authorisation	8
Related applications	10
Other authorisations	10
Consultation	11
ACCC assessment	13
Relevant areas of competition	13
Future with and without	13
Public benefit	14
Stimulation of competition.....	14
Transaction cost savings.....	20
Improved efficiencies through combined contract management	22
Improved efficiencies in the supply of waste processing and disposal services	23
Improved environmental outcomes.....	26
ACCC conclusion on public benefits	28
Public detriment.....	28
Longer-term reduction in competition for the supply of recyclables and organics waste processing services to the Participating Councils and non-participating councils.....	28
Operation of the SA beverage container deposit scheme	30
ACCC conclusion on public detriments.....	32
Balance of public benefit and detriment	32
Length of authorisation.....	33
Draft determination	33
The application.....	33
The net public benefit test	34
Conduct which the ACCC proposes to authorise	34
Interim authorisation	34
The request for interim authorisation	34
Consultation	35
ACCC assessment	35
Next steps.....	36

The application for authorisation

1. On 4 May 2018 Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000419 with the Australian Competition and Consumer Commission (**ACCC**). Council Solutions, on behalf of itself and the Participating Councils, is seeking authorisation to jointly procure certain waste-processing services, until 30 June 2031.¹
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the **Act**). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider it is not harmful to competition and/or there is an offsetting public benefit from the conduct.²
3. The Applicants also requested interim authorisation to enable them to commence the tender and contract negotiation process as soon as possible.³ The Applicants requested that interim authorisation be considered at the time that the ACCC issues a draft determination.

The proposed conduct

4. Council Solutions and the Participating Councils seek authorisation for:
 - Council Solutions, on behalf of the Participating Councils, to
 - i. conduct a collaborative competitive tender process for waste services, comprising the:
 1. receiving and processing of recyclables
 2. receiving and processing of organics and
 3. receiving and processing or disposal of residual waste(together, Processing Services).⁴
 - Council Solutions to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework
 - the Participating Councils to individually enter into separate contracts for each of the Processing Services, each on a joint and not several basis, with the successful supplier/s and

¹ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 1, available: [ACCC Public Register](#).

² Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013.

³ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 40, available: [ACCC Public Register](#).

⁴ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 7, available: [ACCC Public Register](#).

- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils.⁵
- 5. Recyclable waste, or 'recyclables', includes paper and cardboard, glass, plastics, aluminium and steel. Recyclables processing involves the receipt, screening and sorting for 'recovery' of recyclables from waste materials collected either through the 3-bin kerbside collection system from residential premises or from bulk bins. They are delivered to 'resource-recovery infrastructure', typically a Materials Recovery Facility (MRF). The MRF operator may use or sell the material.⁶
- 6. Organics comprises garden organics, food organics, timber and other organics, mainly derived from industries such as food processing.⁷
- 7. The main type of organic waste found in the household/municipal sector is garden organics. However, all Greater Adelaide Region Councils (other than the City of Onkaparinga) allow food organics into the organics (or 'green') bin where provided and this is a growing component of municipal organic waste. Small amounts of timber and other organics may also be present.⁸
- 8. Council Solutions explains that Organics Processing involves the receipt and beneficial processing of organics. Basic steps include screening and removal of contaminants, aerobic or anaerobic biological processing and manufacture of end products, such as organic fertilisers, soil conditioners and mulches. These end products are then sold to the public or may be bought back by the Participating Councils.⁹
- 9. Residual waste should, in theory, consist only of that waste, such as soft plastic, clothing, textiles, nappies and polystyrene, which cannot be treated through resource recovery or reprocessing infrastructure. However, it may also include recyclables and organics where source separation is not followed or available, or contamination is too high to allow for the established processing method. Residual waste may come from the 3-Bin System, Bulk Bins, Hard Waste, Street Litter Bins, contaminated recyclables, contaminated organics or direct disposal by residents.
- 10. Council Solutions explains that residual processing involves the receipt of residual waste; sorting for resource recovery where possible; and disposal of the remaining material into landfill.¹⁰
- 11. Not all Participating Councils will obtain all their waste-processing services through the proposed conduct. Each Participating Council's requirements are as follows:

⁵ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 1, available: [ACCC Public Register](#).

⁶ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 8, available: [ACCC Public Register](#).

⁷ Council Solutions submission in support of application for authorisation, dated 2 May 2018, pp. 8-9, available: [ACCC Public Register](#).

⁸ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 9, available: [ACCC Public Register](#).

⁹ Council Solutions submission in support of the application for authorisation, dated 4 May 2018, p 9, available [ACCC Public Register](#).

¹⁰ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 9, available: [ACCC Public Register](#).

Table 1: Participating Councils' requirements

Processing Service Streams			
Council	Recyclables Processing	Organics Processing	Residual Processing
City of Adelaide	YES	YES	YES
City of Charles Sturt	YES	YES	YES
City of Marion	YES	YES	NO [#]
City of Port Adelaide Enfield	YES	YES*	YES*

[#] The City of Marion does not require Residual Processing as this is provided by SRWRA.
^{*} These services will not be required by the City of Port Adelaide Enfield until existing arrangements have ended in 2024 at which time the City of Port Adelaide Enfield will confirm its requirements.

12. For the recyclables and organics streams, the Participating Councils may appoint up to two suppliers for each stream.
13. The Participating Councils will appoint one supplier for residual waste processing and disposal.
14. Council Solutions explains that it will seek prices from potential suppliers for each stream to receive the materials from one of two 'centroids' (centre points of circles drawn up based on the locations of particular current resource-recovery infrastructure in Adelaide). Council Solutions states that 'by nominating two centroid locations, greater equity is provided by reducing the advantage or disadvantage to any potential supplier by virtue of the location of their processing facility relative to the collection contractor's depots and the Participating Councils.'¹¹
15. Where Council Solutions may appoint two suppliers for a stream, it states that the potential suppliers will provide a price in their tender based on set brackets of tonnes (for example, 25,000 to 40,000 tonnes). In the event that two suppliers are appointed, each supplier will be awarded receipt from one centroid only and the services for discrete Participating Councils.¹²
16. The Applicants seek authorisation until 30 June 2031. This period comprises:
 - publication of the Request for Tender (RFT) for the processing service streams in 2018
 - a tender open period of six to eight weeks

¹¹ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 10, available: [ACCC Public Register](#).

¹² Council Solutions submission in support of application for authorisation, dated 2 May 2018, pp.10-11, available: [ACCC Public Register](#).

- a tender evaluation period that allows for contracts to be awarded in 2019
- nine to 12 months to allow for existing contracts to conclude and, where applicable, new infrastructure to be commissioned
- contract commencement from May 2020, with a rolling start across the Participating Councils as current contractual arrangements conclude, with all contracts commenced by May 2021 (subject to Port Adelaide Enfield’s confirmation of their later participation – see Table 1 above), and
- a proposed maximum 10-year contract operating term (initial term and extension options).¹³

17. Table 2 details proposed terms for each waste stream and Councils Solutions’ reasoning:

Table 2: Proposed contract lengths¹⁴

Service Stream	Initial Term	Extension Option	Reasoning
Recyclables Processing	3 years	2 x 3 years, plus 1 additional year	There is currently instability in the recyclables commodity markets that makes the returns on the sale of recovered material by the processors unpredictable. Accordingly, a shorter initial term is planned, supported by extension options which provides greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall).
Organics Processing	7 years	3 years	The Organics Processing market is very stable in South Australia, with three well established processors providing this service and a stable market for the sale of the processed material.
Residual Processing	4 years	2 x 3 years	Disposal of waste processes are rapidly evolving and moving away from simply ‘burying in a hole’. There are emerging and new technology options and a shorter first term provides greater flexibility.

Proposed tender process

18. The Applicants state that Council Solutions will undertake a competitive RFT process, open to all suitably qualified suppliers. Council Solutions will make the tender documents available on the SA Tenders & Contracts website.¹⁵
19. Council Solutions’ responsibilities including designing and implementing the procurement process and negotiating contracts. An evaluation team comprising Council Solutions, a Waste Service Management Project team consisting of a

¹³ Council Solutions submission in support of application for authorisation, dated 2 May 2018, pp. 13-14, available: [ACCC Public Register](#).

¹⁴ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.14, available: [ACCC Public Register](#).

¹⁵ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.10, available: [ACCC Public Register](#).

representative from each participating council and expert advisors will evaluate tender responses.¹⁶

20. Council Solutions recovers its costs for running the tender process from the Participating Councils. It is not applying a percentage levy to the contracts.¹⁷

Ongoing administration of contracts¹⁸

21. As part of ongoing contract management and administration, Council Solutions and representatives from each Participating Council will participate in joint decisions, activities (including the sharing of information) and discussions concerning, for example, contamination management and assessment of supplier performance.
22. Council Solutions will perform a central contract management role, being primarily responsible for and taking the lead on:
 - reviewing and verifying data
 - measurement and monitoring of Key Performance Indicators
 - pricing reviews, and
 - exercising contract options.
23. Each of the Participating Councils will retain some contract management responsibility, such as internal reporting and providing the customer interface to their communities.

The rationale for the Proposed Conduct

24. The Applicants submit that the Proposed Processing Conduct, which forms part of what it terms the Waste Service Management Project, seeks to establish strategic partnerships that provide the best possible benefits and services to the Participating Councils' communities. They submit that these partnerships will provide value for money, improve waste management and deliver waste reduction outcomes and environmental sustainability across multiple municipalities, to achieve environmental and economic benefits for their communities.¹⁹

The Applicants

Council Solutions

25. Council Solutions is a regional subsidiary established in December 2012 in accordance with the *Local Government Act 1999* (SA). Its constituent councils are

¹⁶ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.10, available: [ACCC Public Register](#).

¹⁷ Council Solutions AA1000419 and AA1000420 response to submissions from interested parties 12 July 2018, p.15, available: [ACCC Public Register](#).

¹⁸ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.11, available: [ACCC Public Register](#).

¹⁹ Council Solutions submission in support of application for authorisation, dated 2 May 2018, pp.12-13, available: [ACCC Public Register](#).

Adelaide City Council and the Cities of Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully.²⁰

26. Council Solutions' primary purpose is to improve the financial sustainability of its constituent councils through collaborative strategic procurement, contract negotiation and management.²¹ During 2016/17 more than \$63.5 million of Council expenditure was undertaken utilising Council Solutions' collaborative contract arrangements.²²
27. Council Solutions is owned by the constituent councils and governed by a Board of Management, formed by the Chief Executive Officers of each of the six constituent councils and an Independent Chair.²³

Participating Councils

28. The Participating Councils and Council Solutions are an unincorporated joint venture with the purpose of undertaking the Proposed Conduct.²⁴
29. The Participating Councils are:
 - the Corporation of Adelaide City Council and the Cities of Charles Sturt and Marion, each being constituent members of Council Solutions, and
 - the City of Port Adelaide Enfield, which is not a constituent member of Council Solutions.²⁵
30. The Participating Councils are local government authorities and bodies corporate incorporated under the provisions of the *Local Government Act 1999* (SA). The functions of each Participating Council include providing services and facilities that benefit its area, its ratepayers and residents, and visitors to its area, in respect of waste collection and control or disposal services or facilities.²⁶
31. The sizes of the Participating Councils are outlined in Table 3.

²⁰ The Cities of Onkaparinga, Salisbury and Tea Tree Gully are non-participating councils for the purpose of the proposed joint procurement process for which authorisation is sought.

²¹ The governing charter as gazetted 20 December 2012.

²² Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.4, available: [ACCC Public Register](#).

²³ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.4, available: [ACCC Public Register](#).

²⁴ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.4, available: [ACCC Public Register](#).

²⁵ Council Solutions submission in support of application for authorisation, dated 2 May 2018, pp. 4-5, available: [ACCC Public Register](#).

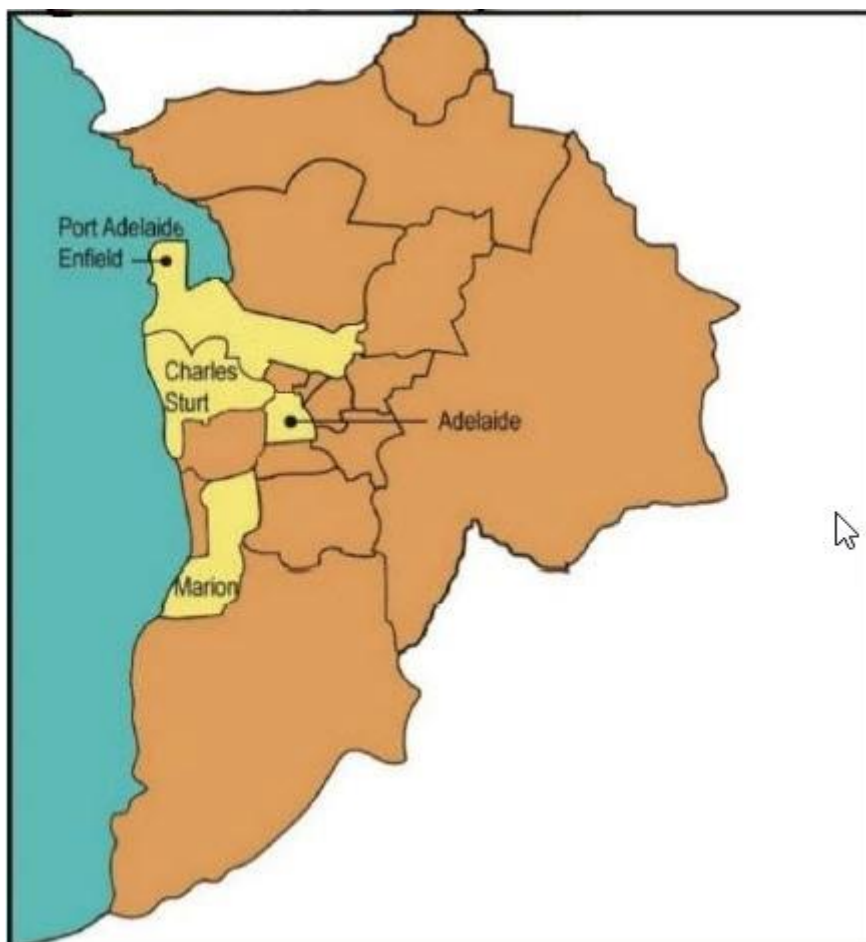
²⁶ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 7, available: [ACCC Public Register](#).

Table 3: The Participating Councils: population, properties and area²⁷

Council	Population	Rateable Properties	Land Area
City of Adelaide	23,396	22,435	15.6
City of Charles Sturt	114,688	55,175	54.8
City of Marion	90,602	41,376	55.6
City of Port Adelaide Enfield	123,947	61,026	91.8
TOTAL	352,633	180,012	217.8
All Greater Adelaide Region Councils	1,429,122	686,236	10,882.50

32. The Participating Councils are situated within the Adelaide metropolitan area. A map showing the location of each of the Participating Councils is provided below.

Map 1: Location of the Participating Councils within the Metropolitan Adelaide area²⁸



²⁷ Council Solutions submission in support of application for authorisation AA1000414, dated 14 March 2018, p.5, available: [ACCC Public Register](#).

²⁸ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p.6, available: [ACCC Public Register](#).

33. The Participating Councils' current Processing Service providers are as follows:

Table 4: Participating Councils' current contractors²⁹

Participating Council	Recyclables receipt and processing	Organics receipt and processing	Waste disposal
Adelaide	SKM Recycling	Jeffries	Cleanaway
Charles Sturt	Visy	Jeffries	Cleanaway
Marion	Contractor: Solo Sub-contractor: Visy	Contractor: Solo Sub-contractor: Peats	SRWRA Marion not participating in proposed joint tender for waste disposal
Port Adelaide Enfield	Contractor: Cleanaway Sub-contractor: Visy	IWS Port Adelaide continuing with this existing arrangement, which expires in 2024	IWS Port Adelaide continuing with this existing arrangement, which expires in 2024

Previous application for authorisation

34. In December 2016, the ACCC issued a determination denying authorisation to Council Solutions and a group of five metropolitan councils in SA, which had applied to jointly procure waste management services.³⁰
35. Council Solutions, on behalf of Adelaide City Council, Charles Sturt, Marion, Tea Tree Gully, and Port Adelaide Enfield, sought authorisation for 17 years (with a proposed maximum contract term of 10 years) to jointly procure the supply of:
- waste collection services
 - the receiving and processing of recyclables
 - the receiving and processing of organics, and
 - waste disposal services.

²⁹ Council Solutions AA1000419 and AA1000420 response to submissions from interested parties 12 July 2018, p.20, available: [ACCC Public Register](#).

³⁰ Determination, Application for authorisation A91520, 20 December 2016, available: [ACCC Public Register](#).

36. Council Solutions proposed to run a joint process to procure all these waste management services streams at once, via a single Request for Proposal process.
37. Under the Request for Proposal process, tenderers would not have been required to tender to service all councils or all these waste management service streams. Each council would have individually decided which supplier to appoint for each service stream, meaning there was the potential for a large number of possible service streams and supplier combinations. The effect of this arrangement would have been that unless a provider wanted to limit itself to one option, it would have been required to prepare a proposal that covered multiple permutations and combinations of waste streams, in case only part of the proposal was successful.
38. The ACCC concluded that the proposed conduct was likely to result in some public benefits in the form of:
 - small improvements in efficiency related to community education
 - small improvements in efficiency in the supply of recyclables and organics processing, and
 - small improvements in environmental outcomes.
39. The ACCC considered that the conduct was likely to result in some public detriment constituted by a lessening of competition through:
 - deterring or preventing some potential suppliers from tendering, or from submitting competitive bids
 - reducing competition for the supply of waste services to Participating Councils in the longer term, and
 - reducing competition for the supply of waste services to non-participating councils.
40. On balance the ACCC was not satisfied that the net public benefit test was met.
41. Council Solutions has sought to address the ACCC's concerns with the conduct the subject of the previous application in the following ways:
 - Council Solutions has split the conduct into three separate tenders for different service streams: waste collection services, Processing Services and ancillary services. The current application relates to Processing Services only. As discussed below, separate applications have been lodged covering the collection and ancillary service streams.
 - Council Solutions proposes to issue a more tightly prescribed RFT for each service stream, instead of a Request for Proposal.
 - Council Solutions proposes to appoint a set number of suppliers to the Participating Councils (see paragraphs 12 and 13 above).
 - Council Solutions seeks authorisation until 30 June 2031, with a proposed maximum contract term of 10 years.

42. The application also covers four, instead of five, councils (the City of Tea Tree Gully is no longer participating).

Related applications

43. Council Solutions has lodged two other applications for authorisation for itself and the Participating Councils, in respect of the following service streams:
- **Council Solutions & Ors (collections), AA1000414, lodged 14 March 2018:** joint procurement of the collection of domestic waste, recyclables and organics through the use of the 3-bin system, including the supply and maintenance of mobile garbage bins.
 - **Council Solutions & Ors (ancillary), AA1000420, lodged 4 May 2018:** joint procurement for the collection of ancillary waste services, comprising the multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins), kerbside collection and processing or disposal of Hard Waste and collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.
44. The ACCC released a Draft Determination proposing to grant authorisation for application AA1000414 (kerbside collections) on 20 July 2018.³¹ The ACCC also granted interim authorisation for Councils Solutions and the Participating Councils to enable them to commence the tender and contract negotiation process. Interim authorisation does not extend to entering into or giving effect to any waste services contracts.
45. Concurrent with the release of this draft determination, the ACCC has released a draft determination proposing to grant authorisation to application AA1000420 (ancillary services). The ACCC also granted interim authorisation for Council Solutions and the Participating Councils to enable them to commence the tender and contract negotiation process. Interim authorisation does not extend to entering into or giving effect to any waste services contracts.
46. The applications, public submissions received and draft determinations are available on the ACCC's Public Register: [collections](#) and [ancillary](#).

Other authorisations

47. It is common practice throughout Australia for groups of local councils to collaborate to jointly procure waste services.³² The objective of such collaboration is to reduce transaction costs, pool resources and expertise and achieve economies of scale.
48. The ACCC has authorised 30 arrangements of this type, concluding that these were likely to result in a net public benefit through improved quality of services at

³¹ Available: www.accc.gov.au/authorisationsregister

³² SA examples include procurements related to Barossa Regional Procurement Group, Adelaide Hills Region Waste Management Authority, Northern Adelaide Waste Management Authority and East Waste.

lower cost to the councils participating. Many of these have involved the procurement of waste-processing services.³³

49. The joint procurement process that the Applicants have proposed in their current application for authorisation is similar to a number of those which the ACCC has previously authorised.

Consultation

50. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
51. The ACCC invited submissions from a range of market participants, including waste and recycling service providers, industry agencies, government agencies/bodies, neighbouring councils and parties who provided a submission in response to the 2016 application.³⁴
52. The ACCC received submissions from 22 parties:
- Fifteen opposed the Proposed Conduct.
 - Each of the four Participating Councils lodged an individual submission in support; and South Australia's Environment Protection Agency and Local Government Association submitted that the proposed conduct could be beneficial.
 - Business SA, South Australia's Chamber of Commerce and Industry, provided comments about the Proposed Conduct but did not expressly support or oppose the application.
53. Those in support of the application submit that the Proposed Conduct will result in cost savings for the Participating Councils through increased service efficiencies and the administration of a single joint tender process; and promote competition for the supply of waste services, providing better value for money for ratepayers.
54. The interested parties opposed to the application submit that:
- Administrative cost savings are unlikely to be realised because all four councils will need to remain heavily involved in the tender process and the ongoing management of waste services in their respective council areas.
 - A tender process of the proposed size will exclude or deter a number of suppliers, particularly small businesses, from tendering.

³³ See at www.accc.gov.au/authorisationsregister: for example, AA1000422 Metropolitan Waste and Resource Recovery Group; A91596 and A91597 Loddon Mallee Waste and Resource Recovery Group; A91585 North East Waste and Resource Recovery Group; A91518 Southern Metropolitan Regional Council; A91483 Maitland City Council and others; A91431 Cities of Wannon, Joondalup and others; and A91408 Clarence City Council and others.

³⁴ A list of the parties consulted and the public submissions received is available from the ACCC public register: www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register and [here](#) .

- Awarding contracts of the proposed size to a small number of suppliers could result in fewer waste services providers in Adelaide, which would impact competition in the long term.
55. Two associations that count current processors for the Participating Councils among their members have expressed concerns to the ACCC. These are:
- The Waste & Recycling Association of SA (WRASA). WRASA lists organics processor Peats as one of its members. Peats is the subcontractor to another WRASA member, Solo Resource Recovery, for organics processing at City of Marion. Peats advised that it supported WRASA's submission.
 - The Waste & Recycling Industry Association of SA (WRISA). WRISA member Cleanaway is the contractor for waste disposal at the cities of Adelaide and Charles Sturt and the head contractor for recyclables processing at Port Adelaide Enfield, with Visy as the subcontractor. Cleanaway advised that it supported WRISA's submission.
56. In addition, the ACCC directly contacted and held discussions with parties including other councils in, and outside, South Australia and service suppliers about all three applications for authorisation. These discussions were initiated by the ACCC to inform the ACCC's understanding of the waste management industry and provide context to the Proposed Conduct. This included obtaining information about the outcomes of joint procurement processes the ACCC has previously authorised, included obtaining commercially sensitive information from some parties who have not identified themselves as having an interest in the current applications. Accordingly, records of these conversations have not been placed on the ACCC's public register.
57. The submissions by Council Solutions, Participating Councils and interested parties, and the information obtained through the ACCC's market inquiries, are considered as part of the ACCC's assessment of the application for authorisation below.
58. Public submissions received to date, any further public submissions received and other information which relates to the application for authorisation may be obtained from the [ACCC's Public Register](#).

ACCC assessment

59. Pursuant to subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation in relation to conduct unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public, and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the conduct.

Relevant areas of competition

60. The ACCC does not consider it necessary to precisely define the relevant areas of competition in assessing the Proposed Conduct.
61. For the purposes of best assessing the Proposed Conduct, the ACCC has focused on the following areas of competition:
- the supply of processing services for recyclables in metropolitan Adelaide, including receiving and processing of paper, cardboard, glass, plastic aluminium and steel from municipal and non-municipal sources
 - the supply of organic waste processing services in metropolitan Adelaide, including receiving and composting of garden and food waste from municipal and non-municipal sources, and
 - the supply of waste disposal services in metropolitan Adelaide including residual kerbside waste, bulk bin waste, 'hard waste' (bulky domestic waste), waste from parks and public area collections, contaminated recyclables, contaminated organics, waste delivered by residents under bulk drop off arrangements, commercial-and-industrial waste and construction-and-demolition waste.

Future with and without

62. To assist in its assessment of the Proposed Conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought, against those in the future without the conduct the subject of the authorisation.
63. The ACCC considers that, in the future without the Proposed Conduct, each council would likely procure services for the receipt and processing of recyclables, receipt and processing of organics and waste disposal services individually.³⁵
64. Where the Participating Councils individually procure these services, the timing of each procurement process is likely to vary because existing contracts are due to expire at different times. Participating Councils would be free to offer and award contracts of a length of their choice, to decide how few or how many service streams to include in a procurement process, and whether to use a request for tender or request for proposal.

³⁵ Some Adelaide Councils have previously obtained some waste services in partnership but the ACCC considers that the most appropriate comparison to the Proposed Conduct is individual procurement.

Public benefit

65. The Act does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (Tribunal) which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.³⁶

66. Having regard to the submissions of the Applicants and interested parties and information available to the ACCC, the ACCC has considered five claimed public benefits of the Proposed Conduct:

- stimulation of competition
- transaction cost savings
- improved efficiencies through combined contract management
- improved efficiency in the supply of waste processing and disposal services, and

67. improved environmental outcomes. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Stimulation of competition

68. Councils Solutions states that the aim of the proposed joint procurement is to provide the best possible benefits and service to the Participating Councils' ratepayers, through acquiring value for money waste management services.³⁷

69. Council Solutions submits that there are some fundamental tenets of collaborative procurement or 'bulk buying' that guide buyers to join together where possible. Aggregating service volumes and providing assurance of business over time via multi-year contracts drives lower costs and optimal value for money. Such opportunities are highly desirable to suppliers and attract significant competition.³⁸ There is clear evidence from the experience of other councils that collaboration can drive savings through improved purchasing power.³⁹

70. Council Solutions argues that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the processing service streams to compete and submit tenders.⁴⁰ The feedback provided by potential suppliers across the processing service streams to Council Solutions during consultation with market

³⁶ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

³⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.13, available: [ACCC Public Register](#).

³⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.30, available: [ACCC Public Register](#).

³⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.31, available: [ACCC Public Register](#).

⁴⁰ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.32, available: [ACCC Public Register](#).

participants indicated that the contract opportunities presented by the Proposed Conduct are attractive. The collaborative approach of the Participating Councils utilising a single RFT across all three processing service streams with standardised specifications, reduces the tendering workload for the potential suppliers and further encourages competition.⁴¹

71. In this respect, Council Solutions states that each of the Participating Councils has chosen to procure waste processing services collectively in the expectation of extracting a better deal in doing so.⁴²
72. The Participating Councils each provided submissions in support of the Proposed Conduct, stating that it supports best value procurement of waste management services aimed at achieving the best outcomes for their communities. The City of Charles Sturt and the City of Marion submit that joint procurement will improve their purchasing power.⁴³
73. WRASA submits that the proposed joint tender will skew bargaining power in favour of the Participating Councils through lessening of competition while establishing a contract that does not benefit the public and create forces that have been proven elsewhere to generate higher prices and reduce service quality and lower landfill diversion rates.⁴⁴
74. WRISA submits that a tender of the size proposed will significantly limit future competition and exclude market players who would likely bid for processing services from Participating Councils if offered through individual tenders. WRISA submits that, given these contracts are highly capital intensive and require significant upfront investment, the business risk alone will further exclude potential contractors from the process.⁴⁵
75. WRISA further submits that claims regarding improved purchasing power are overstated as economies of scale with respect to recycling and organics are already realised by large councils.⁴⁶
76. WRISA states that its members are more likely to tender if the work is not jointly tendered. WRISA submits that, while a supplier may be capable of supplying an individual council, it may not be in a position to supply all the Participating Councils. WRISA submits that the greatest stimulation of a market occurs when there is a dynamic market with a consistent pipeline of opportunities available to all or most contractors.⁴⁷
77. In response, Council Solutions submits that there are no small businesses providing recyclables, organics or residual waste processing or disposal to the Participating Councils or any of the Greater Adelaide Region Councils.⁴⁸

⁴¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.36, available: [ACCC Public Register](#).

⁴² Council Solutions submission, dated 12 July 2018, p. 24, available: [ACCC Public Register](#).

⁴³ City of Charles Sturt submission, dated 4 June 2018, p 1, and City of Marion submission, dated 4 June, p 2, available: [ACCC Public Register](#).

⁴⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 30, available: [ACCC Public Register](#).

⁴⁵ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 2, available: [ACCC Public Register](#).

⁴⁶ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 3, available: [ACCC Public Register](#).

⁴⁷ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 7, available: [ACCC Public Register](#).

⁴⁸ Council Solutions submission, dated 12 July 2018, p. 11, available: [ACCC Public Register](#).

78. The ACCC notes the Participating Councils' aim in establishing the proposed joint procurement process. That is, to provide value for money, improve waste management and deliver waste-reduction outcomes and environmental sustainability across their municipalities: to achieve environmental and economic benefits for their communities. The Participating Councils consider that aggregating their service volumes is likely to be desirable to potential suppliers and attract significant competition.
79. The ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils in contracting for the supply of processing services, as submitted by both Council Solutions and WRASA. All else being equal, this increased purchasing power is likely to be reflected in the terms and conditions of service agreements negotiated, resulting in lower prices and/or better quality of waste management services delivery to the Participating Councils ratepayers.
80. As discussed below, the ACCC also considers that the Proposed Conduct is likely to offer suppliers the opportunity of transaction cost savings and other efficiencies compared with tendering for and supplying these services to the Participating Councils individually. Further, the ACCC considers that the Proposed Conduct, by offering a guaranteed contract for a greater volumes of tonnes than any of the Participating Councils could offer individually, is likely to provide a greater incentive for the suppliers who typically win these contracts to compete for these contracts, while recognising that the tender opportunities may not be commercially attractive to *every* current or potential service provider.
81. Accordingly, the ACCC considers that the Proposed Conduct is likely to result in a public benefit by stimulating competition to provide waste processing and disposal services to the Participating Council, resulting in lower prices and/or better quality of waste management services delivery to the Participating Councils ratepayers.
82. The ACCC notes the concerns raised by some interested parties that the size of the proposed contracts may preclude some potential suppliers from bidding. This is considered in the ACCC's assessment about the impact on competition of the proposed joint tender as it relates to each of the processing service streams (recyclables, organics and residual waste), discussed directly below, and in the ACCC's assessment about the longer-term impact on competition for the supply of waste processing services, discussed in the ACCC's assessment of the potential public detriments of the Proposed Conduct.

Recyclables receipt and processing

83. Council Solutions submits that there are currently at least three potential suppliers who have the capacity to provide recyclables processing to the Participating Councils: NAWMA, SKM Recycling and Visy.⁴⁹
84. WRISA states that their members are more likely to tender if the work is not jointly tendered. WRISA submits that while a supplier may be capable of supplying an

⁴⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.33, available: [ACCC Public Register](#).

individual council, it may not be in a position to supply all the Participating Councils.⁵⁰

85. WRASA submits that the proposed joint tender may actually result in less competition as recycling companies are extremely hesitant to enter long term arrangements at present due to the China national sword policy, or if they do contract their terms are unfavourable for Councils. These unfavourable contract terms will not only include higher gate fee charges, but additionally transfer the risk of market volatility onto the Councils.⁵¹
86. In response, Council Solutions submits that the proposed contract structure, with a shorter initial term, supported by extension options, has been specifically designed to address this risk.⁵²
87. The ACCC notes the three potential suppliers identified by Council Solutions. The ACCC is not aware of any other suppliers currently supplying recyclables receipt and processing services to councils in Adelaide. While some of the identified suppliers, and other suppliers, also provide services to the commercial and industrial and construction and demolition sectors, the nature of the recyclable materials received from these sectors, and the facilities required to process them, differ from those for the receipt and processing of municipal recyclables. The ACCC understands that Adelaide's three largest recyclables processors are largely configured to handle municipal recyclables.⁵³
88. The ACCC considers that each of these suppliers would be capable of supplying services to the Participating Councils, particularly as Council Solutions may appoint up to two suppliers for the processing of recyclables. In this respect, as noted, potential suppliers will be asked to submit tender prices to receive and process materials in specific tonnage bands. Efficiencies in aggregating volumes would be expected to be reflected in the prices tendered for each tonnage band. Similarly, any preference to receive smaller volumes than the aggregate volumes of the Participating Councils are also able to be reflected in the prices tendered by potential suppliers for each tonnage band.
89. Accordingly, the Participating Councils will choose to appoint either a single supplier, or two suppliers, based on whether having one or two suppliers will achieve the best (most competitive) outcome for their ratepayers.
90. With respect to whether the proposed joint tender may attract other potential suppliers, as discussed at paragraphs 145 to 148, while not sufficient in and of itself to attract a new processing facility to Adelaide, aggregating the volumes of the Participating Councils is more likely to assist in encouraging a new processing facility to Adelaide than each council tendering individually. Aggregating volumes may also encourage greater investment in or use of better technologies at existing facilities.
91. However, the ACCC notes that, given the volume necessary to sustain a facility processing municipal recyclables, relative to the total amount of household

⁵⁰ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 7, available: [ACCC Public Register](#).

⁵¹ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, pp. 5 and -7, available: [ACCC Public Register](#).

⁵² Council Solutions submission, dated 12 July 2018, p. 9, available: [ACCC Public Register](#).

⁵³ See, for example, www.nawma.sa.gov.au/material/

recyclables generated in Adelaide, there is some question whether an additional supplier would be sustainable in any event.

92. An alternative approach for a potential new entrant would be to transport recyclables interstate for processing, as does occur in some cases, unless or until such time as the supplier has sufficient volume to sustain a processing facility in the state where the recyclables are received. For a potential new entrant adopting this approach, smaller, more frequent opportunities to win contracts for recyclables processing services may be more likely to encourage expansion into Adelaide. Although, the ACCC notes that under the Proposed Conduct, a new entrant adopting this strategy would still be able to win a proportion of the Participating Councils work if they were able to make the best offer for a proportion of the Participating Councils total volume.
93. With respect to the uncertainty created by the China national sword policy, the ACCC considers that the proposed contract structure, with a short initial term, three years, and extension options, and the ability to appoint one or two suppliers, strikes a balance in dealing with this issue.

Organics receipt and processing

94. Council Solutions submits that there are currently at least three potential suppliers in the market who have the capacity to provide Organics Processing to the Participating Councils, Jefferies, Peats and IWS. In addition, Council Solutions submits that DeLorean Energy has announced that a new bioenergy plant will be established in northern Adelaide and will accept organics for processing, offering an alternative processing solution and a new market entrant.⁵⁴
95. WRASA submits that the size of the proposed contract will favour large companies that can afford the bank guarantees and capital requirements, which WRASA estimates at over \$1 million.⁵⁵
96. SA Composters similarly submits that large tenders are out of the reach of small and medium size businesses and that the bank guarantee and capital requirement necessary to service the Participating Councils through a joint contract mean SA Composters will be unable to tender.⁵⁶
97. In response, Council Solutions submits that there are no small businesses providing organics processing to the Participating Councils or any of the Greater Adelaide Region Councils.⁵⁷
98. The ACCC notes the three potential suppliers identified by Council Solutions. The ACCC considers that these three suppliers would be capable of supplying services to the Participating Councils. Further, as with recyclables processing, the ACCC notes that Council Solutions may spread the total tonnage required to be processed between two suppliers if the tenders they submit support this being a more efficient and competitive way to structure the contract.
99. With respect to whether the proposed joint tender may attract other potential suppliers, as discussed at paragraphs 145 to 148, while not sufficient in and of

⁵⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.34, available: [ACCC Public Register](#).

⁵⁵ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 5, available: [ACCC Public Register](#).

⁵⁶ SA Composters submission, dated 24 July 2018, p. 1, available [ACCC Public Register](#).

⁵⁷ Council Solutions submission, dated 12 July 2018, p. 11, available: [ACCC Public Register](#).

itself to attract a new processing facility to Adelaide, aggregating the volumes of the Participating Councils is more likely to assist in encouraging a new processing facility to Adelaide than each council tendering individually.

Waste disposal

100. Council Solutions submits that in the Greater Adelaide Region there was over 700,000 tonnes of Residual Waste sent to landfill in 2015-16. Council Solutions states that the Participating Councils have a combined volume of just over 53,400 tonnes per annum, representing approximately 7.5 per cent of the Residual Waste tonnes available.⁵⁸
101. Council Solutions submits that there are currently at least seven potential suppliers in the market who have the capacity to provide residual processing to the Participating Councils, including several landfills owned and operated by Regional Subsidiaries. These are all traditional landfill sites with various pre-burial resource recovery systems.⁵⁹
102. Council Solutions states that, in addition, through consultation with the market, it is aware of another potential supplier, Adelaide Resource Recovery, intending to establish reprocessing infrastructure in the form of an energy-from-waste anaerobic digestion facility in northern Adelaide. Council Solutions states that this is subject to receiving enough tonnes to feed the facility, which will accept both organics and residual waste.⁶⁰
103. Council Solutions submits that the introduction of new technology requires availability and security of feedstock volumes to ensure viability. Whilst the Participating Councils' aggregated tonnes may not be sufficient to entirely underpin the establishment of new reprocessing infrastructure, the feedback provided by potential suppliers to Council Solutions during the consultation with the market indicated that the contract opportunity presented by the Proposed Conduct is attractive as it provides a pipeline of significant volumes over an extended period.⁶¹
104. WRASA submits that new entry and innovation is largely driven by small-to-medium, manageable and lower-risk contracts. WRASA submits that the reality is no further competition other than current suppliers in the market will submit tenders, which demonstrates its point that a joint tender is not required to attract new entrants to the market.⁶²
105. In response, Council Solutions submits that WRASA's submission implies that competition has a singular dimension. That of the number of parties tendering. Council Solutions contends that competition has additional dimensions, such as the quantity of supply on offer, and in this instance the joint tender process will

⁵⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.20, available: [ACCC Public Register](#).

⁵⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.35, available: [ACCC Public Register](#).

⁶⁰ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.35, available: [ACCC Public Register](#).

⁶¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.35, available: [ACCC Public Register](#).

⁶² Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 6, available: [ACCC Public Register](#).

trigger the quantity of supply aspect of competition between existing market participants.⁶³

106. In this respect, Council Solutions submits that combining the wastes from the three Participating Councils will present the market with a more attractive parcel of guaranteed waste supply than would be the case with the councils tendering for disposal services separately and at different times. On this basis, it is reasonable to expect that existing disposal service providers, and any new entrants that may wish to consider entering the market, will compete more vigorously for the waste on offer, thereby increasing competition.⁶⁴
107. As discussed at paragraph 79, the ACCC considers that the proposed joint tender is likely to increase the purchasing power of the Participating Councils, resulting in lower prices and/or better quality of waste management services delivery to the Participating Councils ratepayers. Offering a guaranteed contract for a greater volume of tonnes than any of the Participating Councils could offer individually is likely to provide a greater incentive for the suppliers who typically win these contracts to compete to supply the Participating Councils.

Transaction cost savings

108. Council Solutions submits that tendering processes for councils are detailed and involve considerable time, effort and resources for councils and tenderers.⁶⁵ Each council tender process would ordinarily have its own service specification, contract conditions, evaluation criteria, and information to be submitted by suppliers. Council Solutions submits that where multiple councils approach the market separately over a short period of time, the time and effort from the supply market to review and analyse the differences and customise and complete separate tender submissions is compounded.⁶⁶
109. Council Solutions submits that the proposed joint tender will significantly reduce this replication of work for the Participating Councils. Instead of the four Participating Councils each developing their own sets of tender documents, Council Solutions will create one set. Whilst some of the documents, for example the specification, will need to be separate for each processing service stream (recyclables, organics and residual waste), a number will be used in the RFT for all three processing service streams, reducing replication further. While the Participating Councils will contribute to and endorse these documents, the centralisation of the development and drafting will reduce the time and resources to be contributed by the Participating Councils.⁶⁷
110. Council Solutions submits that similarly, in a collaborative procurement process, there is a reduction in time, cost and resources for the potential suppliers in responding to one tender with consistent return schedules. Under the joint procurement process, a potential supplier will only need to complete the tender return schedules once and only for the processing service streams they elect to tender for, reducing the replication further. Additionally, as pricing will be

⁶³ Council Solutions submission, dated 27 July 2018, p 8, available: [ACCC Public Register](#).

⁶⁴ Council Solutions submission, dated 27 July 2018, p 8, available: [ACCC Public Register](#).

⁶⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.22, available: [ACCC Public Register](#).

⁶⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.23, available: [ACCC Public Register](#).

⁶⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.23, available: [ACCC Public Register](#).

requested in pre-set tonnage brackets, potential suppliers will not need to prepare individual pricing for each Participating Council, further streamlining the effort required.⁶⁸

111. Council Solutions also states that technical, legal and probity advice requirements will be sourced and managed through Council Solutions, with the costs shared by the Participating Councils. Without the Proposed Conduct, each Participating Council would be required to engage and pay for their own technical, legal and probity advice, and the advice required would likely be similar for each Participating Council.⁶⁹
112. For potential tenderers, Council Solutions submits that in preparing tender responses they will need to calculate aspects of pricing/costing that may differ between the Participating Councils, however, the 16 other tender return schedules will only need to be completed once rather than four times.⁷⁰
113. Business SA submits that the joint tender process should result in transaction cost savings by reducing the replication of work required by the Participating Councils and allowing them to jointly obtain technical, legal and probity advice.⁷¹
114. WRASA and Jeffries submit that the Proposed Conduct will not result in tender process cost savings because the involvement of Council Solutions adds an extra layer of bureaucracy.⁷²
115. WRASA and WRISA submit that each step of the tender process, from tender specification to contract award, will still need to be reviewed and agreed by each council through their independent internal review processes. WRASA therefore considers that, because individual councils are required to negotiate and agree with other councils and Council Solutions, the work involved is greater and more complex than current practice, thereby increasing coordination costs.⁷³
116. WRASA submits that for potential suppliers a joint tender process only saves approximately 5% of tender preparation time, as approximately 95% of the time invested is on operational research, costings and pricing.⁷⁴
117. WRISA submits that the work involved in considering tenders will not change and is simply being transferred from the Participating Councils to Council Solutions.⁷⁵
118. The ACCC has received information in the course of this review and in previous reviews, from waste-services procurers and providers in and outside SA, supporting the view that transaction cost savings can result from collaborative procurement by councils: by facilitating the reduction of unnecessary duplication of costs incurred by councils and/or suppliers to conduct or participate in individual tender processes.

⁶⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.24, available: [ACCC Public Register](#).

⁶⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.25, available: [ACCC Public Register](#).

⁷⁰ Council Solutions submission, dated 12 July 2018, p. 7, available: [ACCC Public Register](#).

⁷¹ Business SA submission, dated June 2018, p. 5, available: [ACCC Public Register](#).

⁷² Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 2, Jefferies Group submission, dated 14 June 2018, p. 1, available: [ACCC Public Register](#).

⁷³ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 2, Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 6, available: [ACCC Public Register](#).

⁷⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 31, available: [ACCC Public Register](#).

⁷⁵ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 5, available: [ACCC Public Register](#).

119. In this case, the ACCC considers that the proposed conduct is likely to reduce or remove some duplication by Participating Councils of tender-related tasks such as tender documentation preparation, briefing sessions for prospective tenderers and contract preparation. The greater involvement of Council Solutions in the coordination and management of the tender process increases the potential for the realisation of such cost savings.
120. Similarly, a single tender process is likely to reduce duplication of work required by tenderers.
121. The ACCC notes that there will be some costs in the Participating Councils coordinating with each other.
122. However, overall, the ACCC considers that, relative to each Participating Council separately conducting its own procurement process, the Proposed Conduct is likely to result in a public benefit in the form of transaction cost savings, principally for councils but also for suppliers.

Improved efficiencies through combined contract management

123. Council Solutions submits that contract management tasks include:
- benefits realisation reporting, data analysis and feedback and identification of changes that can improve efficiencies – to be undertaken by Council Solutions
 - compliance with contractual requirements such as safety inductions, license and accreditation updates, insurance certificates and any other objective compliance measure – to be undertaken by Council Solutions with Participating Councils contributing as required
 - conformance, ensuring that both parties adhere to their requirements under the contract including monitoring KPIs, data review and certification, pricing reviews and document management – to be undertaken by Council Solutions, and
 - ensuring that services are delivered, which is limited in a processing services stream contract and includes the initial customer interface – to be undertaken by the Participating Councils with support from Council Solutions.⁷⁶
124. Council Solutions submits that with designated contract management provided by it across the four councils, duplicated effort associated with these tasks will be removed and a dedicated focus will be applied in extracting maximum value and performance from the contract.⁷⁷

⁷⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.26, available: [ACCC Public Register](#).

⁷⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.26, available: [ACCC Public Register](#).

125. In particular, Council Solutions submits that good data, consistent across the four councils, will assist in policy and strategy development, monitoring and evaluation of service delivery and investment decisions.⁷⁸
126. WRASA submits that past experience shows that individual Councils do not shed staff or reduce administration costs when they participate in a joint tender process. Administration is simply duplicated and the individual Council staff spend further time managing the joint tender administration. In short, another layer of administration is added to the detriment of ratepayers.⁷⁹
127. WRASA further submits that contract management tasks Council Solutions will be responsible for, as summarised at paragraph 123 above, only account for around 5% of the total time invested in contract management.⁸⁰
128. WRISA submits that once the contract is awarded administration will fall back to the Participating Councils and the role of Council Solutions would add further complexity and may increase the administrative burden.⁸¹
129. The ACCC notes that most of the day-to-day operation contract management would be undertaken by each participating council, although in the case of processing service contracts this primarily involves customer interface which is more limited than in relation to collections contracts.
130. The ACCC considers that there is some potential for cost savings to be realised through Council Solutions undertaking some contract management tasks in relation to issues common to the four councils. In particular, the proposed conduct is likely to reduce or remove some duplication by Participating Councils of contract management tasks such as ensuring compliance and conformance with contractual requirements.
131. Overall, the ACCC considers that there is likely to be some public benefit resulting from likely efficiencies from combined contract management.
132. The ACCC considers that centrally coordinated data analysis and review also has the potential to assist in policy and strategy development and monitoring and evaluation of service delivery to the extent that the issues around operational delivery being analysed are common across the four councils. However, based on the information provided, the extent of the commonality across the four councils, and accordingly the utility of aggregated data, is unclear. Therefore, based on the information currently before it, the ACCC is not in a position to conclude that it is likely that this data sharing will result in a material public benefit.

Improved efficiencies in the supply of waste processing and disposal services

133. Council Solutions submits under the Proposed Conduct, the combined volume of the Participating Councils in each processing service stream will provide a platform for the Participating Councils to seek to unlock additional service improvements and cost savings from potential suppliers. These service

⁷⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.27, available: [ACCC Public Register](#).

⁷⁹ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 31, available: [ACCC Public Register](#).

⁸⁰ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 14, available: [ACCC Public Register](#).

⁸¹ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 3, available: [ACCC Public Register](#).

improvements can establish a new 'benchmark' and lift the service standards and outcomes across all councils.⁸²

134. Council Solutions states that the proposed joint tender could incentivise capital investment from a new entrant or an existing supplier because the surety of a strong and significant future cash flow could provide the certainty for capital investments that may not otherwise be viable.⁸³
135. Council Solutions submits that the volumes represented by the Participating Councils are substantial, with both the recyclables processing tonnes, at 30,200, and organics processing tonnes, starting at 31,500 and potentially increasing to 47,700, represent a significant percentage of the nominated average processing capacity for the infrastructure currently in use. The Proposed Conduct will provide potential suppliers with access to a significant pipeline of aggregated volumes underpinned by a contract commitment of up to 10 years. This represents an opportunity to maximise as far as possible the efficient use of expensive infrastructure.⁸⁴ Council Solutions argues that this also provides a level of support for infrastructure investment that would not be provided if the Participating Councils went to the market separately.⁸⁵
136. In respect of residual waste processing, Council Solutions submits that the reprocessing infrastructure required to provide a beneficial processing solution, prior to the disposal of the un-recoverable waste to landfill, is similarly a high capital cost, between \$30 million and \$100 million, and requires a greater level of feedstock to realise its average processing capacity of 100,000 tonnes per annum. As such, Council Solutions states that it is unlikely a purpose-built facility will be proposed as a response to Participating Councils procurement process. However, Council Solutions submits that a potential supplier may consider the Participating Councils' Residual Waste of 28,300 tonnes per annum, and potentially increasing to 53,400 tonnes per annum, to be an opportunity to build their in-feed supply and improve the economics of their operation. This would provide a public benefit to existing customers as efficiencies increase and operating costs reduce, and a gate price for the Participating Councils that supports the use of alternative technology.⁸⁶
137. The LGASA and City of Charles Sturt submit that collective procurement processes may help to provide the critical mass necessary to secure investment in new technology and infrastructure.⁸⁷
138. The EPA SA similarly submits that the proposed joint tender has the potential to result in better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing

⁸² Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.31, available: [ACCC Public Register](#).

⁸³ Council Solutions submission, dated 12 July 2018, p.19, available [ACCC Public Register](#).

⁸⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.32, available: [ACCC Public Register](#).

⁸⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.39, available: [ACCC Public Register](#).

⁸⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.32, available: [ACCC Public Register](#).

⁸⁷ Local Government Association of South Australia submission dated 6 June 2018, p. 3, City of Charles Sturt submission, dated 4 June 2018, p. 2, available: [ACCC Public Register](#).

recyclables, organics and residual waste and supporting innovation within the resource recovery sector through economies of scale.⁸⁸

139. WRASA submits that the geographic location of the Participating Councils has forced Council Solutions to provide a convoluted qualification around two receival points (centroids) which means tendering facilities cannot be certain of the tonnes to be received and must provide a collection of prices for all possible combinations of potential Councils.⁸⁹
140. WRASA submits that further complexity arises because, with respect to ancillary services (bulk bins, hard waste and street litter), Council Solutions can elect to use the successful collections contractor to supply processing and disposal services or use the suppliers appointed to process/dispose of recyclables, organics and residual waste. This means that tenders for the supply of processing services will have to tender on the basis of both scenarios.⁹⁰
141. In response, Council Solutions states that the tender documents will clearly set out the tonnage of each waste stream generated by each Participating Council and invite tenderers to submit tender prices to receive and process wastes in specific tonnage bands from their nominated facility location.⁹¹
142. Further, Council Solutions submits that the proposed joint tenders have been structured in this way for two reasons. First, to maximise competition for the supply of ancillary processing services by allowing suppliers who do not have processing capabilities to compete for this work. Second, the processing contracts will be substantial contracts, likely secured on favourable terms, which could then also be applied to waste collected under the ancillary collection contracts.⁹²
143. In respect of recyclables processing, WRASA submits that the proposed joint tender commits all the Participating Councils for three years initially in an environment where factors are changing dramatically each week and no resolution to the industry crisis arising from the China national sword policy has been found.⁹³ WRASA submits that the proposed contract is both too long to deal with this issue and not long enough to incentivise new investment.⁹⁴
144. In response, Council Solutions submits that it is cognisant of the risk arising from the China national sword policy and is proposing an initial term of three years to mitigate this risk for both the councils and potential suppliers.⁹⁵ Further, the proposed term has been determined in consultation with relevant processing companies and takes into account the agreed undesirability of fixing a long-term contract in the current circumstances.⁹⁶
145. The ACCC recognises that the aggregation of recyclables or organics volumes can improve efficiency by helping the successful supplier or suppliers of these services to achieve or maintain efficient scale. Aggregation can facilitate lower

⁸⁸ Environmental Protection Authority South Australia submission, dated 22 June 2018, p. 1, available [ACCC Public Register](#).

⁸⁹ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 12, available: [ACCC Public Register](#).

⁹⁰ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 13, available: [ACCC Public Register](#).

⁹¹ Council Solutions submission, dated 12 July 2018, p.21, available [ACCC Public Register](#).

⁹² Council Solutions submission, dated 27 July 2018, p. 17, available: [ACCC Public Register](#).

⁹³ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.1, available: [ACCC Public Register](#).

⁹⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.8, available: [ACCC Public Register](#).

⁹⁵ Council Solutions submission, dated 12 July 2018, p.33, available: [ACCC Public Register](#).

⁹⁶ Council Solutions submission, dated 27 July 2018, p. 11, available: [ACCC Public Register](#).

average costs and reduce the risk associated with investment in new processing technology or facilities.

146. In this case, based on the information available to the ACCC, the estimated volume of recyclables from the Participating Councils, around 30,000 tonnes, represents a significant proportion of the tonnes required to sustain a medium sized facility in Adelaide. The successful supplier or suppliers of recycling services to the Participating Councils would also be likely to have access to other municipal volumes if it has, or can win, contracts to supply councils that do not participate in the Council Solutions arrangement. The ACCC considers that the aggregation of Participating Council recyclable volumes under the Proposed Conduct is likely to result in some public benefits in the form of improved efficiencies in the receipt and processing of recyclables.
147. Similarly, in relation to organics, based on information available to the ACCC, the estimated volume of the Participating Councils, 31,500 to 47,700 tonnes, represents a significant proportion of the estimated tonnes required to sustain a medium sized facility in Adelaide. Again, the successful supplier or suppliers of organic services to the Participating Councils would also be likely to have access other municipal volumes if it has contracts to supply councils that do not participate in the Council Solutions arrangement, and potentially access to non-municipal volumes of organics. The ACCC considers that the aggregation of Participating Council organic volumes under the Proposed Conduct is likely to result in some public benefits in the form of small improved efficiencies in the receipt and processing of organics.
148. In relation to waste disposal, as noted by Council Solutions, the Participating Councils estimated volumes are unlikely to be sufficient to incentivise investment in a new or existing facility. These volumes may support improved efficiencies in the operation of a new facility. However, the ACCC does not presently have sufficient information to conclude that this is likely to be the case.
149. The ACCC notes the concerns raised by WRASA about the length of the proposed contract for processing of recyclables. That is, that the proposed three year initial contract is both too long to mitigate risk associated with the China national sword policy and not long enough to incentivise new investment. The ACCC considers that the proposed contract structure, with a short initial term of three years, and extension options, strikes a balance in dealing with these competing issues.
150. Similarly, in relation to uncertainty about actual volumes that service providers will be required to process, the ACCC considers that inviting tenderers to submit tender prices to receive and process wastes in specific tonnage bands deals with this issue.

Improved environmental outcomes

151. Council Solutions notes that where contamination is managed, diversion will be increased and there will be less waste going to landfill. Council Solutions submits that the Participating Councils will combine their educational materials which will make messaging more consistent, strategic and affordable through sharing the preparation, delivery and costs. Council Solutions submits that consistent education, reinforcement and working with all stakeholders will result in less

waste created and less waste going to landfill, improving environmental outcomes, which will be of a benefit to the whole of South Australia.⁹⁷

152. Council Solutions also submits that as there will be one waste collection services contractor providing services for all four Participating Councils, initiatives that target known sources of high contamination, at neighbourhood, street or household level, will be more effective and based on a consistent data framework.⁹⁸
153. The EPA SA submits that the Proposed Conduct has the potential to result in improved resource recovery by better informing ratepayers through combined education and better targeted and managed communication strategies.⁹⁹
154. WRASA submits that councils nationwide can and do already share educational resources without the need for a joint collection tender and that there is no evidence that the Participating Councils jointly tendering is likely to produce better environmental outcomes, especially as multiple processing facilities are likely to be used.¹⁰⁰
155. WRISA and AORA submit that individual councils are able to best tailor education programs to the unique requirements of their municipality.¹⁰¹
156. AORA submits that the Participating Councils cover different areas of Adelaide with different issues and materials which will be more difficult to manage through a single education program.¹⁰²
157. In its draft determinations about Council Solutions kerbside collections and ancillary services applications for authorisation (AA1000414 and AA1000420) the ACCC considered that a combined education program is likely to facilitate improvements in both design and delivery of community education programs across the Participating Councils, resulting in a public benefit in the form of landfill diversion. However, having regard to the Participating Councils' ability to undertake their own education programs, the ACCC concluded that a combined education program would result in a small public benefit in the form of improved environmental outcomes.
158. The ACCC considers that the proposed joint tender for waste processing services may support the adoption of combined education programs and associated improvements in environmental outcomes across the Participating Councils.
159. However, unlike collection services, waste processing does not involve any direct interface with the community. Accordingly, the ACCC considers that likely improvements in environmental outcomes resulting from the adoption of coordinated education programs is primarily supported by the Participating Councils' proposed joint procurement of kerbside and ancillary collection services.

⁹⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.29, available: [ACCC Public Register](#).

⁹⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.28, available: [ACCC Public Register](#).

⁹⁹ Environmental Protection Authority South Australia submission, dated 22 June 2018, p. 1, available: [ACCC Public Register](#).

¹⁰⁰ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.4, available: [ACCC Public Register](#).

¹⁰¹ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 6, Australian Organics Recycling Association submission, dated 16 August 2018, p. 2, available: [ACCC Public Register](#).

¹⁰² Australian Organics Recycling Association submission, dated 16 August 2018, p. 2, available: [ACCC Public Register](#).

ACCC conclusion on public benefits

160. The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide waste processing services to the Participating Councils.
161. The ACCC also considers that the Proposed Conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting its own procurement process.
162. The ACCC further considers that the Proposed Conduct is likely to generate public benefits through improvements in:
- efficiency in managing waste processing services contracts, and
 - efficiency in the receipt and processing of recyclables and organics.

Public detriment

163. The Act does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as :

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁰³

164. Some interested parties have submitted that the proposed Conduct will result in a longer-term reduction in competition for the supply of recyclables and organics waste processing services to the Participating Councils and non-participating councils.
165. One party has submitted that the Proposed Conduct may result in recyclables being processed outside of SA, which may impact the operation of the SA beverage container deposit scheme.
166. The ACCC's assessment of these potential public detriments follows.

Longer-term reduction in competition for the supply of recyclables and organics waste processing services to the Participating Councils and non-participating councils

167. WRASA, WRISA and Jefferies submit that if the Council Solutions application is approved and awarded to one contractor as intended, approximately 75% of councils in Adelaide will be closed to tenders for 8 to 10 years, due to existing contracts in place with NAWMA (three councils) and East Waste (seven councils).¹⁰⁴

¹⁰³ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

¹⁰⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 27, Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 4, Jefferies Group submission, dated 14 June 2018, p. 1, available: [ACCC Public Register](#).

168. WRISA also argues that the winning tenderer would have an almost unassailable lead in capturing market share.¹⁰⁵
169. Similarly, Business SA submits that the unsuccessful tenderer(s) will be unable to bid for close to one third of the Greater Adelaide Region's recyclable tonnes for up to 10 years.¹⁰⁶
170. The ACCC has considered whether the Proposed Conduct may, in the longer term, reduce the number of suppliers of Processing Services in Adelaide.
171. This may be because:
- new suppliers are more likely to enter the market if there are more frequent, incremental (essentially smaller-scale) opportunities to do so than afforded by the Proposed Conduct, and
 - potential suppliers that do not win the joint work of the four Participating Councils exit the market.
172. As discussed above, in relation to the processing of recyclables and organics, there are only currently a small number of suppliers providing services to municipal councils. This, at least in part, reflects the tonnages necessary to economically operate a processing facility.
173. Particularly in relation to recyclables, the facilities are usually configured for the receipt of municipal recyclables. The ACCC understands that, in relation to organics, there is more commonality between waste generated by household and commercial and industrial customers and therefore greater capacity for the processing facility to be configured to accept both.
174. As noted above in relation to both recyclables and organics processing, there is some question whether an additional supplier would be sustainable.
175. WRASA, WRISA and Jefferies submit that, due to existing long term contracts entered into by other groups of councils, there are only limited council contracts that are currently contestable.
176. The ACCC considers that all the Adelaide councils are likely to be contestable over the longer term (some are more imminently and / or readily contestable than others). That is, it is open to any of these councils to explore the full range of options for the provision of processing services, including open tender for the provision of these services. In this respect, the four councils represent a significant part of, but ultimately only a subset of, opportunities in the wider area of competition.
177. Further, while existing arrangements other councils have in place is relevant context to the ACCC's assessment of the impact on competition of the Proposed Conduct, the ACCC must assess the impact on competition of the four Participating Councils collectively acquiring processing services. In this respect, the Participating Councils represent around a quarter of rateable properties in the Greater Adelaide Region.

¹⁰⁵ Waste & Recycling Industry Association of South Australia submission, dated 15 June 2018, p. 7, available: [ACCC Public Register](#).

¹⁰⁶ Business SA submission, dated June 2018, p. 8, available: [ACCC Public Register](#).

178. Having regard to

- the small number of existing suppliers providing recyclables and organics processing to Adelaide Councils (three in each service stream)
- the volume of waste captured by the proposed joint tender and the volume of waste from other sources and
- the fact that Council Solutions will be likely to appoint two suppliers for each service stream if the tenders suppliers submit support this being a more efficient and competitive way to structure the contract

the ACCC considers that firms that do not win the work of the Participating Councils will likely remain active in the provision of waste processing services in Adelaide, rather than exiting the market.

179. With respect to potential new entrants, the impact on competition of the Proposed Conduct is less clear. For a supplier looking to establish a processing facility in Adelaide, the volume offered by the Participating Councils is likely to make doing so a more viable proposition than if each Participating Council tendered separately. For a potential supplier seeking to grow incrementally, and transport waste out of state for processing, smaller, more frequent opportunities to tender may be more attractive.

180. On balance, the ACCC is satisfied that the Proposed Conduct is unlikely to significantly impact longer-term competition for the supply of waste processing services to the Participating Councils and non-participating councils.

Operation of the SA beverage container deposit scheme

181. Scout Recycling Centres South Australia (Scouts Recycling Centres) submits that if a contract for receipt and processing of recyclables is awarded to a supplier that does not have an MRF in SA this may have an adverse impact on SA's container deposit scheme.¹⁰⁷

182. Under SA's container deposit scheme beverage containers (cans and bottles) can be returned by the public to collection depots in exchange for a 10 cent refund. The collection depots then deliver the containers to 'super collectors' acting on behalf of the beverage manufacturers for reimbursement of the refund and a handling fee. The handling fee is the income source for the collection depots.

183. Scout Recycling Centres, which is owned by The Scout Association of Australia (SA Branch), operates collection depots in SA. Scouts Recycling Centres submits that last financial year they earned \$2.1 million as a result of operating these collection depots.

184. Scouts Recycling Centres submits that if the recyclables contract was awarded to a processor that does not have a MRF in SA, the beverage containers the processor received would be sent interstate for processing and thereby, the containers would be lost to SA. Scouts Recycling Centres states that the loss of these containers would be a loss of income for collection depots.

¹⁰⁷ Scouts Recycling Centres South Australia submission, dated 8 August 2018, p. 1, available: [ACCC Public Register](#).

185. Scouts Recycling Centres also submits that this could potentially undermine the container deposit scheme, forcing out of business the 124 collection depots in SA, including small family run collection depots and collection depots operated by the not for profit sector such as the Surf Lifesaving Association, Guide Dogs and Salvation Army which rely on revenue derived from the operation of collection depots.¹⁰⁸
186. The ACCC considers that the SA's container deposit scheme plays an important role in reducing beverage container litter and promoting the recovery and recycling of beverage containers in South Australia and thereby generates a public benefit.¹⁰⁹ However, which processor is responsible for recycling the beverage containers is not material to the realisation of this public benefit.
187. The ACCC notes that the three potential suppliers identified by Council Solutions currently supplying recyclables receipt and processing facilities to Adelaide councils each have, or are in the process of building, MRFs in Adelaide. As discussed at paragraph 146, the volume of recyclables generated by the Participating Councils is unlikely to be sufficient, in and of itself, to attract a new processing facility to Adelaide. However, as noted at paragraph 92, an alternative approach for a potential new entrant with an MRF in another state would be to transport recyclables interstate for processing unless or until such time as the supplier had sufficient volume, for examples through winning other contracts, to sustain a processing facility in Adelaide. This would result in some beverage containers captured by the SA container deposit scheme being lost to SA.
188. The ACCC also notes that it would be open to the Participating Councils, if tendering individually for the supply of recyclables receipt and processing services, to appoint suppliers who transported recyclables interstate for processing. Given the volumes necessary to attract a new processing facility to Adelaide, the ACCC considers that it is more likely that the Participating Councils tendering individually would successfully attract operators who would transport the recyclables interstate for processing than would the joint tender.
189. In any event, the ACCC understands that containers collected from households through kerbside collection is not the primary source of containers received by collection depots. The value of the containers (the 10 cent refund) means that the containers are typically delivered directly to collection depots by the public rather than disposed of in kerbside recycling bins for the council appointed waste collector to collect and deliver to a recyclables processing facility.
190. Accordingly, the ACCC does not consider that the beverage containers collected from kerbside collection for the Participating Councils being transported interstate would be likely to undermine the operation of the SA container deposit scheme. Nor would it undermine the environmental benefits of the scheme (reducing beverage container litter and promoting the recovery and recycling of beverage containers). Once collected, where the containers are processed does not impact the realisation of these public benefits.
191. Any diversion of containers interstate for processing would potentially impact the revenue available to collection depots in South Australia as submitted by Scouts Recycling Centres. However, for the reasons discussed above, the ACCC does not consider that beverage containers covered by the scheme are more likely to

¹⁰⁸ Scouts Recycling Centres South Australia submission, dated 8 August 2018, p. 1, available: [ACCC Public Register](#).

¹⁰⁹ ACCC Determination, authorisation AA1000415, Recyclers of South Australia Inc, 29 August 2018, p. 18.

be processed outside of SA if the Participating Councils jointly tender for recyclables receipt and processing services than if they tendered separately for these services.

ACCC conclusion on public detriments

192. The ACCC consider that the Proposed Conduct is unlikely to result in significant public detriment from reducing competition for the supply of processing and disposal services to the Participating Councils or other councils in Adelaide.

Balance of public benefit and detriment

193. Council Solutions and the Participating Councils are seeking to conduct a joint procurement process to appoint suppliers to the Participating Councils for the receiving and processing of waste service streams. The Participating Councils' aim in jointly procuring Processing Services is to provide value for money for their ratepayers, improve waste management and reduce waste, and to achieve environmental and economic benefits for their communities.

194. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the Proposed Conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

195. The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide waste processing services to the Participating Councils.

196. The ACCC also considers that the proposed conduct is likely to generate public benefits in the form of transaction cost savings compared with each participating council conducting its own procurement process.

197. The ACCC further considers that the proposed conduct is likely to generate public benefits through improvements in efficiency in the receipt and processing of recyclables and organics.

198. The ACCC is satisfied that the Proposed Conduct is unlikely to result in significant public detriment from reducing competition for the supply waste processing and disposal services to the Participating Councils or other councils in Adelaide.

199. For the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition that would be likely to result. That is, based on the information before it, the ACCC considers that the Participating Councils jointly procuring Processing Services will contribute to the achievement of their aims on behalf of their communities, as it is likely to result in lower prices and/or improved quality of waste management services for their ratepayers.

200. Accordingly, the ACCC proposes to grant authorisation.

Length of authorisation

201. The Act allows the ACCC to grant authorisation for a limited period of time.¹¹⁰ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
202. In this instance, the Applicants seek authorisation for around 13 years (until 30 June 2031) to allow for the tender process, existing contracts to conclude and, where applicable, new infrastructure to be commissioned, contract commencement in May 2020, with a rolling start as existing contracts expire, and a contract length of up to 10 years.¹¹¹
203. As noted in Table 2, Council Solutions has proposed various lengths for initial contract terms and extension options. These are related to the natures of the different streams. In each case the total of proposed initial terms and extensions totals 10 years.
204. Having regard to the ACCC's conclusions about the public benefits and public detriments likely to result from the Proposed Conduct, and the terms of the contracts the Applicants propose to enter into, the ACCC proposes to grant authorisation until 30 June 2031.

Draft determination

The application

205. On 14 March 2018, Council Solutions Regional Authority (Council Solutions), on behalf of itself, the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion and Port Adelaide Enfield (the **Participating Councils**) (together, the **Applicants**) lodged application for authorisation AA1000414 with the ACCC.
206. The Applicants seek authorisation for:
- Council Solutions, on behalf of the Participating Councils, to
 - i. conduct a collaborative competitive tender process for waste services, comprising the:
 1. receiving and processing of recyclables
 2. receiving and processing of organics and
 3. receiving and processing or disposal of residual waste(together, Processing Services).¹¹²

¹¹⁰ Subsection 91(1).

¹¹¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 14, available: [ACCC Public Register](#).

¹¹² Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 7, available: [ACCC Public Register](#).

- Council Solutions to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework
- the Participating Councils to individually enter into separate contracts for each of the Processing Services, each on a joint and not several basis, with the successful supplier/s, and
- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils.¹¹³

207. Subsection 90A(1) of the CCA requires that, before determining an application for authorisation, the ACCC shall prepare a draft determination.

The net public benefit test

208. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to subsections 90(7) and 90(8) of the Act, that in all the circumstances the Proposed Conduct for which authorisation is sought would result or be likely to result in a public benefit that would outweigh any detriment to the public that would result or be likely to result from the Proposed Conduct.

Conduct which the ACCC proposes to authorise

209. The ACCC proposes to grant authorisation AA1000419 to the Applicants for the conduct outlined at paragraph 206 of this Draft Determination, which may contain a cartel provision within the meaning of Division 1 of Part IV of the Act or may substantially lessen competition within the meaning of section 45 of the Act.

210. The ACCC proposes to grant authorisation until 30 June 2031.

211. This draft determination is made on 14 September 2018.

Interim authorisation

The request for interim authorisation

212. At the time of lodging the application, the Applicants requested that interim authorisation be considered at the time that the ACCC issues a draft determination in respect of the substantive application. At the time of lodging the Application, the Applicants advised that interim authorisation was being sought because they wished to approach the market as soon as possible.

213. In support of their request, the Applicants submit that a delay in publishing the RFT will impact on the timelines for running the tender process and will have a negative impact on the time allowed for the market to respond, the tenders to be

¹¹³ Council Solutions submission in support of application for authorisation, dated 2 May 2018, p. 1, available: [ACCC Public Register](#).

evaluated and contracts to be negotiated, potentially reducing the value of the collaboration.¹¹⁴

214. The Applicants further submit that allowing them to proceed in a timely manner, ensuring that the potential suppliers have the greatest opportunity to respond to and participate in the tender, could have the effect of increasing competition, ensuring that the full public benefits of the proposed conduct are realised.¹¹⁵
215. Interim authorisation is not sought to enter into contracts for the processing service streams before the ACCC issues a final determination in relation to this application. Consequently, the Applicants submit that granting interim authorisation will not affect current arrangements in place with each Participating Council and interim authorisation will not affect competition in any relevant market.¹¹⁶

Consultation

216. No submissions were received commenting directly on the request for interim authorisation. As noted in this draft determination, a number of submissions were received both in support of, and objecting to, the substantive application for authorisation.

ACCC assessment

217. The ACCC has decided to grant interim authorisation under subsection 91(2) of the CCA in respect of the application for authorisation AA1000419 for Council Solutions, on behalf of the Participating Councils, to
- conduct a collaborative competitive tender process to jointly procure processing of waste services comprising:
 - i. receiving and processing of recyclables
 - ii. receiving and processing of organics, and
 - iii. receiving and processing or disposal of residual waste
 - evaluate the responses in collaboration with the Participating Councils, and
 - negotiate on behalf of the Participating Councils the contractual framework.

218. Interim authorisation is not sought nor granted to enter into or give effect to any waste service processing contracts.

219. In granting interim authorisation, the ACCC has taken into account the following factors:

¹¹⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 40, available: [ACCC Public Register](#).

¹¹⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 40, available: [ACCC Public Register](#).

¹¹⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 40, available: [ACCC Public Register](#).

- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. The existing waste contracts will continue until the ACCC makes its final determination.
- Interim authorisation is not sought to enter into or give effect to any contracts. Contracts will only be entered into or given effect to if the ACCC decides to grant final authorisation.
- The Applicants' intention, following a tender open period of six to eight weeks and tender evaluation period, is to award the contracts in 2019 to allow nine to 12 months for existing contracts to conclude and, where applicable, new infrastructure to be commissioned before contract commencement from May 2020. Granting interim authorisation will support the Applicants in seeking to have a contract in place within this timeframe.
- Conditions in the relevant markets are unlikely to vary significantly depending on whether or not interim authorisation is granted.

220. Interim authorisation takes effect immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Next steps

221. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.