



# Determination

Application for authorisation AA1000568  
lodged by Surf Coast Shire Council, Golden Plains Shire Council and the  
Borough of Queenscliffe  
in respect of joint procurement of waste collection services  
Authorisation number: AA1000568

10 November 2021

Commissioners: Keogh  
Rickard  
Brakey  
Ridgeway

## Summary

The ACCC has decided to grant authorisation to enable Surf Coast Shire Council, Golden Plains Shire Council and the Borough of Queenscliffe (the Applicants) to collectively procure waste and resource recovery collection services.

The ACCC considers the joint tendering, procurement and management of waste collection services is likely to result in public benefits in the form of transaction cost savings, increased competition for service contracts with more joint tender participants than would be the case if Councils sought tenders on an individual basis, and improved efficiencies.

The ACCC considers that the conduct is likely to result in limited public detriment. All potential waste collection providers will continue to have opportunities to compete to tender to supply to one or more of the Applicants.

Overall, the ACCC is satisfied that the conduct is likely to result in a public benefit that would outweigh the minimal likely public detriment.

Due to the need for long term contracts to provide contractors with a sufficient return to underwrite investment, the ACCC has decided to grant authorisation until 31 May 2033.

### 1. The application for authorisation

- 1.1. On 27 August 2021, Surf Coast Shire Council, Golden Plains Shire Council and the Borough of Queenscliffe (the **Applicants**) lodged application for authorisation AA1000568 with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants seek authorisation to collectively procure waste collection services for 11 years and 6 months. This application for authorisation AA1000568 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. On 30 September 2021, the ACCC granted interim authorisation under subsection 91(2) of the Act.<sup>1</sup> Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

### The Applicants

1.4. The Applicants are:

- Surf Coast Shire Council
- Golden Plains Shire Council
- Borough of Queenscliffe

(the **Applicants**)

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<sup>1</sup> See ACCC decision of 30 September 2021, available on the ACCC's [public register](#).

- 1.5. The Applicants are all Local Councils responsible for providing, amongst other things, the provision of waste and recycling collection services to communities within their respective municipal boundaries.

## The Proposed Conduct

- 1.6. The Applicants seek authorisation to:

- develop and issue a joint request for tender in respect of waste collection services
- jointly evaluate proposals submitted by prospective service providers
- jointly negotiate with selected service providers of arrangements between multiple Councils for the delivery of services

### (the **Proposed Conduct**)

- 1.7. The Applicants propose to run a joint competitive tender process which will encompass kerbside collection services for garbage and recycling bins which are common across three Councils as well as Council-specific services which may be required in addition to kerbside collection. The following Council-specific services are also required:

- FOGO (food organics and garden organics) and glass recyclable kerbside collection service for Surf Coast Shire Council
- Garden Organics kerbside collection service for the Borough of Queenscliffe
- Public litter collection service for Golden Plains Shire Council and the Borough of Queenscliffe
- Bin collection service for commercial properties which have elected to use the service offered by Golden Plains Shire Council
- Bin collection service from municipal offices and four caravan parks in the Borough of Queenscliffe and
- Collection of bins from special events in the Borough of Queenscliffe.

- 1.8. Each Council will direct the successful contractor(s) to disposal and processing sites either operated by that Council, or for which that Council has separate contract arrangements.

- 1.9. The Applicants will enter into individual contracts with the successful tenderer(s). The Councils anticipate staggered contract commencement dates to align with the expiration of existing kerbside collection contracts, with the earliest commencement in October 2022. The initial contract terms will be approximately 7 years, expiring on 5 October 2029. The proposed contracts will include a three year extension option, which if exercised, will expire on 5 October 2032.

- 1.10. The Applicants have entered into an agreement with each other to convene a working group to investigate, plan and prepare for a joint request for tender process. This process will be overseen by an independent probity advisor, who will provide probity advice for the duration of the planning and development process.

- 1.11. Tenderers may elect to provide a schedule of rates for one or more of the Councils, or opt to provide a combined multi council service rate discount to service two or more councils for the contract term.

## 2. Background

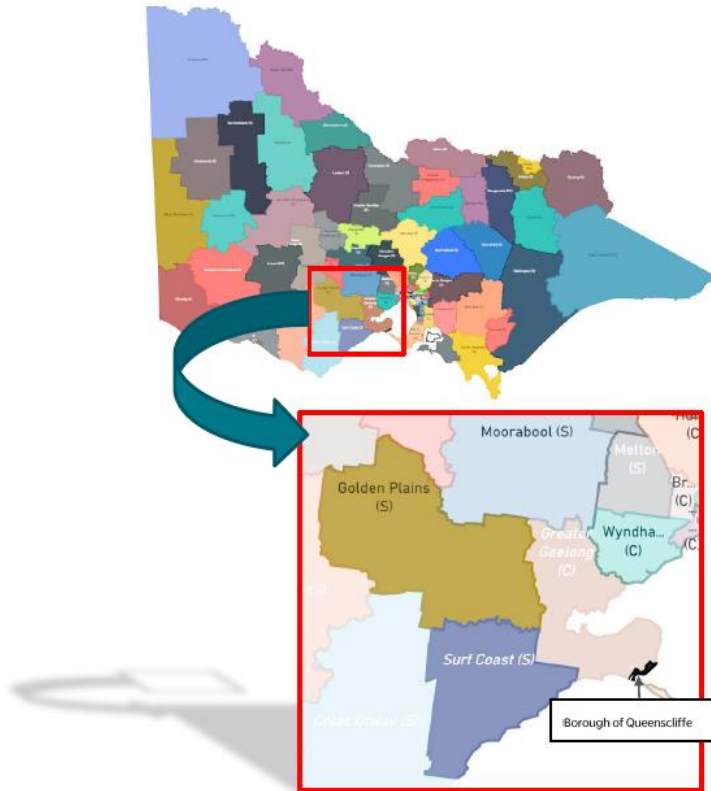
- 2.1. The Applicants are all the local government authorities. Their roles and functions are governed by the *Local Government Act 2020* (Vic) (**LGA Act**). The LGA Act establishes overarching governance principles, which Councils should give effect to in the performance of their roles. One of the overarching principles is that 'collaboration with other Councils and Government and statutory bodies is to be sought'.<sup>2</sup>
- 2.2. The Applicants are aiming to achieve the best possible service for their communities and believe that joint procurement will lead to greater efficiencies and enable consistency between the Councils.
- 2.3. The Applicants are also seeking options for enhanced services by facilitating a joint request for tender process that permits tenderers to provide innovative solutions to service more than one Council.
- 2.4. The Proposed Conduct represents a development opportunity for those companies which are either already in operation within the region, or are likely to express interest in the region through a joint request for tender process.
- 2.5. Service flexibility is a critical factor for smaller, regional Councils and is a key driver for the joint procurement process. This is particularly evident in peak periods where popular tourism areas can triple in population. The Applicants submit that having the ability to draw on additional resources to cater for these seasonal fluctuations in service levels is highly dependent on the ability to source them from other contracts/areas.

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<sup>2</sup> Local Government Act 2020 (Vic), s 9(2)(f)

2.6. A map showing the location of the Councils is below.

**Figure 1: Map of Councils**



### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including waste management companies, industry association and government bodies.
- 3.3. The ACCC received no submissions from interested parties in relation to the application.
- 3.4. On 30 September 2021, the ACCC issued a draft determination proposing to grant authorisation for 11 years and 6 months. No submissions were received in response and a pre-decision conference was not requested following the draft determination.

### 4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation 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 would outweigh the detriment to the public that would be likely to result (authorisation test).

4.3. In making its assessment of the Proposed Conduct, the ACCC has considered:

- the relevant areas of competition likely to be affected by the Proposed Conduct, particularly competition to supply and acquire collection services for waste and recyclable materials in the Barwon South West and Geelong region, and
- the likely future without the Proposed Conduct that is the subject of the authorisation. In particular, the ACCC considers that it is likely that each of the Applicants would individually procure and administer their respective contracts for waste collection services.

## Public benefits

4.4. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **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.*<sup>3</sup>

4.5. The Applicants submit that the Proposed Conduct is likely to result in public benefits, including:

- transaction cost savings for the costs associated with the tender process and negotiating contracts
- increase in competition, as the combined volumes of the Applicants will incentivise additional providers to bid and compete to provide the services
- potential for improved efficiency and management of resources if successful tenderer(s) service multiple Council areas.

4.6. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of:

- **Transaction cost savings**

The collective tender and contracting is likely to lead to efficiency savings for the Applicants and service providers for waste collection and recycling services in the Barwon South West and Geelong region compared to each council running their own process. By collectively conducting the tender process, the Applicants will share the costs of preparing a request for tender and evaluating the tenders received. In the absence of this collaborative approach, the Councils would run their own separate tender processes. Service providers will also be able to participate in a single tender process rather than respond to individual tenders by each Council.

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<sup>3</sup> 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.

- **Increased competition**

The Proposed Conduct may increase competition by offering prospective tenderers a more substantial volume of waste for collection. This may result in existing or new service providers competing more vigorously to win service contracts.

- **Improved efficiencies**

The Proposed Conduct, by aggregating the Applicants' waste collection requirements, may provide potential service providers the opportunity to achieve a more efficient scale of operation than if the Councils tendered individually for collection services.

The Proposed Conduct is also likely to create the opportunity for service providers to lower costs by optimising collection routes and better utilising their fleets. If collection vehicles are used more efficiently, this may also lead to reduced greenhouse gas emissions. The ACCC notes that the Borough of Queenscliffe is not adjacent to the other Council areas and this is likely to reduce the potential magnitude of this benefit.

## Public detriments

4.7. The Act does not define what constitutes a public detriment. 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.<sup>4</sup>*

4.8. The Applicants submit that there will be no discernible public detriment associated with the Proposed Conduct, and any potential detriment would nevertheless be outweighed by the benefit to the public. The Applicants submit that contractors will either already be established in the region or will be required to establish a local depot employing local resources.

4.9. The ACCC notes that the Applicants may compete, to some extent, in the acquisition of waste collection services in the Barwon South West and Geelong region where there is a limited supply of services. In addition, running a collective tender for these services may lessen competition in the supply of waste collection services, particularly if tenderers are required to bid to supply services for all of the Councils, because this may exclude some suppliers with limited collection capacity.

4.10. However, the ACCC considers that the impact on competition will be limited because potential suppliers will be free to tender to supply individual Councils, or combinations of some or all of the Councils.

## Balance of public benefit and detriment

4.11. For the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

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<sup>4</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

## Length of authorisation

- 4.12. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>5</sup> 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.
- 4.13. In this instance, the Applicants seek authorisation for 11 years and 6 months, to accommodate the facilitation of the request for tender process and the proposed contract terms, including any extension options.
- 4.14. The ACCC recognises that long term contracts are commonly required to support investment and enable contractors to have a sufficient return to underwrite investment. Therefore, the ACCC considers that the requested term of authorisation is likely to be necessary for the Proposed Conduct to achieve this outcome and the associated public benefits.
- 4.15. The ACCC has decided to grant authorisation until 31 May 2033.

## 5. Determination

### The application

- 5.1. On 27 August 2021, the Applicants lodged application AA1000568 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Applicants seek authorisation for the Proposed Conduct as defined in paragraph 1.6.

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would 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 Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC has decided to grant authorisation.

### Conduct authorised

- 5.6. The ACCC has decided to grant authorisation AA1000568 to enable the Applicants to collectively tender for waste collection services as described in paragraph 1.6 and defined as the Proposed Conduct.

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<sup>5</sup> Subsection 91(1).



5.7. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

5.8. The ACCC has decided to grant authorisation AA1000568 until 31 May 2033.

## 6. Date authorisation comes into effect

6.1. This determination is made on 10 November 2021. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 1 December 2021.