

Application pursuant to subsection 88(1) of the
Competition and Consumer Act 2010 for interim
and final authorisation

City of Greater Geelong on behalf of itself, Surf Coast Shire
Council, Golden Plains Shire Council, Borough of Queenscliffe,
Wyndham City Council and Colac Otway Shire

1 September 2023

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1 Introduction

Authorisation is being sought by the City of Greater Geelong (**CoGG**), on behalf of Surf Coast Shire Council, Golden Plains Shire Council, Borough of Queenscliffe, Wyndham City Council and Colac Otway Shire, which it represents or has authority to represent for the purposes of this application for authorisation.

Relevantly, the councils are located in outer metropolitan and regional areas of Victoria, represent small populations and generate relatively small waste streams.

This application seeks authorisation for conduct that relates to joint procurement processes and, where agreed, joint negotiation and entering into contracts for the provision of domestic kerbside co-mingled and glass recyclables receipt and processing, and bulk haulage of those materials from the receipt site to the processing site, if applicable.

In addition, interim authorisation is sought to allow the Participating Councils to commence the joint procurement process for the services described above (but not to give effect to any contracts executed pursuant to that procurement process).

2 Parties to the proposed conduct

2.1 The Applicant

The applicant is the City of Greater Geelong ABN 18 374 210 672 (**Applicant**).

2.2 Other parties that propose to engage in the proposed conduct

Other parties who also propose to engage in the proposed conduct and on whose behalf authorisation is sought are:

- Surf Coast Shire Council
- Golden Plains Shire Council
- Borough of Queenscliffe
- Wyndham City Council
- Colac Otway Shire

Together, the Applicant and the Councils listed above are referred to in this application as the **Participating Councils**.

2.3 Contact person

Name	Eddie Scuderi
Position	Partner, Corrs Chambers Westgarth
Telephone	[REDACTED]
Email	[REDACTED]

2.4 Description of the Participating Councils' business activities

The Participating Councils are statutory local government authorities originally established under the now repealed *Local Government Act 1989* (Vic).

The functions of the Participating Councils include, but are not limited to:

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- providing good governance in its municipal district for the benefit and wellbeing of the municipal community;
- planning for and providing services to meet the needs of the local community;
- providing and maintaining community infrastructure in their respective municipal districts;
- exercising, performing and discharging the duties, functions and powers of councils under legislation; and
- any other function relating to the peace, order and good government of the municipal district.

Importantly, in discharging their functions, the Participating Councils must comply with the governance principles set out in the *Local Government Act 2020* (Vic) including:¹

- collaboration with other Councils and Governments and statutory bodies is to be sought;
- regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- the municipal community is to be engaged in strategic planning and strategic decision making; and
- innovation and continuous improvement is to be pursued.

The Participating Councils are responsible for conducting essential waste and resource recovery services within its respective municipal district (as applicable).

Relevant provisions of the Circular Economy Act

Recycling Victoria is responsible for providing state-wide (rather than just regional) leadership, stewardship and oversight of waste, recycling or resource recovery services and to support the development of a circular economy. The Participating Councils note that they have been liaising with Recycling Victoria about providing a letter in support of this application. The Participating Councils will provide this letter to the ACCC once received.

The Head, Recycling Victoria, was appointed on 1 July 2022.

Procurement activities are a core function of Recycling Victoria. In this regard, the Participating Councils draw the ACCC's attention to the following provisions of Part 4 (titled "Procurement") of the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic) (**Circular Economy Act**), which provide further information about the role of Recycling Victoria with respect to the Procurement of Waste, Recycling and Resource Recovery Services by Councils and Alpine Resort Management Boards in Victoria.

References to "Recycling Victoria" in this application are references to the Head, Recycling Victoria.

¹ *Local Government Act 2020* (Vic), section 9.

Part 4—Procurement

56 Procurement agreements between the Head, Recycling Victoria and councils and Alpine Resort Management Boards

- (1) *The Head, Recycling Victoria may enter into a written agreement with a council that intends to procure a waste, recycling or resource recovery service for the municipal district of the council.*
- (2) *The Head, Recycling Victoria may enter into a written agreement with an Alpine Resort Management Board that intends to procure a waste, recycling or resource recovery service for land within its alpine resort.*
- (3) *An agreement under subsection (1) or (2) may provide for any of the following -*
 - (a) *the process by which the council or Alpine Resort Management Board is to procure the waste, recycling or resource recovery service;*
 - (b) *requirements or provisions that must be included in a contract entered into by the council or Alpine Resort Management Board for the procurement of the waste, recycling or resource recovery service;*
 - (c) *the enforcement of a contract referred to in paragraph (b), including but not limited to penalties to which a party to the contract may be liable if the party fails to comply with the contract;*
 - (d) *conditions or standards with which the council or Alpine Resort Management Board must comply at any stage during the procurement process;*
 - (e) *the enforcement of the agreement by the Head, Recycling Victoria, including but not limited to penalties to which the council or Alpine Resort Management Board may be liable if the council or Board -*
 - (i) *fails to comply with the agreement; or*
 - (ii) *withdraws from the agreement before the procurement process is complete;*
 - (f) *any prescribed matter.*
- (4) *The Head, Recycling Victoria may -*
 - (a) *enter into more than one agreement under subsection (1) or (2) with a single council or Alpine Resort Management Board (as appropriate); or*
 - (b) *enter into a single agreement under subsection (1) or (2) with more than one council or Alpine Resort Management Board*

(as appropriate).

- (5) *Despite anything to the contrary in an agreement under subsection (1) or (2), a council or Alpine Resort Management Board is not liable to a penalty under the agreement merely because the council or Board withdraws from that agreement before the relevant procurement process is complete if the Head, Recycling Victoria is satisfied that in the circumstances it would be manifestly unjust to require the council or Board to complete the procurement process.*

57 *Head, Recycling Victoria may provide councils or Alpine Resort Management Boards with procurement advice and support*

- (1) *The Head, Recycling Victoria may provide advice and support to a council or Alpine Resort Management Board for the purposes of enabling or facilitating the council or Board –*
- (a) *to enter into or manage a contract for the procurement of waste, recycling or resource recovery services; or*
 - (b) *to engage in procurement activities; or*
 - (c) *to engage in a prescribed activity.*
- (2) *Without limiting subsection (1), advice or support under that subsection may take one or more of the following forms –*
- (a) *education and training for persons appointed or engaged by the council or Alpine Resort Management Board;*
 - (b) *manuals, recommendations or model contract provisions.*

58 *Procurement guidelines*

- (1) *The Head, Recycling Victoria may issue guidelines relating to the procurement of waste, recycling or resource recovery services by councils or Alpine Resort Management Boards.*
- (2) *A council or Alpine Resort Management Board that is subject to guidelines issued under subsection (1) must have regard to those guidelines.*
- (3) *If the Head, Recycling Victoria issues guidelines under subsection (1), the Head, Recycling Victoria must publish the guidelines on a website maintained by the Department.*

59 *Matters the Head, Recycling Victoria must take into account*

- (1) *When performing a function or duty or exercising a power under this Part, the Head, Recycling Victoria must take the following into account –*
- (a) *a procurement process should be as streamlined as possible;*
 - (b) *the provision of waste, recycling or resource recovery services*

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- should be consistent, high quality and localised;*
- (c) *the provision of waste, recycling or resource recovery services should provide value for money and efficient use of resources;*
 - (d) *the provision of waste, recycling or resource recovery services should be continually improving;*
 - (e) *a procurement process should be transparent and fair and provide accountability;*
 - (f) *any prescribed matter.*
- (2) *When performing a function or duty or exercising a power under this Part, the Head, Recycling Victoria may take into account any matter that the Head, Recycling Victoria reasonably considers relevant.*

Recycling Victoria Policy 2020

The Recycling Victoria Policy 2020 is also relevant to the role and functions of Recycling Victoria.

The Participating Councils note that the role and functions of Recycling Victoria as detailed in the Part 4 of the Circular Economy Act are aligned with statements made in the Recycling Victoria Policy 2020, including (emphasis added):

- that the Victorian Government will work closely with councils to find options that meet local needs while maintaining a consistent statewide service and associated education program; and
- that councils will be supported to work together, aggregating waste volumes and pursuing collaborative procurement of waste and recycling contracts to achieve improved services and recycling outcomes.

The policy objectives and role of Recycling Victoria described above are consistent with the proposed conduct described in this application which, self-evidently, is designed to enable the Participating Councils to work together to aggregate waste volumes and pursue collaborative procurement of waste and recycling contracts to achieve improved services and recycling outcomes.

2.5 Email address for service

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2.6 Contact details for each Participating Council

Contact details for each Participating Council are set out in **annexure A**.

3 Details of the proposed conduct

3.1 Description

The proposed conduct

The proposed conduct comprises the following two phases:

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- joint procurement conduct (summarised in more detail under the corresponding heading below and referred to in this application as the **Procurement Conduct**); and
- giving effect to service contracts that may be executed between one or more of the Participating Councils and one or more suppliers of the Relevant Services (**Service Providers**) as an outcome of the Procurement Conduct (referred to in this application as the **Award Conduct**).

The Applicant seeks interim authorisation for the Procurement Conduct and final authorisation for both the Procurement Conduct and Award Conduct.

The Procurement Conduct

The Procurement Conduct will involve the Participating Councils working jointly together to prepare and issue a single request for tender (**RFT**) for service provider(s) to tender to supply one or more of the Participating Councils with the following waste services (as a package):

- (a) domestic recyclables and glass recyclables receipt and processing; and
- (b) bulk haulage of those materials from the receipt site to the processing site (if necessary).

Together, the services in (a) and (b) above are referred to in this application as the **Relevant Services**. Particulars about the Relevant Services are provided under the corresponding heading below.

The Procurement Conduct will involve the Participating Councils jointly working together to:

- (a) discuss procurement of the Relevant Services;
- (b) prepare the RFT
- (c) prepare draft service contracts for the Relevant Services (which will be issued with the RFT so potential Service Providers can price their tenders);
- (d) issue the RFT and evaluate responses to it;
- (e) appoint the Procurement Department of the City of Greater Geelong to act as the primary contact for administering and coordinating aspects of the RFT process;
- (f) establish and conduct an evaluation panel comprising one representative from each Participating Council;
- (g) through the evaluation panel, evaluate proposals received from prospective Service Providers (based on predetermined objective criteria) and prepare recommendations in respect of those proposals;
- (h) contribute to the costs of conducting the joint procurements; and
- (i) negotiate and execute contracts for supply of the Relevant Services by one or more of the Participating Councils and one or more Service Providers, with such contracts each being subject to a condition precedent of final authorisation being granted by the ACCC. For clarity, the inclusion of the condition precedent means that any contracts that may be executed will not

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become binding and no services will be delivered under those contracts unless and until the ACCC grants final authorisation.

If interim authorisation is granted, the Parties intend to document the Procurement Conduct in a written participation agreement to which they would each be a party.

The Relevant Services

With respect to the Relevant Services, while some of the Participating Councils offer a separate glass kerbside collection service, others do not.

As such, the RFT will be structured so that prospective Service Providers can tender for either of the following options depending on the Participating Council(s) they are bidding for and whether they have a separate glass kerbside collection service:

- domestic kerbside co-mingled recyclables (including glass) receival and processing, and bulk haulage of those materials from the receival site to the processing site if necessary;
- domestic kerbside co-mingled recyclables (excluding glass) and separate glass receival and processing, and bulk haulage of those materials from the receival site to the processing site if necessary;
or
- glass-only receival and processing, and bulk haulage of those materials from the receival site to the processing site if necessary.

Bulk haulage is only required where the receival site for the waste materials is separate to the processing site. If the Service Provider has a site which has both receival and processing capabilities, bulk haulage is not required.

Where bulk haulage is required, Service Providers are encouraged to collaborate with other Service Providers (through a joint venture) and submit a joint bid, if they only have either materials receival and processing capabilities or bulk haulage capabilities.

To enable the Participating Councils to engage in the Procurement Conduct, the Participating Councils request an interim authorisation – see section 3.4, below.

Further information in respect of the Relevant Services is set out in section 6.1 below.

The Participating Councils note that the ACCC has previously granted authorisations to Victorian waste and resource recovery groups and local councils for the joint procurement of multiple waste and resource recovery service streams in similar circumstances.²

Voluntary and independent participation

While all Participating Councils will be parties to the RFT and may jointly enter into contracts if they agree to do so, the Participating Councils will remain free to:

² In Authorisations A91596 and A91597, the ACCC granted the Loddon Mallee Waste and Resource Recovery Group and eight Victorian councils authorisation in relation to the joint procurement of certain waste and resource recovery services. In Authorisation A91551, the ACCC granted authorisation to the North East Waste and Resource Recovery Group and several councils in North Eastern Victoria in relation to the joint procurement of multiple waste and resource recovery and processing services.

- (a) determine which Service Provider(s) they contract with, including Service Providers who have not participated in the tender process (subject to internal procurement requirements); and
- (b) enter into their own contracts with a Service Provider (as opposed to entering into a contract with a Service Provider jointly with one or more of the other Participating Councils).

Accordingly, there will be no mandatory allocation of Service Provider(s) between the Participating Councils, and no Participating Council will be required to enter into any contract with any Service Provider or to enter into a contract jointly with other Participating Councils.

The joint procurement process will also be voluntary and flexible for Service Providers, which may elect to tender for delivery of the Relevant Services for one or multiple Participating Councils.³

Where Service Providers submit proposals to service multiple Participating Councils, those councils may choose to jointly evaluate those proposals.

Ongoing administration of contracts

It is anticipated that decisions regarding the ongoing administration and management of service contracts entered into between the Participating Councils and Service Providers will be made by each of the Participating Councils separately however some joint consultation may occur.

3.2 Relevant provisions of the *Competition and Consumer Act 2010 (Cth)*

The relevant provisions of the *Competition and Consumer Act 2010 (Cth)* which could or might apply to the proposed conduct are:

- section 45AF, 45AG, 45AJ and 45AK in relation to cartels;
- section 45(1)(a) and (b) in relation to anticompetitive agreements; and
- section 45(1)(c) in relation to concerted practices.

3.3 Rationale

Objectives

Allowing the Participating Councils to engage in the proposed conduct will enable the Participating Councils to:

- achieve a critical mass in demand for the Relevant Services to attract the widest possible group of potential suppliers;
- overcome the corresponding risk that arises from the relatively small population base and waste volumes;
- aggregate expertise to create efficiencies in the procurement processes including tender evaluation; and

³ The Participating Councils note that there is one exception to this. Service Providers bidding for CoGG must also bid for the Borough of Queenscliffe (and vice versa). This is due to the risk that no bids will be received for Queenscliffe alone due to its proximity to city centres and low volumes of waste. However, the Participating Councils note that: (1) Service Providers remain free to provide different pricing for CoGG and Queenscliffe; and (2) CoGG and Queenscliffe will also remain free to determine whether and which Service Provider they contract with (or to not contract with any Service Provider at all).

- act in a manner that is consistent with the Victorian Government's emphasis on a more coordinated, state-wide approach to managing waste service in a manner consistent with the recently enacted Circular Economy Act.

In that context, the key objectives of the proposed joint procurements include to:

- facilitate resource sharing and efficiencies;
- work with local councils and industry to improve practices and develop strategies for increased resource recovery;
- increase the diversion of waste from landfills; and
- facilitate the increased recovery of priority materials (e.g., co-mingled recyclables and glass).

Policy context

The proposed joint procurements also support the State Government's strategy in respect of waste and resource recovery, as outlined below.

- **(Circular economy legislation)** The Participating Councils note that the philosophy of regional partnership is consistent with the recent decision by the Victorian Government (in particular, through the introduction of the Circular Economy Act) to establish Recycling Victoria and adopt a more uniform, state-wide approach to leadership, stewardship and oversight of waste, recycling or resource recovery services and to support the development of a circular economy.
- **(Infrastructure Planning Framework)** The *Environment Protection Act 2017 (Vic)* (**EPA 2017**) requires that Sustainability Victoria develop the State-wide Waste and Resource Recovery Infrastructure Plan (**SWRRIP**) and directs waste and resource recovery groups to each develop a regional implementation plan.⁴ Together, these documents form the Victorian Waste and Resource Recovery Infrastructure Planning Framework (the **Framework**), which seeks to achieve long-term infrastructure planning at both State and regional levels (integrated with land-use and transport planning systems). The Framework also establishes a State-wide management system designed to:
 - effectively manage the expected mix and volumes of waste.
 - support a viable resource recovery industry;
 - reduce the amount of valuable materials going to landfill; and
 - reflect environmental justice principles to ensure that impacts on the community, environment and public health are not disproportionately felt across communities.
- **(Recycling Industry Strategic Plan)** The Department of Environment, Land, Water and Planning has developed a Recycling Industry Strategic Plan 2018 (**Recycling Plan**) setting out the pathway to a safe, resilient and efficient recycling sector in Victoria. Its key goals include stabilising the recycling sector, increasing the quality of recycled materials, improving the

⁴ *Environment Protection Act 2017 (Vic)*, sections 407 and 415.

productivity of the recycling sector, and developing markets for recycled materials. The Participating Councils' proposed activities complement the suite of actions included in the Recycling Plan, such as improving contracting and procurement processes and supporting collaborative procurement.

The proposed joint procurement process strongly supports the Participating Councils' strategic objectives, legislative objectives and functions, and the State Government's strategy in respect of waste and resource recovery.

3.4 Request for Interim authorisation

Existing contracts for the Relevant Services for some of the Participating Councils are due to expire as soon as June 2024 and Service Providers (particularly new entrants) require reasonable lead times to satisfy contract requirements. The Participating Councils request interim authorisation to engage in the Procurement Conduct.

Having regard to the factors set out in paragraph 10.3 of the ACCC's Guidelines for Authorisation of Conduct (non-merger), the Participating Councils make the following comments.

Interim authorisation will have no effect on the market

A grant of interim authorisation for the parties to engage in the Procurement Conduct will not:

- (a) have any effect on competition;
- (b) permanently alter the competitive dynamics of the market; or
- (c) inhibit the market from returning to its pre-interim state,

if final authorisation is later denied because the relevant market(s) will not be affected unless and until any new contracts for those the Relevant Services become effective (i.e. unless and until the condition precedent of final authorisation is satisfied).

During any period between a grant of interim authorisation and a grant of final authorisation, the existing waste service contracts will be performed pursuant to their terms and will remain in place unless varied or terminated in accordance with their terms.

No delay in submitting the application

The Applicant did not delay in lodging this application, which could not reasonably have been lodged earlier for a number of legitimate reasons, including the time it took to finalise the Councils that were appropriate and willing to participate, and the collaboration process required to reach a consensus about how to conduct the joint procurement process.

In this regard, the Applicant notes that:

- (a) the Applicant began internal discussions about the procurement of Relevant Services in May 2022;
- (b) in August 2022, it was approached by Surf Coast Shire, Borough of Queenscliffe and Golden Plains Shire about conducting a joint procurement process;

- (c) the Participating Councils held fortnightly meetings to reach agreement on the joint procurement process, including as to the cost sharing model, tender and contract structure, procurement model, contract term, pricing schedules and evaluation methodology;
- (d) it was not until April 2023 that Wyndham City Council and Colac Otway Shire confirmed their decision to participate in the joint procurement process; and
- (e) due to resourcing issues affecting the Applicant, it has taken several months for the Applicant to liaise with Recycling Victoria and prepare, take feedback on and finalise this application.

Harm to the Parties if interim authorisation is denied

If interim authorisation is not granted, the Participating Councils would not be able to commence the Procurement Conduct unless and until final authorisation is granted.

In that scenario, and assuming final authorisation is ultimately granted, the Participating Councils would be seriously delayed in seeking a new Service Provider from the market. This would cause serious harm to some of the Participating Councils whose existing contracts are expiring as soon as June 2024 in circumstances where granting Interim Authorisation will have no effect on competition or the market (as explained above).

As shown in the timeline below, if the Participating Councils cannot commence the tender process until February 2024, contracts with new Service Providers will not be awarded until late April 2024. This leaves the successful Service Provider with only two months to procure the necessary equipment (such as compactors, sorters, front loaders and bulk haulage vehicles) and staff to provide the Relevant Services. The Participating Councils note that Service Providers have indicated that it will take them at least 6 months to procure the necessary equipment and be in a position to deliver the Relevant Services. These lead times are even longer for new Service Providers.

Public benefits outweigh the detriments

The public benefits of the conduct the subject of this application outweighs the detriments, as explained in detail in section 10 and 11 of this Application.

3.5 Final authorisation

Final authorisation is sought by the Participating Councils for:

- the Procurement Conduct the subject of the request for interim authorisation; and
- the Award Conduct.

3.6 Term

Authorisation is sought for a period of approximately seven years, comprising:

- 12 months for the Procurement Conduct;
- a maximum 5 year operating term for contracts entered into between the Participating Councils and Service Providers (3 year initial term plus 2 options to extend for up to 1 year); and
- an additional 12 months to allow for potential slippage in the procurement process or contract negotiations.

4 Relevant documents

The Participating Councils confirm that no relevant board papers have been submitted to the board or prepared by or for senior management for the purposes of assessing or making a decision in relation to the proposed conduct.

5 Names or classes of persons who may be directly impacted

Only Service Providers are likely to be directly impacted by the proposed joint procurements. However, for the reasons outlined in section 11 below – including the voluntary nature of participation for both the Participating Councils and Service Providers, and the implementation of probity measures – no detriment is likely to result.

Contact details for the current Service Providers are listed in section 13.1.

6 Market information

6.1 Services

The Relevant Services are described in further detail below.

- **(Co-mingled Recyclables acceptance, sorting and processing)** The Service Provider must provide access to the Service Provider's nominated facility that receives the co-mingled recycling material to the Participating Council's kerbside bin collection service contractor. The Service Provider may use an existing or new nominated facility as part of the material receipt, handling, transfer, processing, recovery, or treatment.
- **(Glass acceptance, sorting and processing)** The Service Provider must provide access to the Service Provider's nominated facility that receives the glass material to the Principal's kerbside bin collection service contractor. The Service Provider may use an existing or new nominated facility as part of the material receipt, handling, transfer, processing or recovery.
- **(Bulk haulage of materials)** The Service Provider must provide access to the Service Provider's nominated facility for the purpose of bulk haulage of material from the receipt site to the processing site, if applicable. **Confidential annexure B** sets out the details of the existing contracts between the Participating Councils and service providers for each relevant service stream.

6.2 Geographic areas

In previous determinations regarding authorisation applications for the joint procurement of waste and resource recovery services by municipal councils, the ACCC has not considered it necessary to precisely define the relevant geographic market.

For the purposes of this authorisation application, the Participating Councils consider that the relevant area of competition is at least as large as the market for the supply and acquisition of services relating to the acceptance, sorting, processing and/or

disposing of co-mingled recyclables and glass in Wyndham City Council and, the Barwon South West and Geelong Regional Alliance (**G21**) regions. Relevantly, Wyndham City Council is located next to the two regions which geographically overlap with each other. The regions share a range of common features, including a higher percentage of small to medium size councils and lower population densities than metropolitan regions.

Wyndham City Council has a total area of 542 kilometres and a population of approximately 292,000.⁵ It is located in the outer west metropolitan area in Victoria.

The Barwon South West region has a total area of over 27,000 square kilometres and a population of over approximately 430,000, which is projected to increase by 16% by 2031.⁶ The geographic location of the region is depicted in **Figure 1** below.

Figure 1 – Map of the Barwon South West region



Source: Barwon South West Waste and Resources Recovery Implementation Plan 2017 – 2026

The G21 region has a total area of approximately 8,950 square kilometres and a population of over approximately 320,000.⁷ Colac Otway Shire is the only council in the G21 region that is not an Participating Council in this application. The geographic location of the North East region is depicted in **Figure 2** below.

⁵ Wyndham City 2021/2022 Annual Report.

⁶ Regional Circular Economy Plan for Barwon South West, October 2022; Barwon South West Waste and Resources Recovery Implementation Plan 2017 – 2026, 2017.

⁷ G21 Region Profile, July 2019.

Figure 2 – Map of the Geelong (G21) region



Source: G21 Regional Growth Plan

6.3 Overlaps

The Participating Councils' relevant local government areas are adjacent to each other in the outer west metropolitan, Barwon South West and G21 regions of Victoria. As noted above, the Barwon South West and G21 regions share a range of common demographic and geographical features.

6.4 Industry

The relevant industry is the waste and resource recovery industry.

Within that industry the following supply chain is relevant:

- the collection of kerbside waste from residents using kerbside waste collection vehicles, including general, co-mingled recyclables and glass (**Recyclables**);
- the transport of those Recyclables in the same kerbside collection vehicles to transfer stations for bulking-up; and
- the haulage of the bulked Recyclables to processing facilities for recycling.

7 Market shares

Table 1 below sets out the approximate annual 2021/2022 tonnages for the main waste streams (i.e. residual waste, recyclables, food organics and garden organics (**FOGO**) waste and glass) collected by each of the Participating Councils from domestic premises.

Council	Residual Waste	Recyclables	FOGO	Glass
City of Greater Geelong	57,414	25,520	39,132 (GO only)	NA
Surf Coast Shire	5,000	3,000	8,500	1,400
Golden Plains Shire	5,005	2,786	NA	NA
Borough of Queenscliffe	1034	474	NA	NA
Colac Otway Shire	6,295	2,230	3,697	330
Wyndham City Council	59,152	21,882	14,934 (GO and vegetable scraps only)	NA

8 Competitive constraints

8.1 Existing competitors

The Participating Councils, as well as other local councils in south west Victoria more broadly, may be considered to be competitors in the procurement of the Relevant Services.

8.2 Entry by new competitors

The barriers to entry to providing the Relevant Services are relatively high for Recyclables receipt and processing services (and therefore unlikely) but relatively low for bulk haulage services (and therefore more likely).

8.3 Countervailing power of Service Providers

The existing Service Providers exercise considerable countervailing power for reasons including the following.

- (Essential services)** As local governments, the Participating Councils are responsible for the delivery of essential waste and resource recovery services in their respective districts, which members of the public expect. Because the Participating Councils rarely have the expertise, resources or assets to deliver the relevant services, they must engage professional Service Providers to do so. The Participating Councils must also ensure continuity of services (e.g. in the case of service disruptions) because the relevant services are essential services required to ensure the health and hygiene of their communities. In this context, Service Providers are able to exercise considerable countervailing power when negotiating with Participating Councils in terms of both service delivery and pricing.
- (Barriers to entry)** There are moderate to high barriers to entry in the waste and resource recovery industry. For example, in respect of recycling

services, entry into the market and investment in capital is highly dependent on Service Providers' abilities to secure long-term supply contracts and sufficient volumes of recyclable materials. This can be difficult for Service Providers that operate in regional locations such as the Barwon South West and G21 regions (where large volumes of material may not be available, population density is lower, and transport costs are typically higher).

- **(Geographic coverage)** Service Providers are generally interested in delivering services on a regional, rather than council-specific, basis. A small local council cannot meet that service delivery model/preference alone because they are limited to managing services within their local government area. In this context, Service Providers are able to exercise considerable countervailing power when negotiating with the Participating Councils in terms of both service delivery and pricing.

For the reasons outlined above, Service Providers are able to exercise meaningful countervailing power in tendering and negotiating the delivery of their services to the Participating Councils.

9 Counterfactual

The Participating Councils have not formed a final view on the appropriate counterfactuals should the proposed conduct not be authorised. However, they consider that the following two counterfactuals are possible:

- the Participating Councils could individually develop their own tenders and negotiate for the supply of the relevant services solely for their local government area; and
- the Participating Councils could 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 *Competition and Consumer Act 2010* (Cth).

If any of the approaches above were adopted, the Participating Councils consider that this would substantially undermine the substantial public benefits sought to be achieved by the proposed conduct, which are discussed in section 10 below.

Specifically, the Participating Councils consider that any of the counterfactual approaches would result in:

- a materially diminished ability to achieve Victoria's social and environmental objectives of achieving a circular economy due to a reduced ability to attract the significant investment required to achieve those goals;
- higher transaction costs, as each Participating Council would have to evaluate and negotiate large parts of the proposals by Service Providers themselves. These costs would ultimately be borne by residents and rate-payers of the communities in each municipality;
- fewer Service Providers responding to tenders for the relevant services, given the reduced certainty of obtaining contracts for multiple Participating Councils and the significantly smaller contract values;

- reduced economic efficiencies through the smaller scale of potential contracts; and
- reduced opportunities to obtain expertise in evaluating and negotiating such tenders through the collaboration of the Participating Councils.

10 Public benefits

As noted in the discussion on rationale for the proposed conduct (see section 3.3, above), the joint procurement and contracting process is designed to achieve efficiencies and greater expertise in the tender evaluation phase which will be for the direct benefit of rate payers. In addition, the proposed conduct is consistent with the Victorian Government's emphasis on a more coordinated state-wide approach to managing waste service in a manner consistent with the recently enacted Circular Economy Act.

The proposed joint procurements will result in significant and sustained improvements to community welfare in Wyndham City Council, the Barwon South West and G21 regions in the form of transaction and other cost savings, efficiencies and economies of scale, enhanced competition, improved services, environmental and public health benefits, and the potential inclusion of smaller Service Providers in the tender process – all of which have been recognised as public benefits by the ACCC in previous authorisation determinations for the joint procurement of waste and resource recovery services.

10.1 Transaction cost savings

The proposed joint procurements are likely to result in significant transaction cost savings that would not be achieved if each Participating Council were to individually conduct its own procurement process.

In particular, the Participating Councils will achieve administrative cost savings because there will be no unnecessary duplication of work, including in relation to the preparation of tender documents, advertising, and contract preparation.

Given the Participating Councils are not-for-profit government entities that act in the best interests of their respective communities, any cost-savings will help the Participating Councils to reduce or avoid increases to rates, and/or can be applied to defray the cost of meeting other beneficial local government services.

The proposed joint procurement process will also reduce transaction costs for Service Providers, which need only respond to a single RFT per waste stream (relative to each Participating Council otherwise separately engaging with Service Providers or having to respond to less certain procurement methods such as an expression of interest or request for proposal).

10.2 Efficiencies, capacity utilisation and investment

The aggregation of the Participating Councils' waste volumes will create efficiencies and economies of scale that in turn encourage innovation and new investments by Service Providers.

The ability of larger councils, such as CoGG, to participate is likely to allow Service Providers to realise efficiencies, given that their needs are likely to be larger than those of the other Participating Councils'.

- **(Increased opportunities for investment)** The aggregation of the Participating Councils' volumes is also likely to encourage investments by Service Providers. Increased volumes may encourage Service Providers to increase their capabilities in respect of co-mingled recyclables and glass, which are typically transported out of the region for re-processing, and may also incentivise Service Providers to invest in new technologies, such as advanced waste processing, or in service streams that are not currently offered in the region (such as glass re-processing). Attracting such investments is critically important to help achieve one of the primary objectives of the Circular Economy Act, which is to introduce a circular economy in Victoria that maximises the continued use of products and waste material over their life cycle and accounts for their environmental impacts.⁸ Without new and innovative technologies and infrastructure, such a circular economy cannot be achieved.
- **(More efficient haulage of materials)** The more efficient aggregation and bulk haulage of waste materials resulting from their combined volumes will reduce haulage costs from receipt sites to processing sites. This will ultimately lead to lower costs for rate payers in the Participating Councils' local government areas.

10.3 Increased competition

The joint procurements are likely to increase competition for the provision of waste and resource recovery services in Wyndham City Council, the Barwon South West and G21 regions.

The combination of aggregated volumes and the ability to tender for one or more of the relevant services, and for one or more of the Participating Councils, is likely to encourage a greater number of Service Providers to bid.

In particular, the joint process is likely to attract interest from Service Providers who may not have entered the market previously.

Further, the combined volumes of the Participating Councils may underwrite the investment required to encourage the entry of new Service Providers, and help make previously uneconomic technologies and services viable.

10.4 Environmental benefits

The proposed joint procurements are expected to deliver a range of environmental benefits, as outlined below.

- **(More efficient haulage of materials)** In addition to the benefits outlined in section 10.2, the more efficient aggregation and bulk haulage of waste materials resulting from their combined volumes will also reduce greenhouse gas emissions from the transportation of waste between receipt and processing sites, and from the energy used for facility operations.
- **(Improved waste management and recovery rates)** To the extent that the proposed joint procurements assist in diverting waste from landfill to alternative waste and resource recovery solutions, they are likely to result in

⁸ *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic), section 1(a).

improved environmental outcomes in the form of improved resource recovery rates, being a key objective for Recycling Victoria and the State Government. The improved resource recovery rates will assist Victoria in achieving its waste diversion and recycling targets.

- **(Development of re-processing markets)** The aggregation of waste volumes will assist in the development of markets for the re-processing of materials that are not currently treated in the region, or for which insufficient infrastructure exists.

10.5 Consistency with statutory objectives

As discussed in section 3.2, the joint proposed procurement is consistent with, and will support, key objectives outlined in the EPA 2017. The proposed joint procurements also clearly support the State Government's objectives in relation to waste and resource recovery planning, including under:

- the Framework (one of the objectives of which is to protect the environment and public health from the risks that arise from waste materials); and
- the Circular Economy Act.

10.6 Inclusion of smaller Service Providers

Smaller Service Providers will be encouraged to bid for contracts because the proposed joint procurement process will allow proposals from Service Providers in relation to one or more of the Participating Councils. That is, Service Providers will not be required to bid for multiple Participating Councils, although they will be free to do so.⁹

10.7 Ability to respond to significant factors impacting the market

In 2017, the Chinese Government issued Notification #17-3880 to the World Trade Organisation (**Chinese WTO Notification**).

The Chinese WTO Notification implemented a ban on the import of foreign waste, including recyclable paper and plastics. As the ACCC may be aware, the effect of China's ban and the resulting impacts on the Australian market have received extensive media coverage.

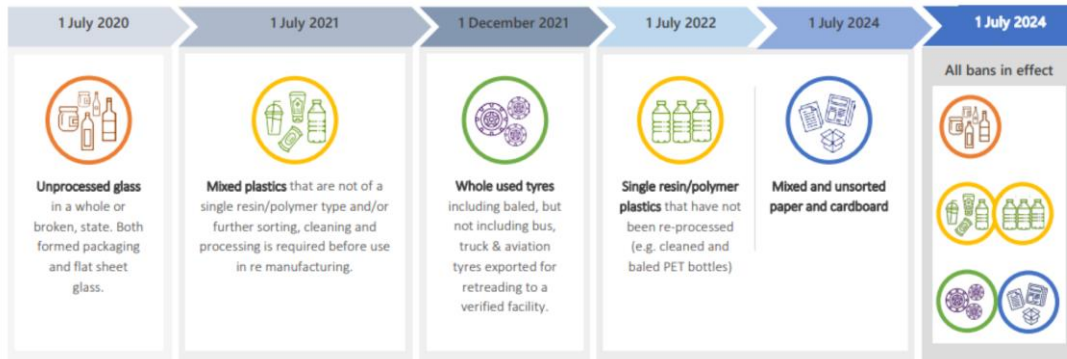
The ban on importing recyclable materials to China has been effective since 1 January 2018 and has had, and continues to have, very significant impacts on the recycling and resource recovery market in Australia. This is primarily because, prior to 1 January 2018, China was the world's largest purchaser of waste and a large volume of Australia's waste has historically been exported to China for recycling.

In response to the China ban, the Council of Australian Governments (**COAG**) released a Waste Response Strategy to implement its 2019 decision to ban the export of waste plastic, paper, glass and tyres from Australia and build Australia's capacity to generate high-value recycled commodities.¹⁰

⁹ The Participating Councils note the one exception to this is CoGG and Borough of Queenscliffe, as explained above in the footnote in section 3.1.

¹⁰ See: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview202021/WasteManagementRecycling >

The waste export ban commenced on 1 July 2020 with a phased approach over a four-year timetable through to 2024 as summarised below:



Because recyclers in Australia will, by 2024, not be able to lawfully export any waste material for recycling, there is a pressing need to develop efficient domestic resource recovery and recycling systems and infrastructure.

If authorised, the conduct proposed in this application will significantly improve the prospects of the Participating Councils being able to attract the level of regional infrastructure and investment interest required to develop local recyclables processing capabilities.

11 Public detriment (including likely competitive effects)

The Participating Councils submit that the proposed joint procurements are familiar to the market and will not result in any discernible public detriment, including no adverse impact on competition for the acquisition of waste and resource recovery services, for the following reasons.

- (Voluntary participation for Participating Councils)** The Participating Councils’ participation in the proposed joint procurement process will be voluntary. As discussed in section 3.1, Participating Councils will be free to choose to participate in the joint procurements or not, and, if they choose to participate, may withdraw from the procurement process at any stage. Further, the Participating Councils will not be required to contract with any particular Service Provider(s). Participating Councils will be free to contract with any one or more Service Providers.
- (Voluntary participation for Service Providers)** Service Providers’ participation in the proposed joint procurements will also be voluntary. Service Providers will not be required to contract with the Participating Councils on a joint basis, and may choose to deal with the Participating Councils on a purely bi-lateral basis if that is their preference. In this way, the proposed conduct will not lead to any compulsory aggregation of volumes, and the Participating Councils will not be able to exercise market power (e.g. by driving down rates to anticompetitive levels) on that basis.
- (Flexibility for Service Providers)** The proposed joint procurement process affords Service Providers with significant flexibility in that they may

choose to tender for one or multiple Participating Councils.¹¹ While Service Providers must bid to provide both materials processing and bulk haulage services (if necessary), Service Providers are encouraged to collaborate with each other via joint venture and submit joint bids. Therefore, Service Providers are not prevented from participating in the tender if they only have capabilities to provide either materials processing or bulk haulage services. Service Providers will also remain free to provide services to customers other than the Participating Councils.

- **(Allocation of volumes)** As discussed in section 3.1, it is currently anticipated that any joint decisions regarding the allocation of volumes would be made on an ad hoc basis, e.g., in the context of contingency arrangements, and would have no significant anti-competitive effects. Further, any joint decisions made by the Participating Councils in relation to the allocation of waste volumes to particular Service Providers will only occur in the context of the ongoing administration of contracts of those Service Providers.

For the reasons set out above, the Participating Councils submit that the extensive public benefits of the proposed conduct will significantly outweigh any public detriment.

Previous ACCC determination refusing authorisation

We note that the ACCC has granted numerous authorisations for similar conduct in the past, however, we note that the ACCC declined to do so with respect to A91520 in response to an application by a group of South Australian councils. That determination was largely based on the view that the public benefits did not outweigh public detriments. The proposed conduct the subject of this application is clearly distinguishable from the conduct the subject of that determination.

In particular, unlike the conduct the subject of that determination, the currently proposed conduct:

- does not involve a request for proposal in relation to undefined services;
- does not involve an unfamiliar or complex procurement approach; and
- involves participating councils that share common geographic boundaries and similar demographics.

12 Contracts, arrangements or understandings in similar terms

This application is not expressed to be made in relation to other contracts, arrangements or understandings that are or will be on similar terms to the abovementioned contract, arrangement or understanding. This application relates solely to the list of Relevant Services.

¹¹ The Participating Councils note the one exception to this is CoGG and Borough of Queenscliffe, as explained above in the footnote in section 3.1.

13 Contact details of relevant market participants

13.1 Service Providers

Cleanaway

Shirley Bloomfield
Level 4, 441 St Kilda Road, Melbourne VIC 3004

[REDACTED]
[REDACTED]

Visy

Chris deFazio
Unit 26 – 29, 1 International Drive, Tullamarine VIC 3043

[REDACTED]
[REDACTED]

Australian Paper Recycling

Darren Thorpe
60-64 Thomas Murrell Crescent, Dandenong South VIC 3175

[REDACTED]
[REDACTED]

Veolia

Mick Beljac
State Manager Resource Recovery – Victoria

[REDACTED]
[REDACTED]

ReGroup

Gayle Seddon
Business Development Manager
27/20 Bond St, Sydney NSW 2000

[REDACTED]
[REDACTED]

Fulton Hogan

Peter Curl
General Manager – Infrastructure Services
Building 7, Level 1, 572 Swan St, Richmond VIC 3121

[REDACTED]

Alex Fraser

Sean McCormick
General Manager – Recycling
9-19 Alex Fraser Drive, Laverton North VIC 3026

[REDACTED]
[REDACTED]

Regional Recycle

Al Lewis
313 Hamilton Hwy, Fyansford VIC 3221

[REDACTED]
[REDACTED]

13.2 Industry groups and Government departments

Department of Energy, Environment and Climate Action

Sebastian Chapman (Executive Director – Waste and Recycling)
8 Nicholson Street
East Melbourne VIC 3002

[REDACTED]
[REDACTED]

Environment Protection Authority

Lee Miezis (CEO)
200 Victoria Street
Carlton VIC 3053

[REDACTED]
[REDACTED]

Sustainability Victoria

Matt Genever (Interim CEO)
Level 12, 321 Exhibition Street
Melbourne VIC 3000

[REDACTED]
[REDACTED]

Declaration by Applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Solicitor on behalf of City of Greater Geelong
(Office held)

Eddie Scuderi
(Name of authorised person)

This 1st day of September 2023.

Annexure A

Contact details for each Participating Council

City of Greater Geelong

Address 137-149 Mercer Street, Geelong Vic 3220

Telephone [REDACTED]

Contact Agnes Tong
Coordinator Sustainable Waste Services

[REDACTED]

[REDACTED]

Surf Coast Shire Council

Address 1 Merrijig Drive, Torquay Vic 3228

Telephone [REDACTED]

Contact Neil Brewster Coordinator Waste Management

[REDACTED]

[REDACTED]

Golden Plains Shire Council

Address 2 Pope Street, Bannockburn Vic 3331

Telephone [REDACTED]

Contact Marina Desa
Resource Recovery and Waste Officer

[REDACTED]

[REDACTED]

Borough of Queenscliffe

Address 50 Learmonth Street, Queenscliffe Vic 3225

Telephone [REDACTED]

Contact Stuart Hansen
Manager Infrastructure and Environment

[REDACTED]

[REDACTED]

Wyndham City Council

Address 45 Princes Highway, Werribee Vic 3030

Telephone [REDACTED]

RESTRICTION OF PUBLICATION OF PART CLAIMED

Contact Kaylene Johnson
Coordinator Waste Collection Services

[REDACTED]

[REDACTED]

Colac Otway Shire

Address 2-6 Rae Street, Colac Vic 3250

Telephone

[REDACTED]

Contact

Simone Robertson
Waste Management Officer

[REDACTED]

[REDACTED]

Annexure B

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

Table of existing contracts

Council	Receival Contract/Agreement	Glass-only Contract/Agreement	Processing Contract/Agreement	Receival & Processing (incl bulk haul) Contract/Agreement
City of Greater Geelong	-	-	-	Cleanaway VCRR – ends [REDACTED]
Surf Coast Shire		Regional Recycle – ends [REDACTED]		Cleanaway VCRR – ends [REDACTED]
Golden Plains Shire				Cleanaway VCRR – ends [REDACTED]
Borough of Queenscliffe	-	-	-	Cleanaway VCRR – ends [REDACTED]
Colac Otway Shire	-	Wheelie Waste (to Visy)	-	Wheelie Waste (to Visy or Polytrade)
Wyndham City Council				Visy Recycling – ends [REDACTED]