



Draft Determination and interim authorisation

Application for authorisation AA1000420

lodged by

Council Solutions & Ors

in respect of

joint procurement, negotiation and contracting for
Ancillary Waste Services

Date: 14 September 2018

Authorisation number: AA1000420

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 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.

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 ancillary waste collection contracts.

The ACCC will seek submissions in relation to this draft determination 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:

- multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins)
- kerbside collection of Hard Waste 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.

(together, Ancillary Waste 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 Ancillary Waste 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 Ancillary Waste 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, the purchase or commissioning of new trucks, 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.

In 2016, the ACCC denied authorisation for Council Solutions and five Adelaide Councils (the four councils participating in the current process plus the City of 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 and Ancillary Waste Services (this application)
- issuing more tightly prescribed, and separate, Request for Tenders 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 for the collection of each of Bulk Bins and Hard Waste and up to two for Street Litter.

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 processing 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 Ancillary Waste 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 Ancillary Waste 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 Ancillary Waste 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 Ancillary Waste Services contracts
- efficiency in the supply of Ancillary Waste Services, and
- environmental outcomes.

The ACCC has considered concerns raised by some interested parties that the Proposed Conduct may, in the longer term, reduce competition to supply Ancillary Waste 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 a number of current service providers who do not have contracts with the Participating Councils, and there will continue to be other opportunities to supply Ancillary Services to other Adelaide councils. Further, barriers to entry in competing to supply Hard Waste and Street Litter collection services do not appear to be high. 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.

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The application for authorisation¹

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 AA1000420 with the Australian Competition and Consumer Commission (**ACCC**). Council Solutions, on behalf of itself and the Participating Councils, is seeking authorisation to jointly procure the collection of Ancillary Waste Services, comprising the collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins), kerbside collection of Hard Waste 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, until 30 June 2031.
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. 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 conduct a collaborative competitive tender process for the Ancillary Service Streams (Bulk Bins, Hard Waste and Street Litter), 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 enter into separate contracts for each Ancillary Service Stream, 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.

(the **Proposed Conduct**).

5. The Applicants describe the Ancillary Waste Services the subject of the application as follows.

¹ The information in this section is taken from: Council Solutions submission in support of application for authorisation, dated 4 May 2018, available: [ACCC Public Register](#), except where otherwise noted.

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

Bulk Bin collection

6. Bulk bin collection involves the collection of residual waste, recyclables and organics (where separated) from premises where lidded bins larger than 360 litres (**Bulk Bins**) are used. Premises that use bins 360 litres and smaller are collected as part of kerbside collection services. Bulk Bins are predominately used in high-density residential, hospitality, community centre, commercial, retail and industrial facilities where the waste generated in a standard kerbside collection cycle is greater than the capacity of a kerbside bin.
7. Bulk Bins are designed to be emptied on site by a front or rear lift truck, rather than the side lift trucks used for kerbside collection services. Bulk Bin collection excludes skip bins and any other large format bin that is designed to be removed and replaced with a new bin when emptying is required.
8. The processing and/or disposal of the waste collected is also included within the scope of Bulk Bin collection. The supply and maintenance of the Bulk Bins may also be included.

Hard Waste collection

9. Hard Waste collection involves the collection of bulky household waste items, such as white goods and furniture, that are typically not captured within the '3-bin' kerbside collection system (**Hard Waste**) and generally requires manual loading onto the collection vehicles. The processing of the waste collected is also included within the scope of Hard Waste collection.
10. This service will be an 'at call' service for the Participating Councils, meaning that residents may book the service when required, with a designated limit on the number of collection services available to each household in any year.

Street Litter collection

11. Street Litter collection involves the collection of residual waste and recyclables (where separated) from bins located on streets, footpaths, parks and other public places (**Street Litter Bins**). These bins are generally housed in or attached to a structure and will need to be released, emptied and returned, thereby incorporating a manual element to the service. Street Litter collection is generally undertaken using either side or rear lift trucks, which may be the same type of vehicles used for kerbside collection services.
12. The processing and/or disposal of the waste collected is also included within the scope of Street Litter collection. Supply and maintenance of the bins is typically not included within the scope of Street Litter collection. Some supply and maintenance may be included where Street Litter bins incorporate mobile garbage bins, however supply and maintenance of the housing or enclosing structure would be excluded.
13. Not all Participating Councils require all the services within the Ancillary Waste Streams. Each Participating Council's requirements are outlined in Table 1.

Table 1 Participating Council's Ancillary waste service stream requirements

Ancillary Service Streams			
Council	Bulk Bin Collection	Hard Waste Collection	Street Litter Collection
City of Adelaide	YES	YES	NO*
City of Charles Sturt	YES	YES	YES
City of Marion	YES	NO*	YES
City of Port Adelaide Enfield	YES	YES	YES
* The City of Adelaide does not require Street Litter Collection and the City of Marion does not require Hard Waste Collection as these services are provided inhouse.			

(Source: Council Solutions)

14. The Applicants seek authorisation until 30 June 2031. This period comprises:
- publication of the Request For Tender (**RFT**) in 2018
 - tender open period of six to eight weeks
 - tender evaluation period that allows for contracts to be awarded by 2019
 - nine to twelve months to allow for existing contracts to conclude, and where applicable, to allow for the purchase and commissioning of new trucks
 - contract commencement from May 2020, with a rolling start across the Participating Councils to allow for current contractual arrangements to conclude, with all contracts commenced by May 2021, and
 - a proposed maximum 10-year contract operating term (seven year initial term and an option for a three-year extension period).³

Proposed tender structure

15. The Applicants describe the proposed tender process as follows.
16. Council Solutions will undertake a competitive RFT process comprising all three Ancillary Service Streams. A potential supplier may tender for one, two or all three of the Ancillary Service Streams, however each offer for an Ancillary Service Stream must be separable.
17. The Ancillary Service Streams RFT will encompass collection and the processing or disposal of the waste collected. However, where a tenderer is not in a position to offer a competitive price for processing or disposal, they will have the option to tender for either (i) collection *and* processing or disposal (the complete service) or (ii) collection only. In the event that a collection only tender is deemed the preferred tender, the processing and disposal function would then be undertaken

³ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 20, available: [ACCC Public Register](#).

by the same tenders appointed under its processing service stream RFT.⁴ As discussed at paragraph 43, Council Solutions has lodged a separate application for authorisation in relation to the joint procurement of waste processing services.

18. For Bulk Bin collection, a sole supplier will be awarded a contract to service all Participating Councils. Similarly for Hard Waste collections, a sole supplier will be awarded a contract to service all Participating Councils requiring the service. It will not be open in either Bulk Bin collection or Hard Waste collection for Participating Councils to select different suppliers.⁵
19. For Street Litter collection, the Participating Councils may appoint up to two suppliers. In the event that two suppliers are appointed for Street Litter collection, each supplier will be awarded the services for discrete Participating Council/s for the entire contract operating term. It will not be open for Participating Councils to select different suppliers outside of the framework established.⁶
20. As noted, the City of Adelaide will not participate in the Street Litter collection RFT and the City of Marion will not participate in the Hard Waste collection RFT, as these services are provided in-house by these councils.
21. Prior to release of the RFT, an evaluation plan will be established dealing with the evaluation process and criteria against which all tenderers will be assessed. The evaluation criteria will be outlined in the RFT documentation. Evaluation of responses will be undertaken by an evaluation team comprising of Council Solutions and a waste service management project team consisting of a representative from each Participating Council and expert advisors.

Ongoing administration of contracts

22. As part of the 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 which may include, but are not limited to:
 - contamination management
 - community education and
 - assessment of supplier performance.
23. Council Solutions will perform a central contract management role, being primarily responsible for and taking the lead on:
 - pricing reviews
 - exercising contract options
 - reviewing and verifying data, and
 - measurement and monitoring of Key Performance Indicators.

⁴ Council Solutions submission dated 8 August 2018, p.1, available: [ACCC Public Register](#).

⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 18, available: [ACCC Public Register](#).

⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 19, available: [ACCC Public Register](#).

24. Each of the Participating Councils will retain some contract management responsibility, such as:
- maintenance of bin and service entitled premises register
 - internal reporting
 - approval of new and removal of expired services, and
 - providing the customer interface to their communities.

The rationale for the Proposed Conduct

25. The Applicants submit that the Proposed 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 strategic 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.

The Applicants

Council Solutions

26. Council Solutions is a regional subsidiary established in December 2012 in accordance with the *Local Government Act 1999* (SA). Its constituent councils are Adelaide City Council and the Cities of Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully.⁷
27. Council Solutions' primary purpose is to improve the financial sustainability of its constituent councils through collaborative strategic procurement, contract negotiation and management. During 2016/17 more than \$63.5 million of Council expenditure was undertaken utilising Council Solutions' collaborative contract arrangements.
28. 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.

Participating Councils

29. The Participating Councils and Council Solutions are an unincorporated joint venture with the purpose of undertaking the Proposed Conduct.
30. 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

⁷ 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.

- the City of Port Adelaide Enfield (which is not a constituent member of Council Solutions).

31. 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.

32. The sizes of the Participating Councils are outlined in Table 2.

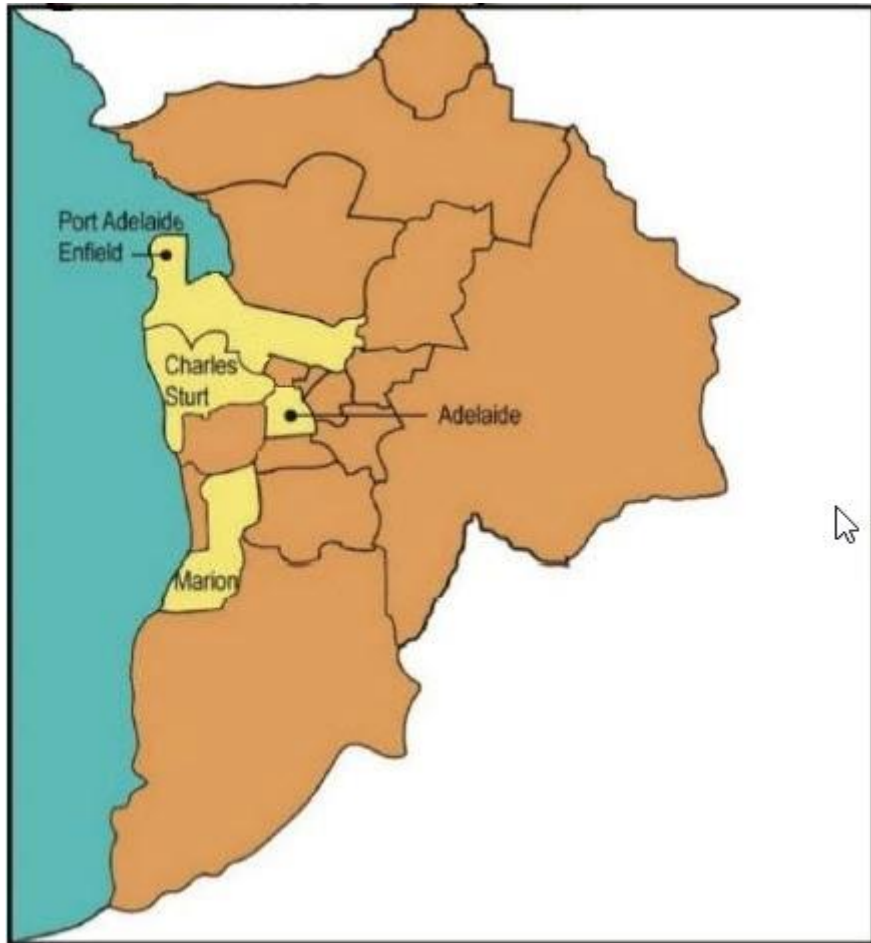
Table 2: Statistical data for the Participating Councils

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

(Source: Council Solutions)

33. The Participating Councils are situated within the Adelaide metropolitan area. A map showing the location of each of the Participating Councils is provided in Map 1, below.

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



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.
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.
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: kerbside collection services, processing services and ancillary services. The current application relates ancillary services (Bulk Bin, Hard Waste and Street Litter collection and processing or disposal) only. As discussed below, separate applications have been lodged covering the kerbside collection and processing 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 single supplier to provide Bulk Bin collections and processing, Hard Waste collection and processing and up to two suppliers for Street Litter collection and processing.
 - Council Solutions seeks authorisation for 13 years, 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 AA100414 (collection), lodged on 14 March 2018:** joint procurement of the kerbside collection of domestic waste, recyclables and organics through the use of a 3-bin system, including the supply and maintenance of mobile garbage bins.
 - **Council Solutions & Ors AA100419 (processing), lodged on 4 May 2018:** joint procurement of waste processing services, comprising the receiving and processing of recyclables, receiving and processing of organics and receiving and processing or disposal of residual waste.
44. The ACCC released a Draft Determination proposing to grant authorisation to application AA100414 (kerbside collection) on 20 July 2018. 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. The Draft Determination and public submissions received are available on the ACCC's [Public Register](#).
45. Concurrent with the release of this draft determination, the ACCC has released a draft determination proposing to grant authorisation to application AA100419 (processing services). 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. The application and public submissions received are available on the ACCC's [Public Register](#).

Other authorisations

46. It is common practice throughout Australia for groups of local councils to collaborate to jointly procure waste services.⁸ The objective of such collaboration is to reduce transaction costs, pool resources and expertise and achieve economies of scale.
47. The ACCC has authorised 30 arrangements of this type, concluding that they were likely to result in a net public benefit through improved quality of services at lower cost to the councils participating. Many of these have involved the procurement of Ancillary Waste Services.⁹ Typically, where the ACCC has considered joint procurements involving Ancillary Waste Services in the past the councils have run a single tender process covering kerbside and ancillary waste collection.

⁸ SA examples include procurements related to Barossa Regional Procurement Group, Adelaide Hills Region Waste Management Authority, Northern Adelaide Waste Management Authority and East Waste.

⁹ See at www.accc.gov.au/authorisationsregister: Muswellbrook Shire Council and Upper Hunger Shire Council, Cairns Regional Council & Ors; Loddon Mallee;

Consultation

48. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
49. 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.¹⁰
50. The ACCC received submissions from 18 interested parties in response to the application for authorisation:
 - six in support of the application (including one from each of the four Participating Councils)
 - eight opposing the application, and
 - four which did not express a view about whether authorisation should be granted.
51. The submissions in support of the application argue 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 Ancillary Waste Services, providing better value for money for ratepayers.
52. The submissions opposed to the application argue that:
 - Street Litter collection services should not be contracted separately to kerbside collection services because both use the same trucks in the same streets.
 - 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 collection 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, and
 - awarding contracts of the proposed size to single providers could result in fewer waste services providers in Adelaide, which would impact competition in the long term.
53. In particular, two associations that count current collectors for the Participating Councils among their members have expressed concerns to the ACCC. These are:
 - The Waste & Recycling Association of SA (**WRASA**). WRASA's position is supported by member firm Solo Resource Recovery, who is a provider

¹⁰ 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

of Bulk Bin collection, Hard Waste collection and Street Litter collection to metropolitan Adelaide Councils, including some of the Participating Councils. WRASA has also listed Trevor Hatch Waste & Recycling (supplier of Hard Waste collection to Adelaide City Council under sub contract from Solo) and Western Refuse (supplier of Street Litter collection to the City of Charles Sturt) as members.

- The Waste & Recycling Industry Association of SA (**WRISA**). Cleanaway, who provides Bulk Bin collection, Hard Waste collection and Street Litter collection to metropolitan Adelaide Councils, is a member of WRISA and has written in support of WRISA's submission.

54. In addition, the ACCC directly contacted and held discussions with a number of parties including other Adelaide councils and potential suppliers of ancillary services. 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.
55. 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.
56. 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

57. 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

58. The ACCC does not consider it necessary to precisely define the relevant areas of competition in assessing the Proposed Conduct.
59. The four Participating Councils are all in what is called the Greater Adelaide Region, consisting of 27 councils. About 19 of the councils may be considered to be within the Metropolitan Area, while the remainder touch the fringes of Adelaide, being in areas such as the Barossa region and Fleurieu Peninsula.
60. For the purposes of best assessing the Proposed Conduct, the ACCC has primarily focused on an area of competition for the acquisition of waste collection services, particularly:
- Bulk Bin collection for municipal waste and commercial and industrial waste sectors in the Adelaide Metropolitan Area
 - Hard Waste collection for the municipal waste sector in the Adelaide Metropolitan Area, and
 - Street Litter bin collection for the municipal waste sector in the Adelaide Metropolitan Area.
61. The ACCC has also had regard to areas of competition that may be affected by the conduct, including markets for the:
- supply of processing services for recyclables
 - supply of organic waste processing
 - supply of waste disposal services, and
 - supply and maintenance of mobile garbage bins.
62. At this stage, of the 19 councils in the Adelaide Metropolitan Area, 12 councils use private sector suppliers to deliver Bulk Bin collection.
63. Of the 27 councils in the Greater Adelaide Region:
- 23 councils offer Hard Waste collection, with 20 of these outsourcing the requirement to either the private sector or a Regional Subsidiary¹¹ and

¹¹ A Regional Subsidiary is a statutory body corporate owned by a group of councils, which has been established to jointly operate waste management services in their areas.

- all 27 councils offer Street Litter collection, with 22 of these outsourcing this requirement to either the private sector or a Regional Subsidiary.

Future with and without

64. 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.
65. The ACCC considers that, in the future without the Proposed Conduct, each council would procure Ancillary Waste Services individually.¹²
66. Where the Participating Councils individually procure Ancillary Waste 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.

Public benefit

67. 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.¹³
68. 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 Ancillary Waste Services, and
 - improved environmental outcomes.
69. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

¹² 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.

¹³ *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.

Stimulation of competition

70. Council Solutions submits that offering each of the Ancillary Service Streams as separable and standalone services will increase competition for the supply of these services as it allows potential suppliers who are capable of providing any or all of the Ancillary Service Streams to tender for that service stream/s directly, without being required to provide all three Ancillary Services Streams and/or kerbside collection services. Council Solutions submits that this will open up Ancillary Service Stream opportunities for potential suppliers – large and small, generalist and specialist – to tender.¹⁴
71. In this respect, Council Solutions submits that generally, South Australian councils will run a single tender process for both kerbside collection and the three ancillary streams. Tenders are awarded to suppliers capable of providing kerbside collecting and the successful tenderer will then either also provide the ancillary collection services itself or sub-contract for the provision of these services.¹⁵
72. Council Solutions submits that potential suppliers capable of providing Bulk Bin collection, such as those who primarily service commercial and industrial customers' Bulk Bins, have not in the past had the opportunities to tender directly for the Bulk Bin collection opportunities presented by South Australian councils, unless they are also capable of providing kerbside collection services.¹⁶
73. With regard to Hard Waste collection, Council Solutions submits there is the potential for new entrants, given the low barriers to entering this market segment on a stand-alone basis. Council Solutions considers such new entrants may be organisations seeking access to the materials contained in the Hard Waste for resource recovery and/or energy recovery. Council Solutions submits that where Hard Waste collection has been bundled with kerbside collection, these potential suppliers have been restricted or excluded from tendering.¹⁷
74. Similarly for Street Litter collection, Council Solutions submits that where Greater Adelaide Region councils have packaged Street Litter collection with kerbside collection services, smaller providers who specialise in Street Litter collection have not been able to tender. Council Solutions submits that two of the Participating Councils have run separate tender processes for Street Litter collection previously and in both cases the contract was awarded to a smaller supplier.¹⁸
75. The Small Business Commissioner SA submits that based on the information provided with the applications it appears that businesses of all sizes will be able to tender for some, if not all, of the work under the various streams.¹⁹
76. WRASA submits that a tender of the proposed size will significantly limit the ability of small providers to submit a competitive bid or provide waste services via

¹⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 27 available: [ACCC Public Register](#).

¹⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 25 available: [ACCC Public Register](#).

¹⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 25 available: [ACCC Public Register](#).

¹⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 26 available: [ACCC Public Register](#).

¹⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 27 available: [ACCC Public Register](#).

¹⁹ Small Business Commissioner of SA submission dated 06 June 2018, p 3, [ACCC Public Register](#).

subcontracting arrangements. WRASA further submits that the proposed joint procurement is too large for some potential suppliers as the capital requirements and bank guarantees required by the tender may be beyond the means of smaller contractors who normally bid for individual council contracts.²⁰ WRASA states that small businesses have been successful in providing waste services to the Adelaide market because individual contracts are a manageable size and the pricing of such contracts involves lower risk.²¹ Therefore, WRASA submits, the Proposed Conduct is likely to result in fewer firms bidding than would otherwise be the case and favour a small number of larger firms.²²

77. WRISA submits that a tender process of the size Council Solutions is proposing will significantly limit competition and exclude a number of market participants who would likely bid for waste services from Participating Councils if offered through individual tender processes, due to upfront investment and risk. WRISA submits that the proposed contacts are highly capital intensive and require significant upfront investment.²³
78. WRASA submits that the proposed joint tender will skew bargaining power in favour of the Participating Councils through lessening of competition, generating higher prices and reducing service quality and lowering landfill diversion rates.²⁴
79. WRISA states 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. WRISA argues that the Proposed Conduct contradicts this and is likely to result in fewer suppliers responding to the RFT.²⁵
80. The Australian Small Business and Family Enterprise Ombudsman submits it is concerned that bigger centralised tenders make it harder for small businesses to respond successfully²⁶ and similarly, Business SA raised concerns that increased capital requirements may result in fewer bidders.²⁷
81. In response, Council Solutions submits that the Ancillary Service Streams are not capital intensive and its approach of unbundling kerbside and Ancillary Waste Services provides small suppliers, who were previously not suitably resourced to provide this bundled service, with the opportunity to tender for one or multiple Ancillary Service Streams.²⁸ Specifically with respect to the collection of Bulk Bins, Council Solutions submits that with the quantum of the services being small at commencement and growing over the term (as housing density increases), this tender affords an opportunity for small to medium suppliers to participate and grow their capacity at a pace which is neither capital nor resource intensive.²⁹ Council Solutions further submits that combining the Participating Councils

²⁰ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.5, available: [ACCC Public Register](#).

²¹ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.5, available: [ACCC Public Register](#).

²² Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.12, available: [ACCC Public Register](#).

²³ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p.5, available: [ACCC Public Register](#).

²⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p. 24, available: [ACCC Public Register](#).

²⁵ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p.5, available: [ACCC Public Register](#).

²⁶ Australian Small Business and Family Enterprise Ombudsman dated 18 June 2018, p.1, available: [ACCC Public Register](#).

²⁷ Business SA submission dated 15 June 2018 A, p2, available: [ACCC Public Register](#).

²⁸ Council Solutions response to interested party, dated 27 Jul 2017, p.5-6, available: [ACCC Public Register](#).

²⁹ Council Solutions response to interested party, dated 27 Jul 2017, p.5, available: [ACCC Public Register](#).

contracts will provide a level of suety of cash flows to small businesses that would encourage those businesses to invest in appropriate fleet infrastructure.³⁰

82. In response to WRASA's argument that the Proposed Conduct would reduce subcontracting opportunities for small businesses, Council Solutions submits that the Proposed Conduct allows businesses to tender to the Participating Councils as prime contractors, instead of being relegated to a subcontract role under a kerbside collections contractor. Council Solutions argues that, as a subcontractor, a small business is a price taker and would likely see margins squeezed to fit within the cost and margin profile of the head contract. Council Solutions submits that in these circumstances, the small business operator would be in a less advantageous position than if the same small business were a prime contractor.³¹
83. Council Solutions further submits that if the Participating Councils each undertake their own separate RFT process, given the small volume of the current requirements of some Participating Councils, particularly in Bulk Bin collection, it is unlikely each would receive as many tender responses as the Participating Councils would receive as a collective.³²
84. 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.
85. 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 ancillary 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.
86. In particular, the Proposed Conduct is likely to offer potential suppliers the opportunity of 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, while recognising that the tender opportunities may not be commercially attractive to every current or potential service provider.
87. The ACCC considers it likely that there is a range of providers who would be able to compete for the Ancillary Service Streams, if these opportunities are offered separately to kerbside collection contracts. The ACCC has been advised by market participants that offering the Ancillary Service Streams as separable services creates an attractive tender opportunity that would otherwise not exist if these services were packaged with kerbside collectors.

³⁰ Council Solutions response to interested parties, dated 12 Jul 2017, p.6, available: [ACCC Public Register](#).

³¹ Council Solutions response to interested party, dated 27 Jul 2017, p.7, available: [ACCC Public Register](#).

³² Council Solutions response to interested parties, dated 12 Jul 2017, p.3, available: [ACCC Public Register](#).

88. The ACCC notes that some waste services suppliers, and possibly some small businesses, will not be successful in the tender process. However, the ACCC views this as an outcome of a competitive process rather than a public detriment resulting from the Proposed Conduct. The ACCC considers that the net impact of the Proposed Conduct is more likely to be to stimulate competition, by affording opportunities for suppliers to compete to supply Ancillary Waste Services, than limit such opportunities, particularly in respect of tendering directly to supply these services.
89. Accordingly, the ACCC considers that the proposed conduct is likely to result in a public benefit by stimulating additional competition to provide Ancillary Waste Services to the Participating Councils, resulting in lower prices and/or better quality of waste management services delivery to the Participating Councils ratepayers.
90. 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 as it relates to each of the ancillary waste streams (Bulk Bins, Hard Waste and Street Litter) directly below, and in the ACCC's assessment about the longer-term impact on competition for the supply of Ancillary Waste Services, discussed in the ACCC's assessment of the potential public detriments of the Proposed Conduct.

Bulk Bin collection

91. Council Solutions submits that while Bulk Bin collection is a growing requirement for Councils as housing density increases and the 3-bin kerbside collection system is no longer viable due to space and capacity restrictions both within multi-unit buildings and at kerbside when bins are set out for collection, the use of Bulk Bins is more common in, and dominated by, the commercial and industrial sector. Council Solutions states that the Participating Councils have 424 Bulk Bins which represents around 1% of all commercial and industrial rateable properties in Adelaide.³³ WRASA also submits that council demand for Bulk Bins is low.³⁴
92. The ACCC considers that having regard to current providers of Bulk Bin collection services in the Adelaide metropolitan area, almost all of whom primarily service the commercial and industrial sector, and the small demand of the Participating Councils for these services, relative to commercial and industrial customers, the proposed size of the Participating Councils contract, around 424 Bulk Bins, is unlikely to preclude potential suppliers from bidding. Rather, tendering for these services separately from kerbside (3-bin) collection is likely to increase opportunities for potential suppliers to compete to supply these services.

Hard Waste collection

93. Council Solutions submits that 23 of the 27 Greater Adelaide Regions offer Hard Waste collection, with 20 of these outsourcing the requirement, either to the private sector or a Regional Subsidiary. The Participating Councils for this Service Stream (Adelaide City Council and the Cities of Charles Sturt and Port Adelaide Enfield) represent approximately 22% of the Rateable Properties across the Greater Adelaide Region where the council offers Hard Waste collection. Of the

³³ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.17, available: [ACCC Public Register](#).

³⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.22, available: [ACCC Public Register](#).

remaining 78% of the Rateable Properties across the Greater Adelaide Region where the council offers Hard Waste collection, Council Solutions submits that:

- approximately 51% of the requirement is outsourced to private sector service providers, including through the Northern Adelaide Waste Management Authority (NAWMA), and
- the remaining 49% have Hard Waste collection delivered inhouse, either directly by the Council or through East Waste (a Regional Subsidiary established and owned by three councils to provide waste management services).

94. Therefore, Council Solutions submits, taking into account the Proposed Conduct, 62% of the market in the Greater Adelaide Region where councils offer Hard Waste collection is outsourced to private sector service providers.³⁵
95. WRASA submits that, using Council Solutions' figures, as a result of the Proposed Conduct more than one third of available Hard Waste work in Adelaide will be tendered together, for 10 years. WRASA submits that many Hard Waste contracts are short, perhaps even one year. By conglomerating the work as well as extending the contract term by up to 1000% on some existing Hard Waste tenders, the opportunity to tender regularly over time is significantly reduced.³⁶
96. In response, Council Solutions submits that in separating out Hard Waste from the other collection services one aim is to seek opportunities and proposals for higher levels of diversion from landfill than is currently achieved. There is a small number of small business specialist service providers already in this market, and there is opportunity for more to emerge – both from existing small and medium sized providers and from possible new entrants into the market. For existing service providers, the offer of an aggregated amount of Hard Waste from all Participating Councils is likely to be sufficient to encourage investment in new collection vehicles which are better suited to separating collected materials along the collection route, increasing the potential for greater diversion from landfill than is currently achieved.³⁷
97. In addition, Council Solutions submits that Hard Waste services have been separated from the typical arrangement where they are bundled with kerbside collections to facilitate opportunity for tendering by small to medium-sized service providers. The contract term (seven years with the option of a three year extension) has been proposed following consultation with a number of small to medium-sized service providers who indicated that short term contracts do not provide them with the financial security necessary to tender for such contracts. Council Solutions argues that the Proposed Conduct will increase competition and encourage small to medium-sized service providers to tender.³⁸
98. The ACCC notes that all three Participating Councils who propose to jointly procure Hard Waste collection services currently use the supplier contracted to provide kerbside waste collection to also provide Hard Waste collection. Adelaide and Charles Sturt use Solo, and Port Adelaide Enfield uses Cleanaway. The

³⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.19, available: [ACCC Public Register](#).

³⁶ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.23, available: [ACCC Public Register](#).

³⁷ Council Solutions response to interested party, dated 27 Jul 2017, p.6, available: [ACCC Public Register](#).

³⁸ Council Solutions response to interested party, dated 27 Jul 2017, p.24, available: [ACCC Public Register](#).

ACCC considers that the Proposed Conduct will provide opportunities for small and medium size businesses to compete directly to supply Hard Waste collection services to the Participating Councils.

99. As discussed above, some of these smaller and medium sized providers, as well as larger providers, are likely to value the opportunity to supply the Participating Councils aggregated volumes through a single contract, which is likely to be reflected in the terms and conditions of supply offered. Further, aggregating the Participating Councils volumes is likely to increase their purchasing power in negotiations.
100. Some smaller suppliers may not be in a position to effectively compete to supply the aggregated volumes required by the Participating Councils. Although, the ACCC also notes that these suppliers would also not be in a position to directly compete to supply the Participating Councils if they tendered individually, individually unless those councils independently decided to procure Hard Waste services separately from kerbside collection.
101. While some smaller suppliers may not be in a position to effectively compete for the tender, on balance, the ACCC considers that the Proposed Conduct is likely to promote competition for the supply of Hard Waste collection services to the Participating Councils.

Street Litter collection

102. Council Solutions states that all Greater Adelaide Region Councils provide Street Litter collection services with 22 of the 27 Greater Adelaide Region Councils outsourcing this requirement to the private sector or a Regional Subsidiary. The Participating Councils for this Service Stream represent approximately 26% of the Street Litter bins across the Greater Adelaide Region. Of the remaining 74% of Street Litter bins serviced by the Greater Adelaide Region Councils:
 - 45% is outsourced to private sector service providers, and
 - the remaining 55% have Street Litter collection delivered in-house by FRWA, East Waste or directly by the council.
103. Therefore, Council Solutions submits that taking into consideration the Proposed Conduct, nearly 58% of the market in the Greater Adelaide Region is outsourced to private sector service providers.³⁹
104. As with Hard Waste collection, the ACCC considers that some potential suppliers are likely to value the opportunity to supply the Participating Councils aggregated volumes through a single contract, which is likely to be reflected in the terms and conditions of supply offered. Further, aggregating the Participating Councils volumes is likely to increase their purchasing power in negotiations.
105. Some smaller suppliers may not be in a position to effectively compete to supply the aggregated volumes required by the Participating Councils. Although, the ACCC also notes the proposed Street Litter contract will only cover three of the four Participating Councils (Adelaide is not included) and Council Solutions may appoint up to two suppliers. Any preference to collect smaller volumes than the

³⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p.21, available: [ACCC Public Register](#).

aggregate volumes of the three Participating Councils are also able to be reflected in the prices tendered by potential suppliers.

106. 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.
107. Accordingly, the ACCC considers that the Proposed Conduct is likely to promote competition for the supply of Street Litter collection services to the Participating Councils.

Transaction cost savings

108. Council Solutions submits that tender processes to procure waste management services involve considerable time and resources across each council. For potential suppliers, there is also significant time and resources involved in responding to multiple tender processes conducted by individual councils, as each council would ordinarily have its own service specifications, contract conditions and evaluation criteria.⁴⁰ Council Solutions submits the Proposed Conduct will result in transaction cost savings, for both the Participating Councils and potential suppliers, by reducing the complexity of the process compared with each council tendering individually for the Ancillary Service Streams.⁴¹
109. Under the Proposed Conduct, Council Solutions intends to centrally undertake a number of tasks relating to the administration and documentation of the RFT. Whilst the Participating Councils will still have a role in reviewing and endorsing the documentation, Council Solutions submits that their individual contribution to the administration of the process will be substantially reduced.⁴²
110. Council Solutions submits that a single joint tender process will remove the duplication of work required to prepare, present, respond, negotiate, evaluate and award suppliers for four councils individually.⁴³ The Participating Councils would issue a single set of tender documents to the market for the provision of Ancillary Waste Services. Whilst some of the documents, for example the specification, will need to be separate for each Ancillary Service Stream, a number of these documents will be used in the RFT for all three Ancillary Service Streams.⁴⁴
111. Council Solutions further submits that the Proposed Conduct will result in transaction cost savings through shared technical, legal and probity advice and streamlining contract management, as activities such as price reviews, extension negotiations and monitoring of KPIs can be undertaken jointly.⁴⁵
112. Business SA submits that the Proposed Conduct may result in tender cost savings and efficiencies. Business SA notes the ACCC's finding in relation to

⁴⁰ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 30, available: [ACCC Public Register](#).

⁴¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 27, available: [ACCC Public Register](#).

⁴² Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 29, available: [ACCC Public Register](#).

⁴³ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 33, available: [ACCC Public Register](#).

⁴⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 29, available: [ACCC Public Register](#).

⁴⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 31, available: [ACCC Public Register](#).

Council Solutions 2016 application that because of the complexity of the proposed arrangement, net transaction cost savings will be difficult to achieve. Business SA states that because of the switch from an RFP approach to RFT and the splitting of the tenders, such complexities may have been reduced.⁴⁶

113. WRISA and WRASA 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.⁴⁷
114. WRISA submits that while resources for each of the Participating Councils are being reduced, the work required is merely being transferred to Council Solutions.⁴⁸ WRISA also submits that it is unlikely the Participating Councils will benefit from any cost savings in relation to ongoing administration because such advice will still be required in relation to the specific service requirements for each of the Participating Councils.⁴⁹
115. WRASA submits that each step of the tender process, from the development of the tender specification to awarding the contract, 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.⁵⁰
116. In response, Council Solutions submits that it will perform numerous tasks that each council would need to undertake individually if conducting its own tender process.⁵¹
117. WRASA further submits that because the Participating Councils may choose to award contracts for both the collection and processing of ancillary waste, or just for the collection of the waste (and use the suppliers contracted by them to process their kerbside (3-bin) household waste to also process ancillary waste), tender prices for the collection of ancillary waste streams will need to include combinations for inclusion or exclusion of disposal or processing services. WRASA submits that this becomes incredibly complex for relatively small contracts with highly variable risk profiles for tenderers and will make the assessment and comparison of tender responses difficult.⁵²
118. In response, Council Solutions submits the tender specification allows the option for tenderers to submit offers to collect a waste stream only, and for both the collection and disposal/processing of a waste stream.⁵³

⁴⁶ Business SA submission, dated 15 June 2018, p.5, available: [ACCC Public Register](#).

⁴⁷ Waste and Recycling Association of South Australia Inc, dated 18 June 2018, p. 20, available: [ACCC Public Register](#), Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 6, available: [ACCC Public Register](#).

⁴⁸ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 6, available: [ACCC Public Register](#).

⁴⁹ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 6, available: [ACCC Public Register](#).

⁵⁰ Waste and Recycling Association of South Australia Inc, dated 18 June 2018, p. 2, available: [ACCC Public Register](#)

⁵¹ Council Solutions response to submissions from interested parties, dated 27 July 2018, p. 23, available: [ACCC Public Register](#).

⁵² Waste and Recycling Association of South Australia Inc, dated 18 June 2018, p. 3, available: [ACCC Public Register](#)

⁵³ Council Solutions response to submissions from interested parties, dated 27 July 2018, p. 23, available: [ACCC Public Register](#).

119. The ACCC has received information in the course of this review and in previous reviews, from collections 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.
120. 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.
121. Similarly, a single tender process is likely to reduce duplication of work required by tenderers.
122. The ACCC notes that there will be some costs in the Participating Councils coordinating with each other.
123. 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

124. 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 (that is, bins emptied or Hard Waste is collected, and waste deposited at the agreed facility as per agreed timings) – to be undertaken by the Participating Councils with support from Council Solutions.⁵⁴
125. Council Solutions submits that with designated contract management provided by it across the four councils, duplicated effort associated with these tasks will be

⁵⁴ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 32 available: [ACCC Public Register](#).

removed and a dedicated focus will be applied in extracting maximum value and performance from the contract.⁵⁵

126. 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.⁵⁶
127. WRISA submits that after awarding the contract, administration will fall back to the individual councils and, as such, cost savings will not be realised.⁵⁷
128. The ACCC notes that most of the day-to-day operation contract management would be undertaken by each Participating Council. However, 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 Participating 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..
129. Overall, the ACCC considers that there is likely to be some public benefit resulting from likely efficiencies from combined contract management.
130. 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 ancillary waste services

131. Council Solutions submits that the Proposed Conduct is likely to result in increased service efficiencies, particularly in allowing collection vehicles to service more than one Participating Council in any run. In particular:
 - The successful tenderer will be able to optimise collection routes without regard to council borders.
 - In response to a missed service, a vehicle currently serving another council will be able to be re-tasked rather than sending out a new vehicle.
 - The successful tenderer will be able to maximise utilisation of vehicles through optimisation of collection routes.⁵⁸

⁵⁵ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 32 available: [ACCC Public Register](#).

⁵⁶ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 32 available: [ACCC Public Register](#).

⁵⁷ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 6, available: [ACCC Public Register](#).

⁵⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 38 available: [ACCC Public Register](#).

132. Council Solutions further submits that:

- With a reduction in the number of vehicles required overall, there will be fewer waste vehicles sharing the road.
- Less trucks and more efficient runs should also lead to reduced traffic congestion and air and noise pollution.
- Both a reduced number of vehicles and a higher level of services through new, safer technology on vehicles should deliver improved public safety and improved ambient environmental conditions.

133. WRASA submits that it is already standard practice of collection contractors supplying ancillary collection services to use trucks that are shared across council areas. Therefore, this saving is already available to councils who tender independently and suppliers.⁵⁹

134. WRISA submits that cross border efficiencies are unlikely to be realised because the Participating Councils do not share enough common borders.⁶⁰ WRISA also submits that no fewer trucks will be required because there is a direct proportionate relationship between the number of tenements serviced and the number of trucks required and this does not change with the size of the contract.⁶¹ WRASA similarly submits that the geographic spread of the councils undermines their ability to realise cost savings.⁶²

135. WRISA also submits that the size of the contracts let by the councils individually are already large enough to realise economies of scale and that beyond a certain point, the aggregation of waste volumes does not have a substantial impact on price and the approach of contractors submitting tenders.⁶³

136. Business SA also questions whether the inclusion of the City of Marion would realise efficiencies, given its geographic isolation from the other Participating Councils.⁶⁴

137. In response, the City of Marion submits that the Proposed Conduct will deliver resident value through increased service efficiencies.⁶⁵ Council Solutions accepts that because Marion does not share boundaries with the other Participating Councils, route-related service efficiencies for Street Litter and Hard Waste may not be achieved in respect of Ancillary Services delivered to Marion.

138. In the case of Bulk Bins, Council Solutions submits that services are, in all probability, likely to be delivered by a service provider already deploying Bulk Bin services across metropolitan Adelaide to the commercial and industrial sector.

⁵⁹ Waste and Recycling Association of South Australia Inc, dated 18 June 2018, p. 8, available: [ACCC Public Register](#)

⁶⁰ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 8, available: [ACCC Public Register](#).

⁶¹ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 8, available: [ACCC Public Register](#).

⁶² Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 8, available: [ACCC Public Register](#).

⁶³ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p.7-8, available: [ACCC Public Register](#).

⁶⁴ Business SA submission, dated April 2018, p. 10, available: [ACCC Public Register](#).

⁶⁵ City of Marion Submission, dated 15 June 2018, p.10, available: [ACCC Public Register](#).

Council Solutions submits that commercial and industrial sector notional geographical boundaries, such as local government area boundaries, do not feature in the planning and scheduling of collection runs.

139. More generally Council Solutions submits that the City of Marion, and the other councils, will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether Marion shares direct boundaries with other councils. For example, shared maintenance and garaging, shared management and supervision and running one customer-service interface (such as a call centre).⁶⁶
140. The ACCC considers that that the Proposed Conduct is likely to create opportunities for ancillary waste service providers to lower costs by:
 - optimising collection routes across Participating Councils. This would be facilitated, in part, by the service provider being allowed to mix waste from the four councils in their trucks and thereby optimise their routes, and
 - reducing the number of spare trucks needed to cover repairs and breakdowns across Participating Councils.
141. With respect to optimisation of collection routes, the ACCC notes that, compared to kerbside collection, the collection points for Bulk Bins, Hard Waste and Street Litter, are far more widely spread, creating greater opportunities for routes to be optimised by routes crossing council boundaries. As noted by both Council Solutions and interested parties, there is likely to be less opportunity to realise such benefits in relation to the City of Marion, than with the other three councils.
142. With respect to WRASA's submission that collectors are already operating across different councils to realise these efficiencies, we note that the realisation of these efficiencies is largely dependent on the collector operating across councils in close proximity. It is possible that, through individual (uncoordinated) tendering, councils in close proximity to each other may appoint the same collector, creating the opportunity for the realisation of such efficiencies.
143. However, the Proposed Conduct ensures that in relation to the supply of Bulk Bin collection and Hard Waste collection, for at least three councils in close proximity, who share common boundaries, this will be the case (noting the City of Marion will not participate in the Hard Waste joint tender). Similarly in relation to Street Litter collection, at least two of the three councils will share common boundaries (noting that the City of Adelaide will not participate in the Street Litter joint tender).
144. Further, the opportunities for such efficiencies to be realised are likely to be enhanced if the collection service arrangements for councils in close proximity have also been collectively negotiated. Therefore, the ACCC considers that efficiencies realised by collectors operating across different councils are more likely to be realised with, than without, the Proposed Conduct.
145. Further, as noted, the ACCC has also received submissions that the City of Marion, and the other councils, will achieve a range of benefits via the Proposed Conduct that have nothing to do with whether it shares direct boundaries with other councils. The ACCC has not received information or submissions indicating

⁶⁶ Council Solutions response to interested party, dated 27 June 2018, p.7 available: [ACCC Public Register](#).

that the City of Marion's participation in the Proposed Conduct would be likely to negate benefits likely to accrue to the three northern Participating Councils.

Improved environmental outcomes

146. Council Solutions submits that the Proposed Conduct would allow for a unified education program, which can help reduce contamination and increase diversion of waste from landfill.⁶⁷
147. Council Solutions submits that while each Participating Council currently has its own independently generated educational material available for their community, this material has its limitations because:
- it tends to focus on the 3-bin system and is less likely to address residents in multi-unit dwellings who may be using Bulk Bins
 - there are differences in presentation, content and detail across Hard Waste collection materials, often relating to permissible items for disposal, the quantum of waste permitted and set-out conditions and
 - Street Litter information currently varies between the Participating Councils and also between different locations within each Participating Council area.⁶⁸
148. Council Solutions submits this lack of consistency and confusion can result in contamination of source-separated systems, such as Bulk Bins or Street Litter bins that provide a recycling option.⁶⁹ Council Solutions argues contamination can reduce the value of the recovered resources or, where contamination is too high, can result in loads of potentially recoverable wastes being sent to landfill.⁷⁰
149. Council Solutions submits that a consistent educative approach across all Participating Councils would create more certainty for residents and visitors about correct waste separation practices, improving the likelihood the waste would be diverted from landfill. Council Solutions further submits that the Proposed Conduct will enable the Participating Councils to work together to develop targeted educational material relevant to key issues, including raising awareness regarding alternate options to waste disposal. Council Solutions submits that for sites with Bulk Bins, this may be supplying information to encourage community composting. For Street Litter collection, it may be reinforcing the reduction of waste by encouraging 'take home and separate' to ensure diversion, or promoting the concept of 'nude food' when attending public spaces.⁷¹

⁶⁷ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 33 available: [ACCC Public Register](#).

⁶⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 34 available: [ACCC Public Register](#).

⁶⁹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 32 available: [ACCC Public Register](#).

⁷⁰ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 34 available: [ACCC Public Register](#).

⁷¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 35 available: [ACCC Public Register](#).

150. Council Solutions submits that this will contribute to the achievement of state government waste diversion strategies and targets.⁷²
151. The Environment Protection Authority SA (the **EPA**) submits that the Proposed Conduct offers significant environmental benefits.⁷³ The EPA also submits that the Proposed Conduct has the potential to result in improved resource recovery through better management of collection waste streams driven by secure contracts of larger volumes, and an improved focus on the processing of recyclables, organics and residuals due to ancillary services being contracted separately.⁷⁴
152. WRISA submits that the potential for environmental benefits and alignment with SA waste policy settings is overstated. WRISA submits that a joint procurement for waste collections services will not be a conduit for waste diversion, as this would more reasonably be attributed to the introduction of new processing infrastructure and processing services that are not part of the Proposed Conduct.⁷⁵
153. WRASA submits that authorisation is not necessary to implement joint community education initiatives, as councils nationwide can and do already share educational resources without the need for a joint collection tender process.⁷⁶
154. WRASA further submits that Council Solutions have erred by separately tendering for public bin collection and kerbside collection services because both kerbside collection and Street Litter collection use the same trucks in the same streets, often on the same collection days. WRASA submits that environmental outcomes will be lost, as kerbside collectors do not know they can combine similar kerbside collection and Street Litter bin collection.⁷⁷ In response, Council Solutions submits that potential suppliers who tender for kerbside collection are not precluded from tendering from any of the Ancillary Service Streams.⁷⁸
155. WRASA further submits that the Proposed Conduct will not be effective at diverting waste from landfill because evidence suggests that contracts which cover a large number of rateable properties have lower landfill waste diversion rates. WRASA considers this is due to the inflexibility of larger contracts which increases collection driver anonymity, making the tagging of public bins and apartment Bulk Bins more difficult.⁷⁹ In response, Council Solutions provided data which it claims shows that diversion rates are more consistent and on average higher the larger the number of rateable properties under a contract.⁸⁰
156. The ACCC recognises that, to the extent that the proposed conduct facilitates diversion of residual waste from landfill, it has the potential to result in improved environmental outcomes by reducing the harmful effects associated with landfill.

⁷² Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 33 available: [ACCC Public Register](#).

⁷³ Environment Protection Authority SA submission, dated 22 June 2018, p 1, available: [ACCC Public Register](#).

⁷⁴ Environment Protection Authority SA submission, dated 22 June 2018, p 1, available: [ACCC Public Register](#).

⁷⁵ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p.7, available: [ACCC Public Register](#).

⁷⁶ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.4, available: [ACCC Public Register](#).

⁷⁷ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.3, available: [ACCC Public Register](#).

⁷⁸ Council Solutions response to interested party, dated 27 June 2018, p.3 available: [ACCC Public Register](#).

⁷⁹ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.10, available: [ACCC Public Register](#).

⁸⁰ Council Solutions response to interested party, dated 27 June 2018, p.20 available: [ACCC Public Register](#).

157. The ACCC considers that by enabling a larger scale education program which facilitates collaboration to improve its effectiveness, the proposed conduct is likely to improve waste separation practices and therefore increase the recovery of recyclable and organic material. This would result from the aggregation of education program requirements and resources, together with the coordinating role to be played by Council Solutions, which is likely to facilitate improvements in both design and delivery of community education programs across Participating Councils. This is likely to result in an environmental benefit in the form of landfill diversion.
158. The ACCC considers that this is particularly likely to be the case in relation to Bulk Bins where consistent education addressing residents in multi-unit dwellings may improve household waste separation practices. However the ACCC considers it is less clear to what extent consistent education messaging will result in environmental benefit in the form of landfill diversion in relation to those Ancillary Service Streams which do not typically offer a recycling or organics option separate from general waste (Street Litter and Hard Waste).
159. Further, the ACCC notes that the Participating Councils can, and currently do, undertake their own community education programs. Their incentives to do so will not change under the proposed conduct, such that any environmental benefit from improved education is likely to be small. Therefore, the ACCC considers that the proposed conduct is likely to result in a small public benefit in the form of improved environmental outcomes.
160. With respect to the concerns raised by WRASA that large contracts are less effective at diverting waste from landfill, the ACCC has not been provided with evidence to conclude that this is the case. The ACCC notes that there are a range of factors that can influence landfill waste diversion rates, such as government policy and regulation and local government initiatives such as those currently run by the Participating Councils and those proposed under the Proposed Conduct.
161. With respect to the concerns raised by WRASA about separating contracts for ancillary waste collection from kerbside waste collection, the ACCC notes that this does not impact the ability for the Participating Councils to deliver consistent, coordinated messaging about recycling.
162. The ACCC also notes the differences between the kerbside collection and Street Litter collection tasks. The emptying of kerbside (household) bins is largely automated with the driver usually remaining in the cabin of the vehicle. Street Litter bins are generally housed in or attached to a structure and the driver must exit the vehicle and manually release the bin so it can be emptied and then return it to the structure it is housed in or attached to. In some cases, the bins are located a considerable distance from the kerbside (for example, in parks). In this respect, the ACCC notes that only one out of the four Participating Councils currently uses the same provider for Street Litter collection that it uses for kerbside collection.⁸¹

⁸¹ Council Solutions provision of requested information, dated 24 August 2018, p.1 available: [ACCC Public Register](#).

ACCC conclusion on public benefits

163. The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide Ancillary Waste services to the Participating Councils.
164. 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.
165. The ACCC further considers that the proposed conduct is likely to generate public benefits through improvements in:
- efficiency in managing Ancillary Waste Services contracts
 - efficiency in the supply of Ancillary Waste Services, and
 - environmental outcomes.

Public detriment

166. 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.⁸²

167. Some interested parties have submitted that:
- The Proposed Conduct may, in the longer term, reduce competition to supply Hard Waste collection services and Street Litter collection services to the Participating Councils and non-participating councils in Adelaide.
 - The Proposed Conduct may reduce competition to supply mobile garbage bins to the Participating Councils and non-participating councils in Adelaide.

168. The ACCC's assessment of these potential public detriments follows.

Longer-term reduction in competition for the supply of Ancillary Waste Services to the Participating Councils and non-participating councils

169. WRISA submits this the size of the tender is greater than represented by Council Solutions, which does not take into account the share of the market that is not available through public tender. In reality, the Application would see as much as a third of the markets for Hard Waste collection and Street Litter collection locked away in the one tender.⁸³

⁸² *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

⁸³ Waste & Recycling Industry Association of SA submission, dated 15 June 2018, p. 2, available: [ACCC Public Register](#).

170. WRASA submits that by conglomerating the work as well as providing contract terms of up to 10 years, the opportunity to tender regularly over time is significantly reduced.⁸⁴
171. The ACCC has considered whether the Proposed Conduct may, in the longer term, reduce the number of suppliers of Hard Waste and/or Street Litter collection services in Adelaide.
172. This may be the case if, for example:
- 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 Participating Councils exit the market.
173. As discussed above, in relation to Hard Waste and Street Litter collection services, there is a range of suppliers capable of providing services to municipal councils in Adelaide.
174. WRASA and WRISA 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.
175. 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 ancillary services, including open tender for the provision of these services. In this respect, the four councils represent only a subset of opportunities in the wider area of competition.
176. Further, while existing arrangements other councils have in place provide 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 Ancillary Waste Services. In this respect, the Participating Councils represent around a quarter of rateable properties in the Greater Adelaide Region.
177. The ACCC also notes that the proposed joint tender will only cover three of the four Participating Councils (the City of Marion will not participate in the Hard Waste tender and Adelaide City Council will not participate in the Street Litter collections tender). Further, in relation to Street Litter collection, Council Solutions will be likely to appoint two suppliers if the tenders suppliers submit support this being a more efficient and competitive way to structure the contract.
178. Accordingly, the number of individual opportunities to supply Ancillary Services to Adelaide councils forgone will be two at most, and in the case of Street Litter collection, possibly one.
179. The ACCC also notes that the capital investment necessary to establish a Hard Waste or Street Litter collection service of the size necessary to service a municipal council, while potentially substantial for some smaller businesses, is not a significant barrier to entry. The main capital requirement is the purchase of

⁸⁴ Waste & Recycling Association of SA Inc submission, dated 18 June 2018, p.23, available: [ACCC Public Register](#).

collection trucks. Given the volume of Hard Waste and Street Litter generated in most council areas, a council is generally able to be serviced by two to three trucks.

180. Accordingly, the ACCC is satisfied that the Proposed Conduct is unlikely to significantly impact longer-term competition for the supply of Ancillary Waste Services to the Participating Councils and non-participating councils

Competition for the supply of mobile garbage bins

172. Trident Plastics, which manufactures moulded plastic products, including plastic mobile garbage bins and multi dwelling Bulk Bins, submits that the Proposed Conduct would lessen competition for the supply of mobile garbage bins. As noted at paragraph 12, the supply and maintenance of Street Litter bins may be included in the Street Litter collection contract where Street Litter bins incorporate mobile garbage bins (supply and maintenance of the housing or enclosed structure would be excluded).⁸⁵

173. Trident submits that:

- The Proposed Conduct would lock away over a quarter of the Adelaide metropolitan market to bin manufacturers for seven to 10 years.
- Smaller-to-medium-sized bin manufacturers may not participate in the proposed joint procurement as they may not have the production capacity to service a contract of the proposed size.⁸⁶

174. The ACCC notes that given that mobile garbage bins are also used by households in Adelaide, where there are over 600,000 rateable properties, the Participating Councils' requirements under the Street Litter contract are likely to represent only a very small proportion of mobile garbage bins in the Greater Adelaide Region. Given the small number of mobile garbage bins that will be required to be supplied under the Street Litter contract, relative to other overall demand for mobile garbage bins in the Greater Adelaide Region, the ACCC considers that the Proposed Conduct is unlikely to lessen competition for the supply of mobile garbage bins.

ACCC conclusion on public detriments

175. The ACCC consider that the Proposed Conduct is unlikely to result in significant public detriment from reducing competition for the supply of Ancillary Waste Services, including mobile garbage bins, to the Participating Councils or other councils in Adelaide.

Balance of public benefit and detriment

176. 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

⁸⁵ Trident Plastics submission, dated 08 June 2018, p.5, available: [ACCC Public Register](#).

⁸⁶ Trident Plastics submission, dated 08 June 2018, p.3, available: [ACCC Public Register](#).

ratepayers, improve waste management and reduce waste, and to achieve environmental and economic benefits for their communities.

177. 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
178. The ACCC considers that the joint procurement process is likely to result in a public benefit by stimulating additional competition to provide Ancillary Waste Services to the Participating Councils.
179. 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 their own procurement process.
180. The ACCC further considers that the Proposed Conduct is likely to generate public benefits through improvements in:
 - efficiency in managing contracts for the Ancillary Waste Services
 - efficiency in the supply of the Ancillary Waste Services, and
 - environmental outcomes.
181. For the reasons outlined in this draft determination, the ACCC is also satisfied that the Proposed Conduct is unlikely to result in significant public detriment because it is unlikely to reduce competition for the supply of Ancillary Waste Services or mobile garbage bins to the Participating Councils or other councils in Adelaide in the longer term.
182. 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 Ancillary Waste 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.
183. Accordingly, the ACCC proposes to grant authorisation.

Length of authorisation

184. The Act allows the ACCC to grant authorisation for a limited period of time.⁸⁷ 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.
185. In this instance, the Applicants seek authorisation for around 13 years (until 30 June 2031) to allow for the tender process, purchasing and commissioning of new trucks by the successful tenderer, contract commencement in May 2020, with

⁸⁷ Subsection 91(1).

a rolling start as existing contracts expire, and a contract length of up to 10 years (seven years with the option of a three year extension).⁸⁸

186. The SA Small Business Commissioner and Australian Small Business and Family Enterprise Ombudsman submit that the proposed contract term of 10 years is a significant and unreasonable period of time, given that the landscape of the waste management market can change dramatically and unexpectedly during that time.⁸⁹
187. The ACCC considers that the proposed contract term of up to 10 years accords with generally accepted contract terms in the industry. In particular, contracts of this duration accord with the likely reasonable economic life of the principal capital assets needed to perform waste collection services, the collection trucks. Having regard to the capital expenditure required to service the proposed contract, a contract of a shorter duration would be likely to attract less competitive bids from suppliers.
188. Accordingly, the ACCC proposes to grant authorisation until 30 June 2031.

Draft determination

The application

189. 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 AA1000420 with the ACCC.
190. The Applicants seek authorisation for:
- Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for the Ancillary Service Streams (Bulk Bins, Hard Waste and Street Litter), 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 enter into separate contracts for each Ancillary Service Stream, 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.⁹⁰
191. Subsection 90A(1) of the CCA requires that, before determining an application for authorisation, the ACCC shall prepare a draft determination.

⁸⁸ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 13 available: [ACCC Public Register](#).

⁸⁹ Small Business Commissioner of SA submission dated 06 June 2018, p 3, and Australian Small Business and Family Enterprise Ombudsman dated 18 June 2018, p.1, available: [ACCC Public Register](#).

⁹⁰ Council Solutions submission in support of application for authorisation, dated 14 March 2018, p. 8, available: [ACCC Public Register](#).

The net public benefit test

192. 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

193. The ACCC proposes to grant authorisation AA1000420 to the Applicants for the conduct outlined at paragraph 190 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.
194. The ACCC proposes to grant authorisation until 30 June 2031.
195. This draft determination is made on 14 September 2018.

Interim authorisation

The request for interim authorisation

196. 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.
197. 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 evaluated and contracts to be negotiated, potentially reducing the value of the collaboration.⁹¹
198. 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.
199. Interim authorisation is not sought to enter into contracts for any of the Ancillary 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.⁹²
200. The Applicants confirmed that their intention is to release the RFT for the Ancillary Waste Service streams, the subject of the current application, at the same time as

⁹¹ Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 39, available: [ACCC Public Register](#).

⁹² Council Solutions submission in support of application for authorisation, dated 4 May 2018, p. 39, available: [ACCC Public Register](#).

RFTs for kerbside collection services and processing services. However, the Applicants advised that this may be subject to change based on the status of the applications for authorisation for the three service streams. Specifically, depending on the time gap between the final determination for each (and, assuming in each case, a positive draft determination is given along with Interim Authorisation), it may be that the RFT for the Processing Service Streams and/or the RFT for the Ancillary Service Streams are released shortly after the waste collection services RFT. However, the Applicants advised, it is the intent of the Participating Councils to release all RFTs as soon as possible following a positive determination, because:

- It will allow sufficient time for the evaluation of tenders, awarding of contracts and start up activities for transition into service provision to the Participating Councils from May 2020.
- By having the RFTs in the market at the same time, a potential supplier which may be able to respond to more than one RFT will have a full understanding of the waste opportunity available and respond to each RFT accordingly. Understanding the full requirements may allow for innovative tender submissions that drive additional diversion or environmental outcomes.
- Considering the tenders for each RFT and for all service streams concurrently will also allow the Participating Councils to ensure the best outcomes and value is achieved across all streams.⁹³

Consultation

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

ACCC assessment

202. The ACCC has decided to grant interim authorisation under subsection 91(2) of the CCA in respect of the application for authorisation AA1000420 for Council Solutions, on behalf of the Participating Councils, to

- conduct a collaborative competitive tender process to jointly procure 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.
- evaluate the responses in collaboration with the Participating Councils, and
- negotiate on behalf of the Participating Councils the contractual framework.

⁹³ Council Solutions further submission, dated 31 May 2018, p.1, available: [ACCC Public Register](#).

203. Interim authorisation is not sought nor granted to enter into or give effect to any contracts for any of the Ancillary Service Streams.
204. In granting interim authorisation, the ACCC has taken into account the following factors:
- The relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. The existing 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 contract in 2019 to allow nine to 12 months for the purchase and commissioning of new trucks before contract commencement from May 2020. Granting interim authorisation will support the Applicants in seeking to have a contract in place by 2019.
 - Conditions in the relevant markets are unlikely to vary significantly depending on whether or not interim authorisation is granted.
205. 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

206. 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.