



Draft Determination

Application for authorisation

lodged by

Goulburn Valley Waste and Resource Recovery Group and eight participating local councils in respect of proposed joint procurement of waste and resource recovery services.

Authorisation number: AA1000453

Date: 5 December 2019

Commissioners: Keogh
Rickard
Ridgeway

Summary

The ACCC proposes to grant authorisation to enable the Goulburn Valley Waste and Resource Recovery Group and eight participating local councils in the central north of Victoria and southern New South Wales to jointly procure a range of waste and resource recovery services.¹

A separate tender process will be conducted for each of the individual waste and resource recovery services covered by this application, staggered as existing contracts with service providers expire.

The ACCC considers the proposed conduct is likely to result in public benefits in the form of reduced transaction costs for the participating councils and service providers.

The aggregation of the participating councils' waste volumes may also result in operational efficiencies and investment in new services or facilities for this region. This is also likely to improve environmental outcomes and may promote competition from existing and potentially new service providers to win service contracts with the participating councils, which is also a public benefit.

The ACCC considers that the proposed joint procurement of the various waste and resource recovery services is likely to result in minimal public detriment due to a number of mitigating factors including: the small proportion of total kerbside waste volumes represented by the participating councils, the joint tender process is voluntary for both the participating councils and service providers, and the structure of the separate tender processes itself – allowing service providers, including smaller players, to tender for one or multiple participating councils and for one or more waste stream.

The ACCC proposes to grant authorisation for 16 years. The proposed period of authorisation would allow the Applicants to run separate joint tender processes for each of the waste services between 2020 and 2025, and for the participating councils to enter into contracts with service providers for up to ten years.

The ACCC invites submissions in relation to this draft determination by 28 January 2020 before making its final decision.

1. The application for authorisation

- 1.1. On 1 October 2019 the Goulburn Valley Waste and Resource Recovery Group (the **Goulburn Valley Group**) lodged application for authorisation AA1000453 with the Australian Competition and Consumer Commission (the **ACCC**). The Goulburn Valley Group seeks authorisation on behalf of itself and eight local councils (**the Applicants**) to jointly procure waste and resource recovery services for 16 years. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

¹ The waste and resource recovery services include: domestic kerbside residual waste, recyclables and organic waste collection and transport; domestic kerbside recyclables acceptance and sorting; domestic kerbside organic waste (including food organics and/or green waste) acceptance and processing; residual waste disposal; Resource Recovery Centre domestic residual waste recyclables collection and transport; supply of mobile kerbside bins; supply of organics kitchen caddies and liners; landfill and resource recovery data recording systems; landfill management services; and collection, processing and/or disposal of specific material streams (for example, e-waste, clothing and textiles, mattresses, and soft furnishings).

1.2. The eight participating local councils are:

- Greater Shepparton City Council (Victoria)
- Moira Shire Council (Victoria)
- Campaspe Shire Council (Victoria)
- Strathbogie Shire Council (Victoria)
- Mitchell Shire Council (Victoria)
- Murrindindi Shire Council (Victoria)
- Murray River Council (New South Wales)² and
- Berrigan Shire Council (New South Wales).

1.3. The ACCC can grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

1.4. In this case, the participating councils may be considered to be each other's competitors when seeking to procure waste processing services. By conducting their procurement of waste services jointly rather than individually, they risk breaching the Act. Accordingly, the Applicants have sought authorisation from the ACCC, which would give them protection from legal action to collectively tender and contract with waste and resource recovery service providers.

1.5. The Applicants submit that the proposed joint procurement process will enable the participating councils to effectively and efficiently access the relevant services in the Goulburn Valley region, and to improve the quality of those services to the community.³

² On 7 November 2019, Murray River Council advised the ACCC that it has undergone a name change from Murray River Shire Council (as listed in application for authorisation AA1000453) to the Murray River Council.

³ The Goulburn Valley Group application for authorisation, 1 October 2019, p 8.

The Proposed Conduct

- 1.6. The Applicants seek authorisation to collaboratively conduct tenders for, and negotiate contractual terms in relation to, the following waste and resource recovery services:
- i. domestic kerbside residual waste⁴, recyclables and organic waste collection and transport
 - ii. domestic kerbside recyclables acceptance and sorting
 - iii. domestic kerbside organic waste (including food organics and/or green waste) acceptance and processing
 - iv. residual waste disposal
 - v. Resource Recovery Centre (**RRC**)⁵ domestic residual waste recyclables collection and transport
 - vi. supply of mobile kerbside bins
 - vii. supply of organics kitchen caddies and liners
 - viii. landfill and resource recovery data recording systems
 - ix. landfill management services and
 - x. collection, processing and/or disposal of specific material streams that are disposed of, aggregated at and collected from council-operated RRC's (including in relation to: e-waste; clothing and textiles; mattresses and soft furnishings; tyres; polystyrene; rigid and soft film plastics; empty oil containers; de-gassing of whitegoods and gas cylinders; waste automotive oil; the drumMUSTER program; scrap steel; cooking oil; green waste mulching; fluorescent lighting; aggregates and brick; and automotive batteries)

(the **Proposed Conduct**).

- 1.7. On 18 November 2019 the Applicants confirmed that the Proposed Conduct does not cover recycling *re-processing* services – that is, service providers currently re-sell recyclable materials to separate end markets under their own private agreements with re-processing facilities which will not be impacted by the Proposed Conduct.⁶
- 1.8. The Applicants advise that separate and staggered joint procurement processes will be conducted for each of the waste and resource recovery services listed at paragraph 1.6 above. These separate joint procurement processes are proposed to be undertaken roughly over six years (from 2020 to 2025), as the participating councils' current contracts with service providers expire.⁷ The Applicants seek authorisation to give effect to contracts between service providers and participating councils for up to ten years.

⁴ **Residual waste** is waste that is collected through councils' kerbside collection services but is *not* recycled or recovered, and is transported to landfill – the Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 4.

⁵ A **Resource Recovery Centre** is a facility established to receive and/or recover reusable and recyclable materials that would otherwise be destined for disposal. They can be combined with a transfer station and may include resale centres – the Goulburn Valley Group application for authorisation AA1000453, Annexure A, *Goulburn Valley Waste and Resource Recovery Implementation Plan, June 2017*, p 113.

⁶ Submission from the Goulburn Valley Group, 18 November 2019, p 2.

⁷ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, pp4, 10.

- 1.9. The Applicants advise that the first joint procurement process will be for *domestic kerbside recyclables acceptance and sorting services*.⁸ They also advise that this first joint procurement process is likely to be shaped by the Victorian Government Department of Environment, Land Water and Planning's (**DELWP**) *Circular Economic Policy* (yet to be finalised), which will include reforms to domestic kerbside waste collection processes. In this context, the Applicants expect to commence the proposed joint procurement for recyclables, acceptance and sorting services prior to June 2020, in order for those contracts to be finalised by July 2021.⁹
- 1.10. The Applicants advise that the priority order of each of the subsequent joint procurement processes is yet to be finalised. However, the Goulburn Valley Group expects that subsequent joint tenders for the relevant waste services would likely be conducted in the following order:
- specific material streams – namely, mattresses and soft furnishings collections, green waste mulching, tyre collections and scrap steel collections
 - kerbside collection services
 - organics acceptance services and
 - landfill disposal services.

2. Background

The Applicants

- 2.1. The **Goulburn Valley Group** is a Victorian statutory authority established under the *Environment and Protection Act 1970 (EP Act)* in 2014 (replacing the former Goulburn Valley Waste Management Group). The Goulburn Valley Group is responsible for assisting local councils in the Goulburn Valley region with waste and resource recovery planning and procurement.¹⁰
- 2.2. In particular, section 49H of the EP Act sets out that, among other things, the Goulburn Valley Group will facilitate the development of joint procurement contracts for waste and resource recovery services and manage contracts for those services.
- 2.3. The **participating councils** – namely, Greater Shepparton City, Moira Shire, Campaspe Shire, Strathbogie Shire, Mitchell Shire, Murrindindi Shire, Murray River Council, and Berrigan Shire – are statutory local government authorities in Victoria and southern New South Wales. Each participating council is responsible for conducting certain waste and resource recovery services within its respective municipal district.¹¹
- 2.4. The participating councils cover a region of approximately 35 000 square kilometres in the central north of Victoria and southern New South Wales, ranging from Melbourne's urban fringe (the Mitchell Shire) to rural areas along the Murray River and southern New South Wales border.¹²

⁸ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p. 5.

⁹ Submission from the Goulburn Valley Group, 18 November 2019, p 4.

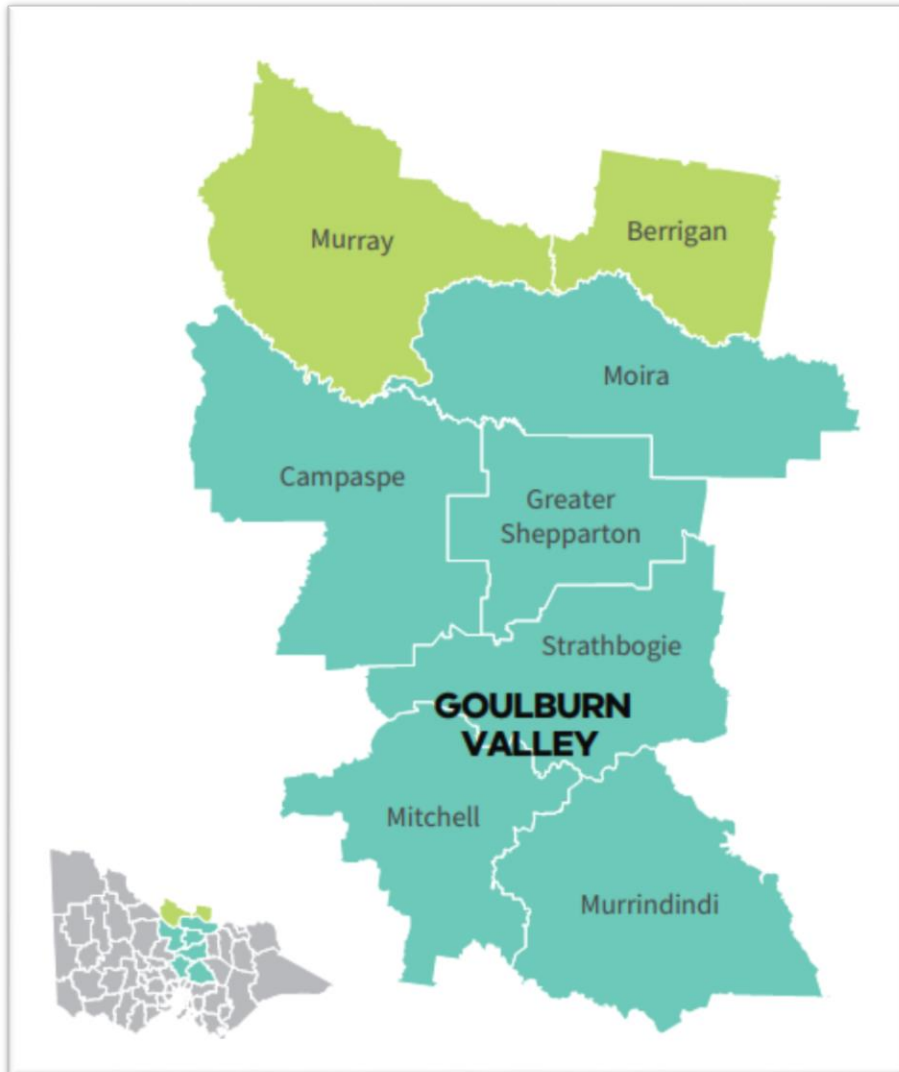
¹⁰ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, Annexure A, *Goulburn Valley Waste and Resource Recovery Implementation Plan, June 2017*, p 4.

¹¹ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 1.

¹² Submission from the Goulburn Valley Group, 18 November 2019, p 3.

- 2.5. Figure 1 shows the location of the eight participating councils, with the New South Wales councils shaded light green.
- 2.6. The combined population of the participating councils is approximately 215 000.¹³ The Goulburn Valley region includes the major population centres of Alexandra, Cobram, Echuca, Wallan and Shepparton. The Greater Shepparton Shire City Council contains the highest population of nearly 62 000 residents, and Strathbogie Shire the smallest with just under 10 000 residents. The greatest population growth is expected in the Mitchell Shire (on the northern outskirts of Melbourne) – forecast to increase by 145 per cent from 40 732 in 2016 to 86 038 in 2031.¹⁴

Figure 1: map of participating councils¹⁵



¹³ Submission from the Goulburn Valley Group, 18 November 2019, p 3.

¹⁴ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, Annexure A, *Goulburn Valley Waste and Resource Recovery Implementation Plan, June 2017*, pp 17,18.

¹⁵ Submission from Goulburn Valley Group, 18 November 2019, p 3.

Waste and resource recovery in the Goulburn Valley region

2.7. In 2017, the total volume of kerbside waste collected across Victoria was approximately 2.23 million tonnes, comprising:¹⁶

- 1.2 million tonnes – residual waste
- 582 300 tonnes – commingled recyclables and
- 462 000 tonnes – organic waste.

2.8. Table 1 shows that in 2017/18, the combined annual volume of kerbside waste (that is, domestic residual, recyclables and organics) collected by the participating councils was 74 436 tonnes. For the Victorian participating councils (only), this represents around 3 per cent of Victoria’s combined kerbside waste volumes in 2017. Table 1 also shows that half of the participating local councils currently have no domestic organic waste collection services.

Table 1: Total kerbside waste volumes (tonnes) by participating council in 2017/2018¹⁷

Council	Residual waste	Recyclables	Organic waste	Total
Campaspe Shire (Vic)	7 893	3 942	1 798	13 633
Greater Shepparton (Vic)	13 500	6 588	6 698	26 786
Mitchell Shire (Vic)	8 181	4 074	No service	12 255
Moira Shire (Vic)	4 496	2 747	2 747	9 990
Murrindindi Shire (Vic)	2 667	1 431	No service	4 098
Strathbogie Shire (Vic)	997	1 029	1 269	3 295
Murray River Council (NSW)	2 496	468	No service	2 964
Berrigan Shire (NSW)	780	635	No service	1 415
TOTAL	41 010	20 914	12 512	74 36

2.9. In accordance with the EP Act, the Goulburn Valley Group released the *Goulburn Valley Waste and Resource Recovery Implementation Plan (GV Implementation Plan)* in 2017. The GV Implementation Plan outlines the region’s waste and resource recovery infrastructure needs and how they will be met over the next ten years. Some of the key waste issues in this region are:¹⁸

- establishing additional food and garden organics processing capacity is a priority need

¹⁶ Sustainability Victoria’s interactive kerbside waste data, viewed on 24.10.19 at: <https://www.sustainability.vic.gov.au/Government/Victorian-Waste-data-portal/Interactive-waste-data-mapping/Kerbside-waste-data#>

¹⁷ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, pp 16-17.

¹⁸ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, Annexure A, *Goulburn Valley Waste and Resource Recovery Implementation Plan, June 2017*, p 29.

- landfill data suggests that a significant amount of waste going to landfill is mixed industrial waste. There is a need to increase recovery of these materials through additional sorting infrastructure
- ensuring infrastructure in the Goulburn Valley region to recover and reprocess priority materials of tyres, textiles and e-waste (which includes items such as televisions, mobile phones, computers, kitchen appliances and white goods) and
- the Goulburn Valley region does not require additional land fill capacity within the next ten years.

How the proposed joint procurement will work in practice¹⁹

Voluntary process and Memorandum of Understanding

- 2.10. Participation in the proposed joint procurements will be voluntary for each of the participating councils, which may elect not to participate in the process and instead continue to procure the relevant services independently if they prefer.
- 2.11. The Applicants advise that the Goulburn Valley Group and the participating councils will enter into a Memorandum of Understanding (MOU)²⁰ which states that the participating council is willing to participate in a collaborative tender process for the joint procurement of the relevant services, and setting out the participating council's specific service requirements.
- 2.12. The Goulburn Valley Group expects that participating councils that sign an MOU will ultimately execute contracts with service provider(s) if their requirements are met. However, the participating councils will not be obliged to do so, and may withdraw from the joint process at any time.

Tender process

- 2.13. The Goulburn Valley Group and representatives from each participating council for any joint procurement process will form a Collaborative Procurement Project Working Group (**Working Group**) to coordinate the following aspects of the joint procurement process:
- development of a Request for Tender and advertising to the market for each of the relevant waste and resource recovery services
 - evaluation of proposals received from prospective service providers (based on objective criteria) and the preparation of recommendations about these proposals
 - contribution to the costs of conducting the joint procurements
 - where a service provider is selected to provide relevant services to multiple participating councils by way of a joint agreement, the joint negotiation of contractual terms and
 - where joint agreements are entered into by multiple participating councils, the formation of a group of those councils and the Goulburn Valley Group to coordinate the ongoing administration of those agreements.

¹⁹ Unless stated otherwise, information under this heading is taken from The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, pp 5-7.

²⁰ Non-binding and confidential to the Goulburn Valley Group and the participating council.

- 2.14. In developing the Request for Tender document, the Working Group will consider each participating council's service requirements for each of the relevant waste and resource recovery services. Service providers may elect to bid for one or multiple participating councils, and for one or more of the relevant waste and resource recovery streams. The Working Group will receive and evaluate all the proposals received in response to the Request for Tender.
- 2.15. The evaluation of tender responses will be documented in a joint report containing the Working Group's recommendations. The Working Group's report will be provided to each participating council that has opted into the joint procurement process for consideration and selection of a service provider(s). The participating councils are not bound to accept the recommendations in the Working Group's report, and will still have the ability to contract with service providers that did not participate in the tender process.

Proposed priority order of the various joint procurement processes and pilot program

- 2.16. As noted, at this stage the separate joint procurement processes are proposed to be conducted between 2020 and 2025 in the following order:
- domestic kerbside recyclables acceptance and sorting services, commencing prior to June 2020
 - specific material streams – mattresses and soft furnishings collections, green waste mulching, tyre collections and scrap steel collections would likely be considered first
 - kerbside collection services
 - organics acceptance services and
 - landfill disposal services.
- 2.17. For the collection, processing and/or disposal of specific material streams, the Goulburn Valley Group proposes to conduct a Working Group Pilot. The purpose of the pilot will be to review the current services provided to each of the participating councils for specific material streams, and to determine how 'best to conduct joint tenders for those services that will result in maximum benefits to both participating councils and service providers.'²¹ The Pilot Working Group will likely be smaller than the main Working Group, comprising one representative from two participating councils, one member from the main Working Group, and one procurement officer.
- 2.18. The Applicants advise that the first pilot is likely to consider the collection of mattresses and soft furnishings because there are currently a number of short term contracts in place with service providers which would not hinder the commencement of joint procurement process for those services.²²

Negotiation of supply terms

- 2.19. Following the tender process, the Goulburn Valley Group and participating councils propose to jointly negotiate terms of supply with selected service providers, including in relation to rates, volumes (for example, minimum volume commitments) and capacity requirements.

²¹ Submission from Goulburn Valley Group, 18 November 2019, p 4.

²² Submission from Goulburn Valley Group, 18 November 2019, p 4.

2.20. The Applicants submit that contracts entered into will be long term contracts, of a maximum of ten years.²³

Ongoing administration of contracts

2.21. The Applicants advise that decisions regarding the ongoing administration and management of service contracts entered into between participating councils and service providers will be made by each of the participating councils. However, the Applicants submit that the Goulburn Valley Group may manage those contracts on behalf of participating councils in the future, should the Goulburn Valley Group and the participating councils agree.

Other similar Victorian waste authorisations

Loddon Mallee Waste and Resource Recovery Group (A91596 and A91597)

2.22. On 1 February 2018, the ACCC granted authorisation to the Loddon Mallee Waste and Resource Recovery Group and eight local councils (namely – the City of Greater Bendigo, Rural City of Mildura, Rural City of Swan Hill, Gannawarra Shire, Loddon Shire, Buloke Shire, Mount Alexander Shire and Macedon Ranges Shire) to jointly procure certain waste and resource recovery services. Requests for tender issued by the group will be staggered over several years.

2.23. The waste and resource recovery services are:

- domestic kerbside waste, recyclables and organic waste collection
- domestic kerbside recyclables acceptance and processing
- domestic organic waste acceptance and processing (including food organics and green waste)
- supply and collection of bulk bins and skips and
- collection and processing of specific material waste streams, such as e-waste, mattresses, tyres and certain plastics.

2.24. Authorisation was granted until the end of 2029.

North East Waste and Resource Recovery Group (A91551)

2.25. On 2 February 2017, the ACCC granted authorisation to the North East Waste and Resource Recovery Group and 10 participating councils (namely – Alpine Shire, Benalla Rural, Indigo Shire, Mansfield Shire, Towong Shire, Rural City of Wangaratta, the City of Wodonga, and the Falls Creek, Mt Hotham Alpine Resort Management, and Mt Buller Mt Stirling Alpine Resort Management) to conduct collaborative tender processes for waste services and to participate in the ongoing administration of the relevant supply contracts.

2.26. The waste services are:

- the collection of materials from transfer stations, resource recovery centres and landfills
- transport of materials from the collection locations to the processing sites

²³ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p. 10.

- processing at the processing sites of: metal recyclers; tyre recyclers; plastic recyclers; electronic waste recyclers; mattress recyclers
- concrete crushing and garden waste chipping on site
- receiving and processing of organics and
- purchase of waste and resource recovery infrastructure such as bins.

2.27. Authorisation was granted for 11 years.

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including relevant service providers, industry associations or peak bodies, government, and relevant regulatory bodies.²⁴
- 3.3. The ACCC did not receive any submissions from interested parties in relation to the application.
- 3.4. Public submissions from the Applicants are available from the ACCC's [Public Register](#) for this matter.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, and may substantially lessen competition and be concerted practices within the meaning of section 45 of the Act. This is because the councils may otherwise be considered competitors in the acquisition of the relevant waste and resource recovery services.
- 4.3. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (the **Authorisation Test**).

Relevant areas of competition

- 4.4. To assess the likely effect of the Proposed Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.5. The Applicants submit that the relevant area of competition is at least as large as the supply and acquisition of services relating to the collection, acceptance, sorting, processing and/or disposal of residual waste, recyclables and organic waste in the Goulburn Valley region and adjacent areas.²⁵

²⁴ A list of the parties consulted and the public submissions received is available from the ACCC's [Authorisations public register](#).

²⁵ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 13.

4.6. The ACCC considers that the relevant areas of competition likely to be affected by the Proposed Conduct are competition to acquire and supply the various waste and resource recovery services (listed at paragraph 1.6) in the Goulburn Valley region of Victoria and adjacent southern New South Wales border region.

Future with without the conduct

4.7. In applying the Authorisation Test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.

4.8. The Applicants submit that in the absence of the Proposed Conduct, the participating councils could either develop tenders and negotiate the supply of the relevant services individually, or structure their procurement plans to 'engage in a modified form of collaboration that relies on the joint venture and collective acquisition exceptions to the relevant prohibitions' in the Act.²⁶

4.9. The ACCC considers that, absent the Proposed Conduct, the participating councils are likely to continue to individually tender and contract for the relevant waste and resource recovery services, at least in the short term.

Public benefits

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

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*²⁷

4.11. The Applicants submit that the Proposed Conduct is likely to result in the following public benefits:²⁸

- Transaction and other cost savings through avoiding the duplication of work by individual councils in preparing tender documents, advertising, contract preparation, and sharing specialist advisers' costs. The involvement of the Goulburn Valley Group will also streamline ongoing contract management costs.
- Aggregating participating councils' waste volumes will:
 - Increase capacity utilisation of existing facilities in the region and encourage service providers to invest in infrastructure or new technologies.
 - Increase competition by attracting new service providers that may not have entered the market previously. The Applicants consider the long lead time built into the proposed staggered tender processes for each of the waste streams may also facilitate the entry of new service providers.

²⁶ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 18.

²⁷ 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.

²⁸ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, pp18 – 23.

- Improve current services offered across the region, particularly where services are not provided across all participating councils. In particular, services in respect of materials that have low recovery value or require sufficient volumes of material for services to be financially viable. The Applicants submit there is currently insufficient food and garden organics processing infrastructure in this region to meet expected future demand for these services, with the region's existing infrastructure operating at close to capacity (at approximately 93 per cent).
- Improved environmental outcomes arising from improved waste and resource recovery services being offered in the Goulburn Valley and diverting residual waste from landfill.

4.12. The ACCC has considered the following public benefits:

- reduced transaction costs
- improved efficiencies and investment
- increased competition and
- environmental benefits.

Reduced transaction costs

4.13. The ACCC considers the Proposed Conduct is likely to provide transaction cost savings for the both the Applicants and service providers. In particular, the proposed Working Group will centrally coordinate the tender processes, evaluate proposals, and jointly negotiate terms and conditions of contracts with individual service providers, resulting in less time, effort and resources being expended. Additionally, the Proposed Conduct is likely to result in transaction cost savings for the service providers who engage in the tender process. The providers can choose to participate in a single tender process per waste stream, which would reduce their administrative burden.

4.14. Therefore, compared to a situation without the Proposed Conduct, the ACCC considers that the Proposed Conduct is likely to result in transaction cost savings.

4.15. The ACCC considers the extent of costs savings associated with the ongoing administration and management of contracts with the successful service provider(s) is unclear. As advised by the Applicants, this role will initially be carried out by each of the participating councils, with the Goulburn Valley Group potentially taking on a coordinating role in the future if it, and the participating councils, agree. To the extent this occurs, it is likely to result in further cost savings.

Improved efficiencies and investment

4.16. The ACCC has previously recognised that the aggregation of waste volumes through joint procurement of waste services by local councils can result in public benefits by facilitating service providers' realisation of operational efficiencies, making services financially viable, and/or reducing the risks associated with investment in upgraded or new facilities and technologies. This is particularly relevant for service providers that operate in regional locations such the Goulburn Valley where individual councils may not be able to offer sufficient waste volumes individually to support service provision or investment, population density is lower and transport costs are typically higher.

4.17. The Applicants advise that currently only 2 per cent of textile waste (for example, clothing, end-of-life furniture and manufacturing offcuts) is recovered in Victoria each

year. Given these materials have a lower recovery value and are required in large volumes to make collection and re-processing services viable, the Applicants consider the Proposed Conduct will create an opportunity for services providers to invest in textile re-processing, mattress recovery services and additional textile collection services in the Goulburn Valley Region.²⁹

- 4.18. The Applicants also submit that there is currently significant re-processing capacity for recovered plastics in the region. It is estimated that currently 33 per cent of plastics originating in the Goulburn Valley are re-processed outside of the region, and that nine facilities that manage plastics have the capacity to re-process more than double the volumes that they currently manage. Therefore, the Applicants consider that combining the participating councils' domestic recyclables volumes will make the Goulburn Valley region's plastics re-processing services more viable.³⁰
- 4.19. Further, the Applicants submit that there is currently no re-processing infrastructure in the Goulburn Valley region for paper and cardboard, glass and metals, all of which are transported outside of the region for re-processing. The Applicants consider the Proposed Conduct, by aggregating volumes, will assist the development of re-processing services within the region.³¹ Similarly, the Applicants submit that there is potential to build new tyre re-processing facilities in the Goulburn Valley based on pre-existing interest notified to the Goulburn Valley Group, the significant volumes transported outside of the region each year (approximately 100 tonnes), Moira Shire's priority stockpile of tyres, and the significant transport sector in the region.³²
- 4.20. The ACCC considers that to the extent aggregated waste volumes and longer term contracts allow service providers to improve operational efficiencies, or underpin investment in new services or facilities, the Proposed Conduct is likely to result in public benefits in the form of cost savings from efficiencies and from increased waste processing due to investment in new and more efficient waste processing facilities.

Increased competition

- 4.21. The Applicants submit that the Proposed Conduct, including the long lead times built into the proposed joint tendering process, is likely to attract interest from service providers that have previously not operated within the region. For example, the Applicants submit that there is currently insufficient infrastructure in the Goulburn Valley region for the recovery and re-processing of food and garden organics, with the region's existing facilities operating at close to capacity (around 93 per cent).³³ The ACCC notes that only half of the participating councils currently have organic waste services in their municipalities.
- 4.22. The ACCC considers the Proposed Conduct may increase competition by offering prospective tenderers a more substantial volume of waste for collection and/or processing. This may result in existing or new service providers competing more vigorously to win service contracts, which is a public benefit.

²⁹ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 21.

³⁰ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, pp 21-22.

³¹ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 21.

³² The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 21.

³³ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 20.

Improved environmental outcomes

- 4.23. The Applicants submit that there are likely to be environmental benefits, including assisting with the development of markets for the re-processing of materials that are currently not treated in the Goulburn Valley region, and reducing the volume of waste going to landfill by diverting it to alternative waste and resource recovery solutions.
- 4.24. The ACCC considers the Proposed Conduct is likely to result in public benefits from improved environmental outcomes.

Public detriments

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

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.³⁴

- 4.26. The ACCC considers that public detriments may arise as a result of joint procurement arrangements such as these where the group comprises such a substantial portion of the market that it reduces competition between providers of the relevant waste and resource recovery services – that is, by limiting the availability of business for which service providers compete.
- 4.27. However, the ACCC considers that the Proposed Conduct is likely to result in minimal public detriment for the following reasons:
- Each of the individual waste streams will have a separate tender process, rather than one single process for the entire suite of waste services covered by the authorisation application. Having separate tender processes for each of the relevant waste and resource recovery services, facilitate service providers, including smaller providers, being able to tender for one or multiple participating councils and for one or more waste streams.
 - The participating councils' combined annual kerbside waste volumes (comprising domestic residual, recyclables and organics) makes up only around 3 per cent of total kerbside waste volumes collected in Victoria.
 - The Proposed Conduct is voluntary for both service providers and the participating councils.

Balance of public benefit and detriment

- 4.28. Therefore, for the reasons outlined in this draft determination, based on the information currently before it, the ACCC is satisfied that the Proposed Conduct is likely to result in public benefits and that these public benefits would outweigh any likely detriment to the public from the Proposed Conduct.

³⁴ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

Length of authorisation

- 4.29. The Act allows the ACCC to grant authorisation for a limited period of time.³⁵ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.30. In this instance, the Applicants seek authorisation for a total period of 16 years, comprising:³⁶
- approximately six years to conduct a separate joint procurement process for each of the relevant waste and resource recovery services (including the MOU, tender process, and negotiation and execution of contracts) between 2020 and 2025 (being the period when existing contracts between the participating councils and service providers expire) and
 - a maximum ten year period to give effect to the contracts entered into between participating councils and service providers.
- 4.31. In support of this request, the Applicants submit that ten year contract terms are typical for waste and resource recovery services, and are intended to facilitate a competitive tender process, as well as allow service providers to realise returns on any capital investment.³⁷
- 4.32. Given the particular features of the Proposed Conduct – namely, the staggered joint procurement processes between 2020 and 2025 – and the ACCC’s conclusions about the public benefits and minimal public detriments likely to result from the conduct, the ACCC proposes to grant authorisation for 16 years until 1 July 2036. The ACCC invites submissions in relation to the proposed period of authorisation.

5. Draft determination

The application

- 5.1. On 1 October 2019 the Goulburn Valley Waste and Resource Recovery Group (the **Goulburn Valley Group**) lodged application for authorisation AA1000453, seeking authorisation under section 88(1) of the Act on behalf of itself and eight local councils (**the Applicants**).
- 5.2. The eight participating local councils are:
- Greater Shepparton City Council (Victoria)
 - Moira Shire Council (Victoria)
 - Campaspe Shire Council (Victoria)
 - Strathbogie Shire Council (Victoria)
 - Mitchell Shire Council (Victoria)
 - Murrindindi Shire Council (Victoria)

³⁵ Subsection 91(1).

³⁶ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 10.

³⁷ The Goulburn Valley Group application for authorisation AA1000453, 1 October 2019, p 11.

- Murray River Council (New South Wales)³⁸ and
- Berrigan Shire Council (New South Wales).

5.3. The Applicants seek authorisation to collaboratively conduct tenders for, and negotiate contractual terms in relation to, the following waste and resource recovery services:

- i. domestic kerbside residual waste, recyclables and organic waste collection and transport
- ii. domestic kerbside recyclables acceptance and sorting
- iii. domestic kerbside organic waste (including food organics and/or green waste) acceptance and processing
- iv. residual waste disposal
- v. Resource Recovery Centre (**RRC**) domestic residual waste recyclables collection and transport
- vi. supply of mobile kerbside bins
- vii. supply of organics kitchen caddies and liners
- viii. landfill and resource recovery data recording systems
- ix. landfill management services and
- x. collection, processing and/or disposal of specific material streams that are disposed of, aggregated at and collected from council-operated RRC's (including in relation to: e-waste; clothing and textiles; mattresses and soft furnishings; tyres; polystyrene; rigid and soft film plastics; empty oil containers; de-gassing of whitegoods and gas cylinders; waste automotive oil; the drumMUSTER program; scrap steel; cooking oil; green waste mulching; fluorescent lighting; aggregates and brick; and automotive batteries)

(the **Proposed Conduct**).

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

The authorisation test

5.5. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

5.6. For the reasons outlined in this draft determination, based on the information currently before it the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

5.7. Accordingly, the ACCC proposes to grant authorisation.

³⁸ On 7 November 2019, Murray River Council advised the ACCC that it has undergone a name change from Murray River Shire Council (as listed in application for authorisation AA1000453) to the Murray River Council.

Conduct which the ACCC proposes to authorise

- 5.8. The ACCC proposes to grant authorisation AA1000453 to enable the Applicants to jointly procure and contract the waste and resource recovery services as described in paragraph 5.3 and defined as the Proposed Conduct.
- 5.9. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, may have the purpose or effect of substantially lessening competition or be a concerted practice within the meaning of section 45 of the Act.
- 5.10. The ACCC proposes to grant authorisation AA1000453 for 16 years, until 1 July 2036.
- 5.11. This draft determination is made on 5 December 2019.

6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination by 28 January 2020. 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.