

From: Alice Waterston [REDACTED]
Sent: Friday, 29 October 2021 11:33 AM
To: Hobbs, Tanya <tanya.hobbs@acc.gov.au>
Cc: Geoff Carter [REDACTED]; Jones, Gavin <gavin.jones@acc.gov.au>
Subject: RE: AA1000583 - authorisation Regional Renewable Organics Network project - request for clarification [SEC=OFFICIAL] [ACCC-ACCANDAER.FID2993038] [ME-ME.FID6481110]

Dear Ms Hobbs

Thank you for your email.

In relation to the ACCC's first question, we confirm that the conduct for which authorisation is sought is limited to the conduct described in sub-clauses 3.1 (a) to (c) of the application for authorisation (**Application**).

In relation to the ACCC's second question:

- The Applicants have requested the protection of authorisation in connection with the entry into Waste Supply Agreements (and not only to the giving effect to those agreements).
- Authorisation has been requested on an interim basis to allow the Waste Supply Agreements to be executed by [REDACTED]. Notwithstanding that ACCC authorisation is a condition precedent to the Waste Supply Agreements becoming effective, the Applicants will be bound to the terms of the Waste Supply Agreements once executed (even before those Agreements are effective). This means that once the Waste Supply Agreements are executed, subject to ACCC authorisation being obtained, Barwon Water can have certainty over the commercial terms the Councils have agreed to, which will underpin the required investment approvals to conduct the detailed design work, including several technical assessments, obtaining the necessary approvals, procuring the processing equipment and constructing the Regional Renewable Organics Network Facility (**RRON**).
- The ACCC has questioned the utility of being able to enter into contracts in terms of enabling the investment in the design and construction of the project given that such contracts would not come into effect until final authorisation was granted. However, it is not the case that the investment would be immediately expended: the executed Waste Supply Agreements underpin the *approval* to make various investments in progressing the RRON Project (notwithstanding that their effectiveness is contingent on the condition precedent being satisfied).
- If interim authorisation is not granted in relation to the entry into Waste Supply Agreements, the detriment to the Applicants is that the July 2024 'Go Live' date would be put at risk as follows:
 - Working backwards from the 'Go Live' date, construction of the RRON is planned to commence in early 2023, to allow approximately 15 months for construction, installation and commissioning prior to July 2024;
 - Prior to commencing construction, there is approximately 12 months required to develop the design of the RRON and obtain all necessary approvals (including a minimum statutory 4 month timeframe to obtain an Environment Protection Authority Development Licence). Accordingly, this phase is required to commence at

the beginning of 2022 to allow sufficient time to commence construction in early 2023 and meet the July 2024 'Go-Live' date (and cannot commence until the Waste Supply Agreements are executed);

- Accordingly, if interim authorisation was not granted, a final decision on authorisation would not be expected until at least February 2022, which would push back the execution of Waste Supply Agreements at least until that time;
- Finally, any delay in the 'Go Live' date could cause issues in connection with the Councils' existing waste contracts, some of which are in place only [REDACTED].
- Conversely, in granting interim authorisation there is no detriment to the ACCC, because as the ACCC has noted, the interim authorisation does not trigger the condition precedent for the Waste Supply Agreements becoming effective. The ACCC is free to make a different decision at a later time when granting final authorisation. However, granting interim authorisation in respect of the entry into Waste Supply Agreements provides great benefit to the Applicants, as this means that the RRON Project schedule is not delayed and Barwon Water can have confidence in obtaining all necessary internal approvals for the capital expenditure required to build the RRON.

Kind regards

Alice Waterston

Associate

T [REDACTED] M [REDACTED]
[REDACTED]

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From: Hobbs, Tanya <tanya.hobbs@accg.gov.au>

Sent: Wednesday 27 October 2021 04:50 PM

To: Alice Waterston [REDACTED]

Cc: Geoff Carter [REDACTED]; Jones, Gavin <gavin.jones@accg.gov.au>

Subject: AA1000583 - authorisation Regional Renewable Organics Network project - request for clarification
[SEC=OFFICIAL] [ACCC-ACCCANDAER.FID2993038]

OFFICIAL

Dear Ms Waterston,

I refer to the application for authorisation lodged on 13 October 2021 on behalf of Borough of Queenscliff, City of Greater Geelong, Colac Otway Shire, Golden Plains Shire, Surf Coast Shire, Wyndham City Council and Barwon Region Water Corporation (the **Applicants**). I am seeking clarification on two aspects of the application.

- 1) I note that the description of the conduct for which authorisation and interim authorisation is sought is phrased as: "conduct *in connection with*:". I'm seeking to clarify whether this formulation means that the Applicants are seeking to include conduct beyond that described in the following three sub-clauses (ie 3.1 a) to c)) or whether the conduct proposed is limited to that described in the following three sub-clauses. If the Applicants are seeking authorisation for conduct beyond that described in sub-clauses 3.1a) to c), please provide an explanation and description of this conduct so that it can be explicitly considered in the ACCC's assessment of the conduct for which authorisation is sought. Otherwise, the ACCC's consideration of the application, including the scope

of any authorisation granted, is likely to be limited to only the specific conduct described by sub-clauses 3.1(a) to c).

- 2) The scope of the conduct for which the Applicants have sought interim authorisation appears to include entering into Waste Supply Agreements - with a condition precedent to the effect that they would not come into effect until such time as final authorisation for the proposed conduct has been obtained. I note your submissions regarding the Applicants' commercial timeframe and the effects of interim authorisation in assisting the Applicants to meet this timeframe. Interim authorisations granted by the ACCC to these types of arrangements are usually limited to the Councils commencing and progressing the collective bargaining process (i.e. the conduct described at paragraphs 3.1(a) and 3.1(b) of the application). Interim authorisation is not generally granted for the parties to enter into contracts. In this case, it is unclear why urgent interim authorisation has been sought for this limb of the proposed conduct or what the utility of being able to enter into contracts would be in terms of enabling the investment in the design and construction of the project to meet its estimated completion date, given that such contracts would not come into effect until final authorisation was granted. Accordingly, could you provide further explanation of this point.

The ACCC's current intention is to make a decision about the request for interim authorisation in the week commencing 8 November 2021. Accordingly, we are seeking the above clarification by 1 November 2021. Please do not hesitate to contact me or Gavin Jones on 03 9290 1475 if you wish to discuss the above points. We will place this email and your response on the ACCC's public register on the internet, subject to any request for public register exclusion.

Yours sincerely

Tanya Hobbs

Tanya Hobbs
Assistant Director | Competition Exemptions
T: +61 2 6243 1029
Hours: Mon & Fri: (7am-6pm); Tues, Wed, Thurs: (7-9:30am, 12-1pm, 4-6pm)



The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.