



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

Redland City Council
Brisbane City Council

in respect of

collective tendering for waste and recyclable
collection services

Date: 13 August 2015

Authorisation number: A91500

Commissioners: Sims
Rickard
Schaper
Court
Featherston
Walker

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Summary

The ACCC proposes to grant authorisation to Redland City Council and Brisbane City Council for 19 years to enable them to jointly procure, negotiate and contract for waste, green waste and recyclables collection services.

Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision. The applicants and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

The application for authorisation

1. On 25 May 2015 Redland City Council and Brisbane City Council (the Councils) lodged application A91500 with the ACCC seeking authorisation for the conduct described below.
2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the Act). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Before making its final decision on an application for authorisation the ACCC must first issue a draft determination.¹

The conduct

3. The Councils seek authorisation to jointly procure, negotiate and contract for the supply of waste, green waste and recycling collection services. If a joint contract eventuates, the Councils additionally seek authorisation to make joint decisions regarding the ongoing management of the contract (the Proposed Conduct).
4. The Councils are seeking authorisation for a period of 19 years comprising:
 - a. A three year period for the joint procurement process, including negotiation/execution and mobilisation of the contract.
 - b. An eight plus eight year contract operating term.
5. Brisbane City Council proposes to act on the Councils' behalf and facilitate the procurement, negotiation and contracting processes in relation to the acquisition of the collection services. The Councils will conduct the tender in accordance with the requirements of the *Local Government Act 2009* and the *City of Brisbane Act 2010*.

¹ Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation available on the ACCC's website www.accc.gov.au.

Geographical regions

6. The Councils envisage that the tender will be comprised of three separable portions concerning the provision of waste and recycling collection services within:
 - a. the Brisbane City Council and Redland City Council Local Government Areas (LGAs);
 - b. the Redland City Council LGA; and
 - c. the Brisbane City Council LGA.
7. The Councils will assess the benefits of a joint contract, and may independently select contractors for their LGA.

Services included in the tender

8. The proposed joint tender is to include the following waste and recycling collection services:
 - a. Kerbside collection services, which include the collection of domestic waste, recyclables and green waste.
 - b. Bulk bin collection services, which involve the collection of waste from bulk bins which have been installed at multi dwelling premises where kerbside collection is not practicable.
 - c. Park and footpath services, which involve the collection of waste and recyclable material from public and community spaces.
9. The tender would also include ancillary waste services, including but not limited to manual collections and bin cleansing.
10. Authorisation has not been sought and would not extend to the kerbside collection of bulky items, dead animals, mobile garbage bin supply and maintenance or waste and recyclables processing, as the Councils anticipate that these services would not be included in the proposed joint tender.

Background

The Local Government Areas

11. The Councils are local government authorities and bodies corporate incorporated under the *Local Government Act 2009* (QLD) and the *City of Brisbane Act 2010* (QLD).
12. The Councils are situated in South East Queensland (SEQ), which contains about 70% of Queensland's population within 11 City and Regional Councils.
13. Brisbane City Council governs the largest population of any Council in Australia. Its LGA (which includes Moreton Island) has an approximate population of 1.1 million residents and covers an area of 1400 square km.

14. Redland City Council is situated approximately 30 kilometres east of Brisbane CBD. It governs an LGA with an approximate population of 150,000 residents, covering an area of 540 square km.
15. Attachment B contains a map of the Councils and surrounding LGAs.

Current arrangements

16. Brisbane City Council currently manages three contracts for waste collection services. These contracts are due to be renewed on 1 July 2018, and are proposed to be combined into one contract. The incumbent collection service provider for Brisbane City Council is SITA Pty Ltd trading as Suez Environnement (Suez).
17. Redland City Council's waste and recycling collection contract expires on 29 June 2016. Redland City Council has awarded an interim contract which will expire in 30 June 2018 to coincide with Brisbane City Council's contract renewal timeframe. The incumbent service provider for Redland City Council is JJ Richards & Sons Pty Ltd.
18. The Councils submit that the main types of waste are regarded to be:
 - a. Municipal/household waste
 - b. Commercial and industrial waste and
 - c. Construction and demolition waste
19. Municipal/household waste is generally the responsibility of local government to manage and accounts for 31.5% of total waste generated in Queensland², whereas the latter two types are predominately managed by the private sector via separate contracts with the waste generators.
20. Eleven out of the twelve councils in the SEQ region outsource their waste and recycling services through open public tender processes.

Similar authorisations

21. The ACCC has previously considered a number of authorisation applications for joint tendering and contracting for various waste management services . Previous waste authorisations have tended to involve both the collection and processing of waste, recyclable materials, and/or organics, and have involved more than two councils. These applications have been made by groups of councils in Sydney, Melbourne, regional NSW and Queensland.
22. The ACCC has previously considered only one other waste authorisation application (A91019) solely for the collection of waste and recyclables (that is, excluding processing services). This application was made by three councils within the St George Region and was granted authorisation for 12 years in 2006, comprising of a 2 year tendering process and 10 year contract term.

² *State of Waste and Recycling in Queensland 2014* published by Queensland Department of Environment and Heritage, p.6

Submissions received by the ACCC

23. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
24. The ACCC sought submissions from 21 interested parties potentially affected by this application, including waste and recycling service providers, industry associations and neighbouring councils. A summary of the public submissions received from the Councils and interested parties follows.

The Councils' submission

25. Broadly, the Councils submit that the arrangements would create transaction cost savings, improved purchasing power, increased efficiencies and economies of scale, resulting in cost savings to ratepayers, greater investment from service providers in the SEQ region, and greater competition between potential service providers.
26. The Councils submit that the arrangements would not result in significant public detriment as the tender process will be open and transparent, be overseen by an independent probity advisor and utilise a weighted criteria and scoring methodology.
27. The proposed tender is to be issued in separable portions allowing smaller suppliers to enter bids for an individual LGA. The Councils are free to accept individual suppliers for their LGAs if those services are more favourable than a single provider for both LGAs.

Interested parties

28. The ACCC received four submissions from interested parties. Suez and Curbside Services Pty Ltd, which are both waste and recycling collection service providers, had no objections to the Proposed Conduct, whereas the Waste, Recycling Industry Association of Queensland (WRIQ) and another anonymous interested party opposed the Proposed Conduct.
29. WRIQ and the anonymous interested party expressed concerns about the proposed contract length of 16 years, and were of the view that the joint tender would not attract a greater number of bidders, nor deliver the additional public benefits of economies of scale, reduction of transaction costs and increased investment in the SEQ region.
30. The views of the Councils and interested parties are considered in the evaluation chapter of this draft determination. Copies of public submissions may be obtained from the **ACCC's website**.

ACCC evaluation

31. The ACCC's evaluation of the Proposed Conduct is in accordance with the relevant net public benefit tests³ contained in the Act. In broad terms, under the relevant tests the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result.
32. In its evaluation the ACCC has taken into account:
- a. The applications and submissions received from the Councils and interested parties;
 - b. Information available to the ACCC from consideration of previous matters;
 - c. The likely future without the Proposed Conduct for which authorisation is sought;
 - d. The relevant areas of competition likely to be affected by the Proposed Conduct. The Councils submit that the relevant areas of competition likely to be affected are the provision of waste and recyclable collection services in the SEQ region. However the ACCC does not consider that it is necessary to precisely identify the relevant areas of competition in assessing the application; and
 - e. The period for which authorisation has been sought.

The future with and without

33. To assist in its assessment of the conduct against the authorisation tests the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future without the conduct that is the subject of the authorisation. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.
34. The Councils submit that the following outcomes would occur if authorisation is not granted for the Proposed Conduct :
- a. The Councils will issue individual tenders for waste collection services, resulting in additional expenses and administrative burdens.
 - b. The potential suppliers will be required to submit separate tender responses, increasing their individual administrative and resource burdens.
 - c. The successful bidders will not be able to achieve certain efficiencies and economies of scale due to potential lack of consistency between the separate Council contracts.

³ Subsections 90(6), 90(7), 90(5A) and 90(5B). The relevant tests are set out in Attachment A.

35. The ACCC considers that without the Proposed Conduct, each council would conduct separate tenders for a provider of the required services independently of each other, as has been the case previously.

Public benefit

36. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁴

37. The Councils submit that the arrangements will deliver public benefits, including:

- a. Transaction cost savings
- b. Economies of scale
- c. Increased efficiency (economies of scope)
- d. Improved purchasing power
- e. Increased investment in the SEQ region.

Transaction cost savings

38. The Councils submit that the Proposed Conduct would allow the Councils to avoid expending significant time and resources associated with calling separate tenders by reducing unnecessary replication of work. The Councils submit that these transaction cost savings would be ultimately passed on to ratepayers as lower rates.
39. WRIQ and the anonymous interested party submit that the Proposed Conduct would not result in a reduction of transaction costs, as both Councils must monitor compliance and performance of the waste and recycling collection contracts to meet their obligations under the *Local Government Act 2009* (QLD).
40. Redland City Council has responded submitting that although both the Councils would be involved in the joint tender process, the Proposed Conduct would be a more resource efficient process than separate tendering for each LGA.
41. The ACCC notes that the Councils' legislative obligation to monitor compliance and performance of a successful bidder's service is only one aspect of the tendering and contracting process. The ACCC considers that the Proposed Conduct may give rise to transaction cost savings unrelated to the Councils' compliance assessment workloads resulting from the Councils' legislative obligations. For example, potential service providers that intend to compete for both Redland City Council and Brisbane City Council would only be required to participate in one tendering process, potentially reducing their administrative burdens, leading to lower prices for services.

⁴ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

42. The ACCC considers it likely that the Proposed Conduct would result in transaction cost savings to both the Councils and service providers participating in the tender process.

Economies of scale

43. The Councils submit that a successful supplier under a joint contract would have a greater area to service, resulting in economies of scale in providing the service.
44. The anonymous interested party submits that both Redland City Council and Brisbane City Council local governments are individually large enough to separately solicit tender prices that benefit from economies of scale, and that pricing obtained jointly or separately should be the same, that is, there are no resultant benefits to be gained by the Proposed Conduct. The anonymous interested party argues that if Redland City Council was not sufficiently large to individually solicit a tender price that would benefit from economies of scale, Brisbane City Council ratepayers would be subsidising the increased costs to service Redland City Council were the Councils to conduct a joint tender.
45. Redland City Council has responded submitting that the majority of required services across both Councils are within suburban areas, which have common service standards and would be provided in a similar way.
46. The ACCC considers that if the services required by Redland City Council are of a similar nature to the services required by Brisbane City Council, then it would be likely that one service provider can service both councils and that this may lead to some economies of scale.
47. The ACCC notes that Brisbane City Council and Redland City Council LGAs feature similar dwelling compositions, with the majority of dwellings being separate houses (86.6% for Redland City Council and 70.9% for Brisbane City Council – 2011 Census) which would receive the same kerbside collection services. The waste and recyclables generated (and hence requisite collection frequency and bin size) by these dwellings are likely to be similar across both councils, as the average number of people per household for Redland City Council and Brisbane City Council is 2.7 and 2.6 respectively.
48. The ACCC notes that the vast majority of collection services would be carried out on the mainland, as the number of permanent island residents covered by Redland City Council amounts to approximately six per cent of the population of the LGA, and less than one per cent of the combined population of both Councils' LGAs. The ACCC considers that there is greater scope for services to be provided more efficiently by one provider as most of the collection areas of the Brisbane City Council and Redland City Council LGAs are on the mainland.
49. The ACCC also notes that the proposed tender would contain separable portions which permit service providers to bid for the work of an individual council. The Councils are free to accept such bids if they stand to benefit one Council more than a contract for both LGAs. If the concerns identified by interested parties in paragraph 44 are correct, then bids for each Council's individual LGA would be more attractive to the Councils than bids for both LGAs, and the Councils would be free to accept the more attractive individual bids.

50. The ACCC also notes that if the joint tendering process fails to yield satisfactory offers for both the Councils then the Councils can conduct individual tendering processes for their LGAs.
51. The ACCC considers that contracting with a single provider may result in some economies of scale in waste collection in the Brisbane City Council and Redland City Council LGAs. The ACCC notes that if Redland City Council conducted an individual tender, the number of collection services put to tender would be less than one tenth of the number of collection services required for both Redland City Council and Brisbane City Council. While the size of any likely economies of scale are unclear, the ACCC considers that the cost to provide waste collection services to the Redland City Council on a stand-alone basis would likely be higher than the incremental cost to provide waste collection services to the Redland City Council given the provider already serviced the Brisbane City Council.

Economies of scope

52. The Councils submit that the Proposed Conduct would allow a successful supplier to take advantage of geographical synergies from the Councils sharing a common boundary, as well as other efficiencies by sharing infrastructure across the Councils.
53. The WRIQ and the anonymous interested party submit that both LGAs present different logistical complexities to service providers. Brisbane City Council's LGA has inner city traffic challenges, high density housing and numerous one way streets. Redland City Council's LGA includes six populated Islands in Morton Bay amounting to approximately 8800 permanent island residents. The ACCC understands that waste and recyclables services are carried out by collection trucks which are ferried from the mainland to the islands. The anonymous interested party contends that a joint tender process will potentially result in fewer tenders being submitted due to the scale and combined logistical challenges posed by both LGAs. The anonymous interested party also contends that these bids would be at a higher price to the Councils due to the added complexity of servicing both Councils.
54. Redland City Council has responded submitting that providing collection services to the unique aspects of each individual LGA area would only constitute a small portion of the overall tender, and that the majority of services required across both LGAs would be delivered in a similar manner with common service standards. Redland City Council argues that the Proposed Conduct provides an opportunity for waste collection companies to realise service efficiencies through taking advantage of shared depot infrastructure and using run mapping software to optimise transportation logistics across both LGAs.
55. As discussed in paragraph 47, the Councils feature similar dwelling profiles, and the vast majority (94%) of Redland City Council's population reside on the mainland in clusters of high density populations similar to Brisbane City Council.
56. Again, as discussed in paragraph 49, if concerns identified by some of the interested parties are correct, the Councils are free to individually accept bids for their respective LGAs if they are more attractive than a joint bid.
57. The ACCC considers it likely that that there are potential efficiencies to be gained by taking advantage of the Council's shared common boundary and

through sharing infrastructure located within the different LGAs. For instance, the ACCC understands that an existing Redland City Council vehicle depot close to the border between the two Councils could serve as the base for a new catchment area that services two sizable populations within Redland City Council and Brisbane City Council, potentially resulting in more efficient route options for the winning bidder.

Improved purchasing power

58. The Councils submit that aggregating waste collection services into a joint tendering process will place the Councils in a stronger bargaining position which may allow the Councils to obtain a higher level of service at a lower price.
59. The ACCC notes that Redland City Council received two tenders the last time Redland City Council tendered for collection services, and considers that the Proposed Conduct may improve Redland City Council's bargaining position by increasing the number of tenderers. The degree to which any such improvement in bargaining position will affect the contract terms Redland City Council will be able to achieve is unclear. The ACCC does not consider that Brisbane City Council's bargaining position would be significantly stronger as part of a joint tendering process with Redland City Council.

Increased investment within the SEQ region

60. The Councils submit that the Proposed Conduct may encourage potential service providers to increase investment and expand operations within the SEQ region.
61. The ACCC regards the prospect of an eight plus eight year contract length for Brisbane City Council to be the main consideration for service providers when deciding whether to increase investment and expand operations within the SEQ region. The ACCC understands that Brisbane City Council is considering introducing such contract lengths regardless of whether the Proposed Conduct is authorised or not.
62. In summary, the ACCC considers that the Proposed Conduct is likely to result in public benefits, including:
 - a. **Transaction cost savings:** The combined tendering and contracting process is likely to lead to some efficiency savings (including the removal of some duplicated administrative costs) for the Councils relative to the scenario where each Council conducts separate tender processes.
 - b. **Potential for improved economies of scale:** The aggregation of a larger volume of waste and recyclables is likely to result in some public benefits by enabling the service provider to achieve improved economies of scale. These efficiencies could be achieved if the collection cost per tonne of waste and recyclables falls as the collection volumes increase.
 - c. **Potential for increased economies of scope:** The Councils' LGAs share a common border and it is likely that there are potential efficiencies to be gained by sharing infrastructure located within the different LGAs, such as improved waste collection routing that serves catchments across both LGAs.

63. While the Proposed Conduct may improve Redland City Council's bargaining position by increasing the number of tenderers, the degree to which this is likely to result in public benefits is unclear. For the reasons previously stated, the ACCC does not consider that the Proposed Conduct is likely to result in public benefits as a result of increased investment.

Public detriment

64. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...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.⁵

65. The Councils submit that there will be minimal or no public detriment resulting from the joint tendering and contract arrangements as the tender process will promote competition between bidders as it will be open and transparent, be overseen by an independent probity advisor and utilise a weighted criteria and scoring methodology.
66. WRIQ and the anonymous interested party submit that the Proposed Conduct would preclude unsuccessful bidders from a large portion of the waste stream across Queensland for 16 years, which would damage competition amongst service providers and reduce incentives to invest in innovation and productivity improvements in Queensland.
67. Redland City Council has responded submitting that the SEQ region is a large area with 12 local governments, and that only two of these local governments are proposing to jointly tender. Redland City Council submits that the Proposed Conduct would not damage competition by creating barriers to new market entrants as the councils within the SEQ region undergo a rolling program of waste and recyclables contract renewals. Redland City Council does not consider that the length of the contract would stifle innovation and access to new technology as these benefits could flow through the contract as the vehicles are replaced, or as stand-alone considerations based on merit. Redland City Council also submits that research and development in equipment design is shaped by Australia wide and global factors, and that it is not likely that the Proposed Conduct would have a significant impact on innovation in the waste collection industry.
68. The ACCC notes that Brisbane City Council's LGA encompasses approximately 24 per cent of the population of Queensland. Redland City Council's LGA encompasses approximately 3 per cent.
69. As discussed in paragraphs 34 and 62, in the likely future without the Proposed Conduct, Brisbane City Council would conduct its own tender and would be free to offer a contract of eight plus eight years to the successful bidder. This would have the effect of precluding unsuccessful bidders from providing services to 24 per cent of the Queensland population for up to 16 years.

⁵ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

70. If the Proposed Conduct is authorised and a joint contract is awarded by the Councils to the successful bidder, unsuccessful bidders would be precluded from providing services to 27 per cent of the Queensland population for 16 years.
71. The ACCC considers the increase in the population being serviced by the one provider for up to 16 years in the likely future with the Proposed Conduct does not amount to significant public detriment when compared to the likely future without the Proposed Conduct.
72. The ACCC also considers that the Proposed Conduct is likely to result in limited public detriment, if any, for the following reasons:
- a. Although waste collection services for the Councils will not be contestable for the duration of the contract period, the tender process will ensure that there will be competition between suppliers to win the contract. The ACCC considers that the Proposed Conduct potentially enables Redland City Council to benefit from a greater degree of competition in the supply of collection services through the joint tender with Brisbane City Council.
 - b. Redland City Council submits that all councils bar one in the SEQ region subcontract for waste and recycling collection services. The ACCC considers that it is likely that there will be future opportunities for unsuccessful bidders to bid for contracts with other councils in the SEQ region.
 - c. Allowing potential service providers to bid for separable portions, as discussed in paragraphs 6-7, gives smaller providers the option to enter bids for the work of an individual Council, permitting a large number and range of competing service providers to participate in the tendering process. If bids to individual councils are more attractive, then the Councils are free to contract for these services individually

Balance of public benefit and detriment

73. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the Proposed Conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
74. For the reasons outlined in this draft determination the ACCC is satisfied that the likely benefit to the public would outweigh the detriment to the public including the detriment, if any, constituted by any lessening of competition.
75. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Length of authorisation

76. The Act allows the ACCC to grant authorisation for a limited period of time.⁶ This allows 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.
77. In this instance, the Councils seek authorisation for a period of 19 years, comprising of a 3 year tendering process and an eight plus eight year contracting term.
78. WRIQ and the anonymous interested party submit that the successful service provider would need to renew the entire fleet during the 16 year contract term, introducing a substantial risk as the projected cost of new vehicles must be included in tender prices. It would be impossible to accurately predict operating costs over the term of the contract and the contractor would likely take a conservative view, leading to unnecessary price inflation.
79. Redland City Council submits that a 16 year contract term will serve to “smooth out” the cost of maintaining and/or replacing the fleet of collection trucks over the contract period, as the significant capital expenditure would be amortised over a greater period and that a longer contract length allows new technology to be progressively introduced. Redland City Council contends that if the contract term aligned with the life of the truck fleet then there would be an increase to rate payers at the commencement of a new contract.
80. The ACCC understands that an eight plus eight year contract term is preferred by certain service providers, as the longer contract duration provides the service provider with the flexibility to stagger gradual fleet replacements throughout the life of the contract as required. Further, the successful tenderer may include provisions to deal with uncertainty around environmental standards and the resultant cost implications during the term of any contract. In light of this, the ACCC is not convinced that contract terms necessarily lead to higher prices, as submitted by interested parties. In any case, as discussed in paragraph 49, if the joint tendering process fails to yield satisfactory offers for the Councils then they can conduct individual tenders involving contracting terms of whatever length they believe would yield more attractive bids.
81. Accordingly, the ACCC proposes to grant the application for 19 years, to include the requested contracting period of 16 years.

Draft determination

The application

82. On 25 May 2015 Redland City Council lodged application for authorisation A91500 with the ACCC. Application A91500 was made using Form B Schedule

⁶ Subsection 91(1).

1, of the Competition and Consumer Regulations 2010. The application was made under subsection 88 1 and 1A of the Act to:

- a. Conduct a joint tender process for waste and recyclables collection, including procurement, negotiation and contracting; and
- b. If a joint contract eventuates, to make joint decisions regarding the ongoing management of the contract.

83. The Councils seeks authorisation of the Proposed Conduct as it may contain a cartel provision and may have the effect of substantially lessening competition within the meaning of section 45 of the Act.

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

The net public benefit test

85. For the reasons outlined in this draft determination, the ACCC considers that in all the circumstances the Proposed Conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

Conduct for which the ACCC proposes to grant authorisation

86. The ACCC proposes to grant authorisation to the Councils for the Proposed Conduct as outlined in paragraphs 3-10 for 19 years.

87. This draft determination is made on 13 August 2015.

Further submissions

88. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

Attachment A - Summary of relevant statutory tests

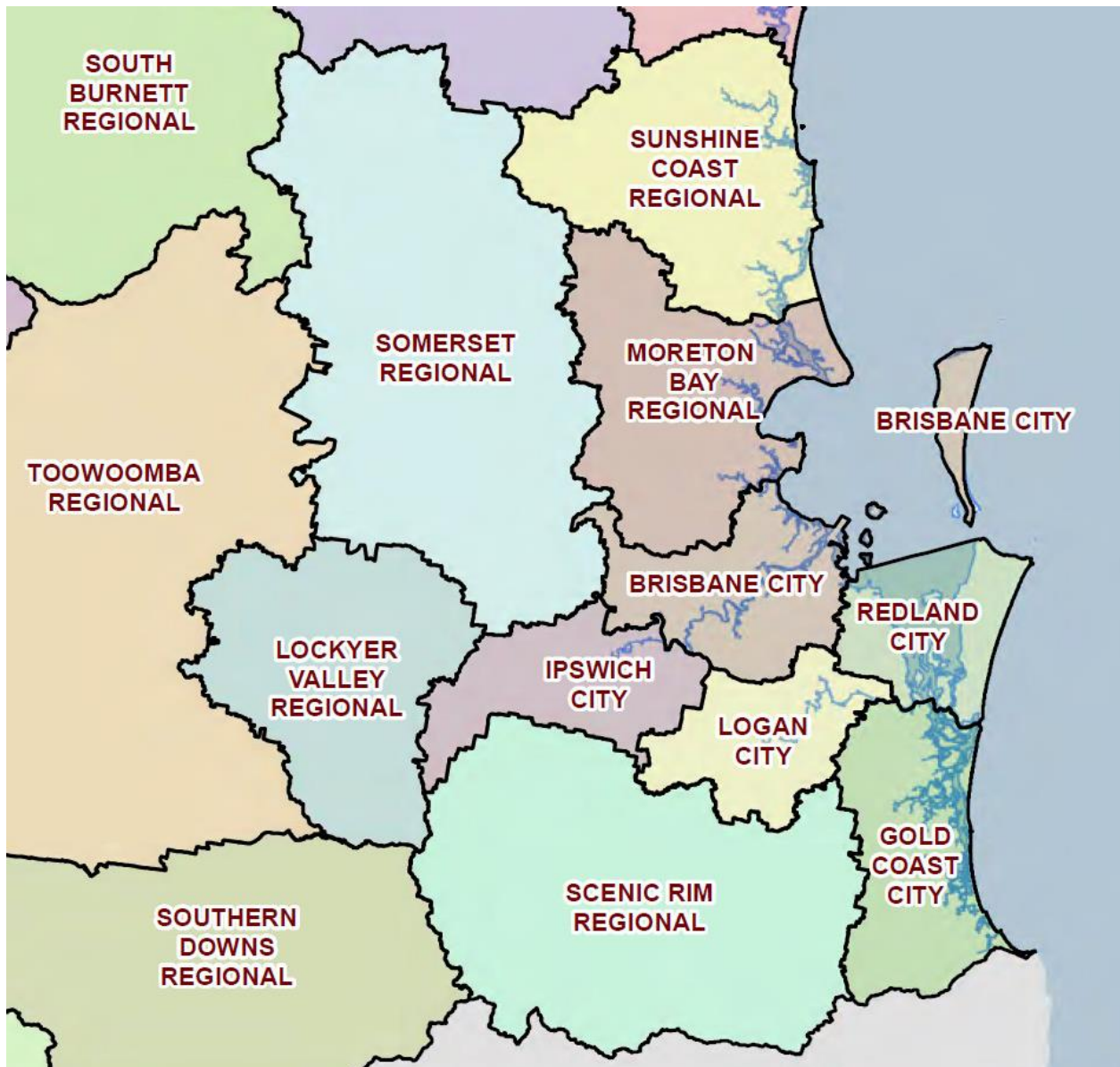
Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Attachment B – Map of the Councils and surrounding LGAs



Accessed from <http://www.dilgp.qld.gov.au/resources/map/local-government-area-boundaries.pdf> 27 July 2015