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MM/AN/MWVG14315-9104215

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8 April 2015

By email: Richard.Chadwick@accg.gov.au

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer
Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

Contact
Alistair Newton (03) 9672 3483
Email: alistair.newton@corrs.com.au

Partner
Mark McCowan

Dear Dr Chadwick

Metropolitan Waste and Resource Recovery Group – applications for authorisation

As you know, we act for Metropolitan Waste and Resource Recovery Group (**MWRRG**), a Victorian statutory body corporate established under section 50 of the *Environment Protection Act 1970* (Vic). MWRRG is responsible for municipal solid waste management and planning in Melbourne and, in that capacity, it works with Melbourne's metropolitan councils to co-ordinate the efficient procurement of waste management services.

MWRRG is applying for authorisation on behalf of itself and the city councils of Brimbank, Melbourne, Port Philip and Wyndham in relation to the joint procurement of recyclable receiving and processing services

Enclosed are the following documents:

1. a Form A application for authorisation;
2. a Form B application for authorisation;
3. public and confidential versions of the supporting submission to which the Forms A and B refer;
4. a letter from the Australian Competition and Consumer Commission granting MWRRG a partial fee waiver in this matter; and
5. EFT remittance advice for the payment of \$4,000.00, being the total lodgement fees payable in respect of the applications (we note that MWRRG is entitled to pay a concessional fee in respect of its second application).

8 April 2015
Australian Competition and Consumer Commission
**Metropolitan Waste and Resource Recovery Group –
applications for authorisation**



Yours faithfully

Corrs Chambers Westgarth



Mark McCowan
Partner

attachments

Form A

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

A91489

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

This application is made by the Metropolitan Waste and Resource Recovery Group (MWRRG) (formerly the Metropolitan Waste Management Group) on behalf of itself and the following councils:

- Brimbank City Council;
- Melbourne City Council;
- Port Phillip City Council; and
- Wyndham City Council (together, the **Group**).

- (b) Description of business carried on by applicant:
(Refer to direction 3)

MWRRG is a Victorian statutory body corporate established under section 50 of the *Environment Protection Act 1970* (Vic). MWRRG is responsible for municipal solid waste management and planning and, in that capacity, it works with Victoria's metropolitan councils to facilitate best practice in waste management.

Members of the Group are responsible for, amongst other things, providing residential waste collection services to their respective local communities.

- (c) Address in Australia for service of documents on the applicant:

Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
Attention: Mark McCowan
Email: mark.mccowan@corrs.com.au

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

MWRRG and the Group propose to jointly procure services for the receiving, sorting, compacting and processing of kerbside collected recyclable material. MWRRG and the Group also propose to make joint decisions regarding the ongoing administration of the contracts for the supply of recyclables receiving and processing services. Refer to the supporting submission for further details.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

It is possible that, if more than one supplier is contracted, MWRRG and/or the Group may make decisions regarding the allocation of particular volumes of recyclables amongst the contracted supplier(s). For example, MWRRG and/or the

Group may decide that it would be appropriate for particular volumes of recyclables to be allocated to one or more suppliers for capacity or efficiency reasons

Authorisation for collective boycott conduct in respect of these arrangements is sought out of an abundance of caution and on a limited basis. MWRRG and the Group do not seek authorisation to make or give effect to an exclusionary provision which:

- extends to suppliers other than those which agree to participate in the contractual framework described in the supporting submission; or
- is for the purpose of negotiating a variation to the contractual rights of suppliers.

MWRRG also notes that Group members are free to not enter into the contractual framework set out in the supporting submission and to independently select, negotiate and contract with any supplier of recyclables receiving and processing services.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The proposed conduct relates to recyclables receiving and processing services. Refer to the supporting submission for a detailed description of recyclables receiving and processing services.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The parties seek authorisation for a total period of 12 years, comprising:

- a 12-month period for the completion of the tender and negotiation/execution of new contracts and interim supply arrangements; and
- a maximum 11-year operating term.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The address for each Group member is set out below.

Brimbank City Council
6-18 Alexandra Avenue
Sunshine
Victoria 3020

Melbourne City Council
120 Swanston Street
Melbourne
Victoria 3000

Port Phillip City Council
333 Bay Street
Port Melbourne
Victoria 3207

Wyndham City Council
45 Princes Highway
Werribee
Victoria 3030

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

As above.

4. Public benefit claims

- (a) Arguments in support of application for authorisation:
(Refer to direction 6)

Refer to the supporting submission.

- (b) Facts and evidence relied upon in support of these claims:

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Refer to the supporting submission.

- (b) Facts and evidence relevant to these detriments:

Refer to the supporting submission.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

N/A

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

(c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Mark McCowan
Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
mark.mccowan@corrs.com.au

Dated..... 8 APRIL 2015

Signed by/on behalf of the applicant _____

.....
(Signature)

Mark McCowan

(Full Name)

Corrs Chambers Westgarth

(Organisation)

Partner

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

A91490

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

This application is made by the Metropolitan Waste and Resource Recovery Group (MWRRG) (formerly the Metropolitan Waste Management Group) on behalf of itself and the following councils:

- Brimbank City Council;
- Melbourne City Council;
- Port Phillip City Council; and
- Wyndham City Council (together, the **Group**).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

MWRRG is a Victorian statutory body corporate established under section 50 of the *Environment Protection Act 1970* (Vic). MWRRG is responsible for municipal solid waste management and planning and, in that capacity, it works with Victoria's metropolitan councils to facilitate best practice in waste management.

Members of the Group are responsible for, amongst other things, providing residential waste collection services to their respective local communities.

- (c) Address in Australia for service of documents on the applicant:

Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
Attention: Mark McCowan
Email: mark.mccowan@corrs.com.au

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

MWRRG and the Group proposes to jointly procure services for the receiving, sorting, compacting and processing of kerbside collected recyclable material. Refer to the supporting submission for further details.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Refer to the supporting submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The proposed conduct relates to recyclables receiving and processing services. Refer to the supporting submission for a detailed description of recyclables receiving and processing services.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The parties seek authorisation for a total period of 12 years, comprising:

- a 12-month period for the completion of the tender and negotiation/execution of new contracts and interim supply arrangements; and
- a maximum 11-year operating term.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The address for each Group member is set out below.

Brimbank City Council

6-18 Alexandra Avenue
Sunshine
Victoria 3020

Melbourne City Council

120 Swanston Street
Melbourne
Victoria 3000

Port Phillip City Council

333 Bay Street
Port Melbourne
Victoria 3207

Wyndham City Council

45 Princes Highway
Werribee
Victoria 3030

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

As above.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Refer to the supporting submission.

- (b) Facts and evidence relied upon in support of these claims:

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

Refer to the supporting submission.

- (b) Facts and evidence relevant to these detriments:

Refer to the supporting submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

N/A

- (c) If so, by whom or on whose behalf are those other applications being made?

N/A

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mark McCowan
Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
mark.mccowan@corrs.com.au

Dated..... 8 APRIL 2015

Signed by/on behalf of the applicant

.....
(Signature)

Mark McCowan

(Full Name)

Corrs Chambers Westgarth

(Organisation)

Partner

(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

PUBLIC REGISTER VERSION

Application for authorisation to jointly procure
receiving and processing services for kerbside
collected recyclable material – supporting
submission

Metropolitan Waste and Resource Recovery Group
on behalf of itself and the Western/Central
Recyclables Group

8 April 2015

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1 Executive Summary

A group of Melbourne city councils comprising Brimbank, Melbourne, Port Phillip and Wyndham (together, the **Western/Central Recyclables Group or Group**) propose to jointly procure services for the receiving, sorting, compacting and processing of kerbside collected recyclable material (**receiving and processing services**).

The Metropolitan Waste and Resource Recovery Group (**MWRRG**), a Victorian statutory body corporate whose role is to coordinate joint procurements of this kind, proposes to act on the Group's behalf and facilitate the procurement, negotiation and contracting process in relation to the acquisition of receiving and processing services.

The Victorian Government has developed a policy for addressing growing waste management and resource recovery concerns in Victoria. The joint procurement of recyclables receiving and processing services by the Group, facilitated by MWRRG, is a significant step in achieving the Victorian Government's policy outcomes.

It is proposed that MWRRG will complete a tender for, and negotiate contractual terms with, a supplier or suppliers of recyclable material receiving and processing services (**supplier or suppliers**). Members of the Group will then enter into separate agreements to confirm their consent to the terms of the arrangements negotiated by MWRRG. At this stage, it is anticipated that the tender and negotiation process will run to around February 2016, when formal contracts will be executed.

MWRRG considers that it is arguable that the arrangements the subject of this submission do not constitute a contravention of the *Competition and Consumer Act 2010 (CCA)*. However, authorisation (including interim authorisation) is sought out of an abundance of caution.

MWRRG and the Group submit that the proposed conduct will result in no material public detriment and significant public benefits, including:

- environmental and public health benefits arising from the efficient diversion of waste;
- transaction cost savings for both the Group and suppliers;
- improved purchasing power, leading to lower costs for the Group;
- increased certainty and reduced operational risks for suppliers, thereby potentially underwriting investment in recyclables receiving and processing facilities; and
- increased resource recovery rates.

2 Confidentiality

Portions of this document that have been highlighted in red and are preceded by the word “**CONFIDENTIAL:**” contain confidential and commercially sensitive information. This information must not be disclosed to any third party without the express written consent of MWRRG. MWRRG consents to the disclosure of confidential information to: (i) the Australian Competition and Consumer Commission’s (ACCC) external advisors and consultants on a confidential basis; (ii) if the ACCC is compelled to do so by law; or (iii) otherwise in accordance with section 155AAA of CCA.

3 Background

This submission is lodged by MWRRG on behalf of itself and members of the Group in support of an application to the ACCC for authorisation to jointly procure, negotiate and contract for the provision of recyclables receiving and processing services.

3.1 Household waste collection

Waste generated by households in Melbourne is collected by municipal solid waste kerbside collection services provided by Melbourne metropolitan councils. The municipal solid waste is sorted by households and collected separately by councils according to type. The majority of Melbourne metropolitan councils offer the following municipal solid waste kerbside collection services:

- organic waste collection – includes garden waste such grass clippings and tree prunings;
- commingled recycling waste collection – includes recyclable material which is combined in a single “commingled” recycling bin;
- residual waste collection – includes other household waste not classified as organic waste or recycling waste. Residual waste is generally sent to landfill; and
- periodic hard waste collection – includes larger-sized waste that would otherwise be residual waste, such as mattresses, white goods, furniture and electrical appliances.

3.2 Recyclables receiving and processing services

Recyclable material includes paper, cardboard, liquid paperboard (used in milk and juice cartons), glass, plastic and certain metals which can be reprocessed into products with productive uses (**recyclables**). Recyclables may be collected through kerbside collection services provided by councils (as described above), through the commercial and industrial sector, or through drop-offs at public recycling facilities. This application for authorisation relates only to the receiving and processing of recyclables collected as part of kerbside collection services.

Recyclables receiving and processing services include the following activities:

- receiving – recyclables are received from kerbside collections;
- sorting and decontaminating – recyclables are sorted to remove contaminants and segregated according to material group (for example, glass, plastics, aluminium and paper). Sorting and decontaminating may be conducted manually or mechanically, for example with optical sorting facilities or screening equipment; and
- compacting – recyclables must be compacted or consolidated before they can be sent for reprocessing into new products or disposal by landfill or incineration. For example, glass may be crushed into glass sand, which can then be used to produce insulation and glass bottles. Plastic containers may be processed into resins which can be used for drink packaging and irrigation pipes. Paper and cardboard may be compacted for dispatch to paper mills, where they are used to produce new packaging and newspapers.

A number of different types of facilities carry out recyclables receiving and processing services, including transfer stations, drop-off centres, resource recovery centres and materials recovery facilities (collectively, **resource recovery facilities**). Resource recovery facilities have different capabilities and features, as set out in Table 1 below. The capabilities of some resource recovery facilities have also changed over time and continue to evolve to accommodate increased waste volumes and to meet new resource recovery targets. For example, transfer stations traditionally conducted only preliminary sorting activities before transferring recyclables to a more high-technology facility for advanced sorting, followed by compacting. However, in more recent years some transfer stations have combined with resource recovery centres to deliver compacting services and on-site resale services, enabling recyclables to be ready for manufacturing into alternative products by the time they leave the transfer facility, instead of requiring further processing at a more advanced resource recovery facility.

After recyclables have undergone the above processes at a resource recovery facility, recyclables are manufactured into saleable end products such as newspapers, tissues, packaging, insulation, potting mixture, manufacturing glass, soft drink bottles, underground pipes and aluminum cans. Products derived from recyclables are traded domestically and globally.

Table 1 – Resource recovery facilities

Type	Activities	Characteristics
Transfer station	Collection, consolidation, transfer	<ul style="list-style-type: none"> • Receives hard, organic and residual waste and commingled recyclables. • Separates waste and sends it to materials recovery facilities, processing facilities, or

Type	Activities	Characteristics
		<p>for disposal to landfill.</p> <ul style="list-style-type: none"> Mainly handles municipal solid waste. Accepts local government and private collections and householder drop-offs. Can be publicly or privately owned. Can be combined with a resource recovery centre and may include a resale centre. Does not undertake reprocessing activities.
Resource recovery centre	Sorting, consolidation, transfer	<ul style="list-style-type: none"> Receives and/or recovers re-usable and recyclable materials that would otherwise be destined for disposal. Can be combined with a transfer station. May include a resale centre.
Drop-off facility	Collection, consolidation, transfer, resale	<ul style="list-style-type: none"> Receives selected materials and household items dropped off by householders for recycling and reuse.
Materials recovery facility	Sorting, consolidation, transfer	<ul style="list-style-type: none"> Receives and sorts household and businesses commingled recyclables. Compacts and bales, or consolidates, materials and sends to processing facilities.

Source: Draft Statewide Waste and Resource Recovery Infrastructure Plan, page 14.

3.3 MWRRG

MWRRG is a Victorian statutory body corporate established under section 50 of the *Environment Protection Act 1970* (Vic).

MWRRG is responsible for municipal solid waste management and planning and, in that capacity, it works with Victoria's metropolitan councils to facilitate best practice in waste management including by:

- planning for waste management and resource recovery facilities;
- coordinating and facilitating the joint procurement of efficient waste disposal services and sustainable resource recovery; and
- building the knowledge and capacity of councils and their communities to implement best practice waste minimisation practices.

MWRRG and the functions that it performs are a key component of the Victorian Government's broader economic and environmental strategy, which is discussed further below.

MWRRG was previously named the Metropolitan Waste Management Group (or MWMG).

3.4 The Group

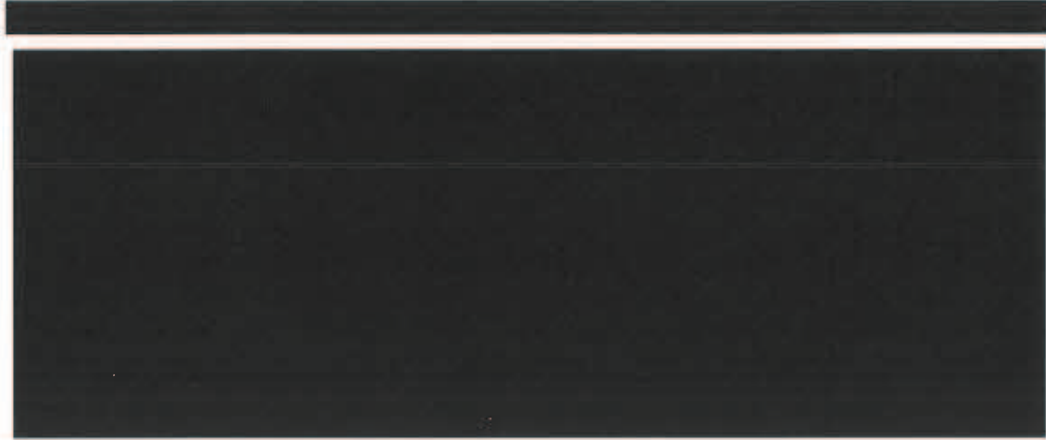
The location of members of the Group is depicted in Figure 1 below.

Figure 1: Map of Group Members



The functions and powers of local councils, including members of the Group are set out in the *Local Government Act 1989 (Vic)*. Each member of the Group is currently responsible for providing regular municipal solid waste kerbside collection services to households, including commingled recycling waste collection.

Table 2 below shows the approximate annual volumes of recyclables collected by each member of the Group.



3.5 Government policy on waste management and resource recovery

In recent years, environmental concerns and population growth have led to the development of a new waste management and resource recovery policy by the Victorian Government. In April 2013, the Victorian Government released *Getting Full Value: the Victorian Waste and Resource Recovery Policy (Waste and Resource Recovery Policy)*¹, which sets out a 30-year plan for a Victorian waste management system that protects the environment and public health, maximises the economic value of waste and minimises costs to local government, households and industry.

A key aspect of the Waste and Resource Recovery Policy is the development of the draft *Statewide Waste and Resource Recovery Infrastructure Plan*² (**Statewide strategic plan**) and the draft *Metropolitan Waste and Resource Recovery Strategic Plan*³ (**MWRRG strategic plan**), which were released by the Victorian Government in September 2013 (together, the **strategic plans**). Following a consultation process on the draft strategic plans, it is expected that the final strategic plans will be released during 2015.

The Waste and Resource Recovery Policy describes the importance of waste management and resource recovery facilities for environmental and public health outcomes:

“The fundamental role of the waste and resource recovery system is to protect the environment and public health from the risks that arise from waste materials... If things go wrong, waste management and resource recovery facilities can cause significant and unacceptable impacts on the environment and surrounding communities. Risks to

¹ Located at <http://www.depi.vic.gov.au/environment-and-wildlife/sustainability/waste-management-and-resource-recovery/?a=182537>.

² Located at <http://www.sustainability.vic.gov.au/our-priorities/integrated-waste-management/waste-strategy-statewide-planning/statewide-waste-and-resource-recovery-infrastructure-plan>.

³ Located at http://www.mwmg.vic.gov.au/images/documents/about/StrategicPlan2013/ConsultationDraft_MWRRSP_071013.pdf.

the environment include contamination of land, ground and surface waters, and gas emissions, including greenhouse gases. Communities located near waste and resource recovery facilities can be affected by odour, noise, dust, litter and vermin. Facilities need to be sited, designed, built and operated to the highest standards so that the environmental and public health benefits Victorians expect are achieved.”⁴

The Waste and Resource Recovery Policy also identifies significant long-term problems associated with the disposal of waste to landfills in Victoria, stating:

“Landfills pose a unique risk to the environment and public health because they contain a diverse mix of materials in large volumes beneath the ground indefinitely. These materials continue to react under the ground for generations, and can create harmful substances. Landfills have adverse impacts on communities if they are not managed properly.”⁵

The establishment and efficient operation of facilities with sufficient capacity to process growing volumes of waste is a critical step in ensuring that waste continues to be diverted from Victorian landfills. The Waste and Resource Recovery Policy identifies that aggregating waste volumes across multiple municipalities will make investment in resource recovery facilities viable and deliver economies of scale and cost savings:

“Investors in large regional resource recovery facilities need access to larger volumes of waste than can be provided by single municipalities, and so they must broker access with multiple municipalities and commercial clients. Similarly, if local government wishes to invest in resource recovery, it is likely that large-scale, regional facilities will be the most capable of delivering value for money services. However, achieving economies of scale requires agreements with other local governments, so regional local government procurement will be necessary. This need for pooling waste and brokering agreements can be a barrier to investment and competitive market outcomes, because of increased transaction costs, delays and lack of transparent information regarding service costs. Consolidation of waste streams will open opportunities for substantial, long-term investment in resource recovery infrastructure that can process the quantities and types of waste that is currently sent to landfill.”⁶

The Waste and Resource Recovery Policy also expresses the Victorian Government’s intention that, in future, landfills will only receive residual waste that has been through a process to extract all material of economic value.⁷

⁴ Waste and Resource Recovery Policy, p.42.

⁵ Waste and Resource Recovery Policy, p.43.

⁶ Waste and Resource Recovery Policy, p.38.

⁷ Waste and Resource Recovery Policy, p.48.

The MWRRG strategic plan refers to the establishment of recovery facilities that can service “clusters” of councils:

“[MWRRG] suggests establishing strategic sites that will service multiple council areas (clusters). These sites will consolidate material in preparation for bulk hauling to a disposal or reprocessing site ... The benefits of handling increased volumes include providing a cost effective service to communities whilst attracting industry investment by aggregating material and providing long term contracts on material amounts.”⁸

This strategic approach to establishing resource recovery facilities is supported by the Waste and Resource Recovery Policy, which refers to the importance of a “holistic approach” to waste and resource recovery infrastructure planning and involves government and industry investors working together.⁹ The Waste and Resource Recovery Policy states that:

“Waste and resource recovery infrastructure needs to be planned as a statewide system so that return on investments can be maximised and costs to consumers minimised.”¹⁰

3.6 Future requirements for resource recovery infrastructure

The MWRRG strategic plan refers to the need for existing resource recovery infrastructure in the Melbourne metropolitan area to grow and adapt in order to cope with increased resource recovery rates and projected increases in waste collection volumes.¹¹ In recent years, resource recovery facilities have evolved to enable the management of increasing volumes and types of material and achieve reductions in the volume of waste sent to landfill. For example, as described in section 3.2 above, many transfer stations have adapted to include resource recovery centres which now process the material they receive and may sell it on-site.

The strategic plans foreshadow further growth and adaptation by resource recovery facilities in order to accommodate larger volumes of waste and undertake activities to further reduce the volume of material being sent to landfill. As any expansion or upgrading of resource recovery facilities (or construction of new facilities) entails significant capital investment, long term supply contracts and certainty of receiving and processing volumes are required to ensure investment viability.

The capital equipment required to operate a resource recovery facility with the capabilities required to service the Group is likely to include:

- electromagnetic equipment to separate steel and aluminium from other recyclables;

⁸ MWRRG strategic plan, p.63.

⁹ Waste and Resource Recovery policy, p.35.

¹⁰ Waste and Resource Recovery policy, p.35.

¹¹ MWRRG strategic plan, p.59-65.

- other sorting equipment such as detectors to separate materials according to size, shape and density differences, air classifiers which blow lightweight material from heavier material such as glass, and infrared light equipment to separate plastics;
- compacting equipment capable of consolidating large volumes of material, including steel can balers, paper and cardboard balers and plastics compacters; and
- conveyors and trucks to transport materials through the different stages of sorting and processing.



Further, a new entrant that is a successful tenderer would obviously need to make substantial investments in new receiving/processing infrastructure.

4 Joint procurement of recyclables receiving and processing services

Authorisation is sought for MWRRG and the Group to make and give effect to contracts, arrangements or understandings in relation to the joint procurement of recyclables receiving and processing services.

Those contracts, arrangements or understandings may relate to matters including but not limited to:

- the completion of a tender and interim supply arrangements;
- the negotiation, with a supplier or suppliers, of a contractual framework for the supply of recyclables receiving and processing services to the Group; and
- decisions regarding variations to the contract for the supply of recyclables receiving and processing services, and (if necessary) the allocation of recyclables volumes amongst suppliers.

4.1 Group member requirements

In order to conduct the proposed joint tender and procurement, MWRRG must ascertain and take into account the individual requirements and resource constraints of each member of the Group.

Each member of the Group has provided to MWRRG the parameters of its specific requirements for the receiving and processing of recyclables, including:

- the maximum cartage distance, being the maximum distance the council will travel to transport recyclables to the resource recovery facility; and
- the anticipated number of dwellings serviced by their kerbside recycling collection service.

The requirements specified by each member of the Group are confidential between that member and MWRRG. Each member's requirements are to be used by MWRRG to conduct a competitive tender process and negotiate contracts for the supply of recyclables receiving and processing services that fall within the parameters specified by the Group.

Each member's decision to enter a contract will be entirely independent and voluntary and each member will be free to separately select and contract with alternative suppliers if they wish.

Each member will also independently determine the kerbside collection area from which the recyclables are to be collected.

4.2 Tender for the provision of recyclables waste processing services

MWRRG proposes to conduct a competitive tender for the provision of recyclables receiving and processing services. The tender will seek a supplier or suppliers to operate a facility or facilities for receiving and processing recyclables to be collected by the Group.

It is proposed that a tender evaluation panel comprising representatives of MWRRG and the members of the Group (**Panel**) will consider whether the responses to the Tender meet the requirements of the Group. The Panel will then recommend a supplier or suppliers for consideration by the executives of the each member of the Group. Each member of the Group may then, if it chooses, pass a resolution independently approving the selection of the recommended supplier to provide recyclables receiving and processing services to it.

Each member of the Group will remain free to decide whether it wishes to individually contract with the recommended supplier(s) and is not restricted to acquiring services from them. Each member of the Group also remains free to contract with suppliers other than the supplier(s) recommended by the Panel.

4.3 Joint negotiation of supply terms

It is proposed that MWRRG will then negotiate with the recommended supplier(s) regarding the terms for the supply of recyclables receiving and processing services to members of the Group.

[REDACTED]

The key terms that are proposed to be agreed with the supplier by MWRRG on behalf of the Group if authorisation is granted include terms relating to:

- the rate that will be paid by the supplier to each member of the Group per tonne of recyclable material that is received by the supplier;
- the rate of reduction in the payment required to be made by the supplier to each member of the Group as a result of the level of contamination in the material delivered and the load density (in kilograms per cubic metre) of the material delivered by the Group member (**contamination charge**). The contamination charge represents the cost of sorting and disposing of material from which productive uses cannot be recovered; and
- the requirements of the receiving and processing facility, including its capacity, management plans and operating hours.

[Redacted]

[Redacted]

[Redacted]

[Redacted]



4.4 Joint decisions regarding variations to contracts

A group comprising representatives from each member of the Group and MWRRG will be established to consider and make decisions regarding variations to the agreement with the supplier(s) if required (**User Group**).

It is also possible that, if more than one tenderer is successful, MWRRG and/or the Group (most likely, but not necessarily, through the User Group) may make decisions regarding the allocation of particular volumes of recyclables amongst those contracted supplier(s). For example, MWRRG and/or the Group may decide that it would be appropriate for particular volumes of recyclables to be allocated to one or more suppliers for capacity or efficiency reasons (each of which will already be contracted to MWRRG and the Group and who will have their commercial positions protected).

In light of the above, authorisation to enter into or give effect to an agreement containing an exclusionary provision is sought out of an abundance of caution and on a limited basis. For the avoidance of doubt, MWRRG and the Group do not seek authorisation to make or give effect to an exclusionary provision which:

- extends to suppliers other than those which agree to participate in the contractual framework described in this supporting submission; or
- is for the purpose of negotiating a variation to the contractual rights of suppliers (for instance, the parties do not seek authorisation to make or give effect to an exclusionary provision for the purpose of varying the per tonne rate to be paid by a supplier, or the contamination charge).

5 Period for which authorisation is sought

The parties seek authorisation for a total period of 12 years, comprising:

- a 12-month period for the completion of the tender and negotiation/execution of new contracts and interim supply arrangements; and
- a maximum 11-year operating term. [REDACTED]

As described in section 3.6 above, resource recovery facilities in the Melbourne metropolitan area will need to grow and adapt in order to accommodate projected future waste volumes. The supplier(s) selected may be required to modify and upgrade an existing facility, or construct a new facility in order to achieve the functionality and capacity required by the Group. In those cases, substantial capital investment would be required.

Based on its own assessment and feedback from potential suppliers of recyclables receiving and processing services, MWRRG considers that a term of 11 years is likely required to incentivise potential suppliers (including potential suppliers who would be required to make capital investments) to participate in the tender.

6 Request for interim authorisation – timetable

Interim authorisation is sought for the immediate progression of the tender and negotiation process (so that contracts can be executed by the end of February 2016) and for interim supply arrangements to be agreed. In this regard, MWRRG notes that the recommended supplier(s) will likely need adequate lead time prior to commencing operations in order to:

- obtain relevant quality assurance certifications;
- obtain the necessary approvals, permits, licences and consents for the operation of the receiving and processing facility;
- secure tenure to the site or sites at which the facility will operate; and
- design and construct a new receiving and processing facility or upgrade an existing facility so that it meets the requirements of the members of the Group.

7 Market definition

MWRRG notes that, in previous determinations regarding authorisation applications by councils to jointly conduct a tender for waste management services, the ACCC has not considered it necessary to precisely define the relevant market.

For present purposes, MWRRG considers that the relevant area of competition is at least as large as the market for the supply of services for receiving and processing recyclable material in the Melbourne metropolitan area.

MWRRG notes that the Councils prefer the receiving facility to be located within the Melbourne metropolitan area to minimise the distance travelled to deliver their kerbside recyclables collections. However, MWRRG considers that it is possible for subsequent stages of processing to be performed at a facility located outside of the Melbourne metropolitan area.

8 Counterfactual

MWRRG has not formed a final view on the appropriate counterfactual should the proposed conduct not be authorised. However, at least two counterfactuals appear to be possible:

- first, each member of the Group could separately evaluate prospective suppliers and individually negotiate their respective contracts for the supply of recyclables receiving and processing services; and
- second, the Group could potentially explore some form of modified collaboration in the procurement of recyclables receiving and processing services which would rely on the CCA's joint venture or collective acquisition exceptions.

MWRRG considers that either approach would be likely to significantly diminish the ability of MWRRG and Group members to realise the cost savings, efficiencies and environmental benefits sought by the proposed conduct. For example, if the Group members were to separately procure recyclables receiving and processing services then that would be likely to result in:

- higher transaction costs, which may be passed on to residents in the form of higher rates or reductions in other council services. This is discussed further in 9.3 and 9.4 below;
- fewer tenderers seeking to provide the services sought, given reduced certainty of recovering any investment required to establish the requisite facilities from the small processing volumes of separate councils; and
- reduced potential for adoption of high-technology sorting and processing solutions, as high-technology solutions are less likely to be economically viable where smaller quantities of recyclables are received.

9 Public benefits

The proposed conduct will result in significant and sustained improvements to community welfare in the form of environmental and health benefits, investment viability, cost savings, efficiency improvements and increased resource recovery rates.

9.1 Environmental and health benefits

As outlined above, resource recovery facilities can cause significant damage to the environment and public health, including from harmful emissions and land and water contamination. In addition, diverse materials in landfills may react under the ground to produce harmful substances. Consequently, and in line with Victorian Government policy, resource recovery facilities must be high quality, high performing and suitably located in order to protect the environment and public health from risks that arise from waste materials.¹²

The members of the Group currently collect approximately 51,300 tonnes of recyclable material per year. This figure is expected to increase in coming years due to population growth, increased resource recovery rates and the ongoing implementation of Government policies to reduce the quantity of material sent to landfill. Investment in a facility with the capacity and functionality to receive, sort and process kerbside collected recyclables with minimal risk to the environment and public health may be required. This will also ensure maximum recovery of productive uses from waste before it is sent to landfill.

The proposed joint procurement will aggregate sufficient volumes of recyclables to underwrite any investment required to upgrade an existing facility or develop a new facility capable of:

- processing increased volumes of recyclables collected as a result of future population growth and greater resource recovery;
- operating in strategically selected and safe location(s) according to the high performance standards required to minimise risks of undesirable environmental and public health outcomes arising from substandard operating procedures, inappropriate location, poor quality or design; and
- utilise improved technology to offer enhanced receiving, sorting and processing services.

9.2 Investment viability and operational risk

The expansion or upgrading of existing recyclables receiving and processing facilities or the construction of a new facility requires a substantial investment (discussed in section 3.6 above) and carries significant operational risk. To be commercially viable, the receiving and processing facility requires long term contracts, certainty and sufficiency of volumes, and downstream customers or end markets for the sale of goods derived from recyclable material. This investment viability and certainty will be achieved in part by aggregating the Group's demand for receiving and processing services. The Group's combined volumes of recyclables could also underwrite investment by a new market entrant.

¹² Waste and Resource Recovery Policy p.42.

The Waste and Resource Recovery Policy and draft strategic plans expressly support and rely on the establishment of joint local government procurement in order to secure investment in resource recovery facilities. As outlined above, the Victorian Government's policy intention to consolidate waste streams is expected to encourage substantial, long-term investment in resource recovery infrastructure.

Combined volumes of recyclables will also reduce the operational risk that the supplier(s) face in establishing the requisite capacity and resourcing for the resource recovery facility. The assurance of a regular delivery of a minimum quantity of recyclable material is likely to assist with the supplier(s) planning and investment decisions and ultimately result in reduced operating costs.

9.3 Transaction cost savings

The joint procurement of recyclables receiving and processing services will deliver considerable transaction cost savings compared with each member of the Group engaging separately with potential suppliers.

Further, MWRRG's depth of expertise in technical waste management issues and procurement of waste management services can be utilised collectively by the Group, rather than requiring each member to separately secure specialist tendering and contract management services.

Councils are not profit-making entities and cost savings can be expected to benefit rate-payers and enable resources to be used in the provision of other services to benefit their residents.

9.4 Improved purchasing power

The aggregated receiving and processing requirements of the Group will place them in a stronger bargaining position. This is likely to increase competition between tenderers vying for the combined volumes of recyclables compared with each Group member individually negotiating receiving and processing services for smaller volumes.

This is likely to result in suppliers tendering to pay higher rates per tonne of recyclable material received or to impose lower contamination charges, which will ultimately benefit rate payers.

9.5 Efficiencies and capacity utilisation

The processing of combined quantities of recyclables collected by the Group will result in efficiencies and economies of scale in the delivery of receiving and processing services, lowering costs per tonne incurred in receiving and processing recyclables. This efficiency benefit may be passed on to the Group in the form of lower contamination charges or larger financial benefits per tonne of recyclable material delivered.

9.6 Increased recovery of productive uses from kerbside waste collections

The proposed conduct is likely to increase recovery rates for recyclables collected by the Group. Facilities that utilise more sophisticated technology to sort and scan materials will maximise the rate of recovery of valuable

resources from waste streams. The Waste and Resource Recovery Policy refers to the fact that improvements in recycling rates or resource recovery rates in Victoria from 2000-01 to 2009-10 were achieved as a result of acting on affordable and accessible recycling options. However, as gains from these more straightforward changes have already been achieved, further increases in recycling rates will be primarily attained through new initiatives and efficiency improvements, such as those contemplated by the proposed joint procurement.

10 Public detriment

MWRRG submits that the proposed conduct does not result in any significant public detriment and that any public detriment would be outweighed by the substantial public benefits outlined above.

Currently, there are at least three large suppliers of recyclables receiving and processing services in the relevant market/s and competition between those suppliers to secure contracts is expected to be aggressive. [REDACTED]



MWRRG submits that the proposed arrangements will not result in any discernible detriment for the following reasons:

- the proposed conduct involves a maximum of four of the 31 councils located in the Melbourne metropolitan area, which in aggregate account for approximately 51,300 tonnes, out of the total 1.5 million tonnes of recyclables collected by Melbourne metropolitan councils;
- the tender process will be competitive and transparent, and the Panel will have regard to detailed objective criteria and be subject to an independent audit procedure. There will therefore be vigorous competition “for the market” during the tender process;
- Group members’ participation in the joint procurement and negotiation process will be voluntary, and members will be free to independently select and negotiate with an alternative supplier of recyclables receiving and processing services if they consider that this would result in a more favourable outcome;
- the selected supplier(s) will also be able to offer recyclables receiving and processing services to customers other than the Group members, including industry clients and other Victorian local councils. There are

- 79 Victorian local councils, of which 31 are located in the Melbourne metropolitan area; and
- the Group members will have input into the terms negotiated by MWRRG and may propose variations or additions to the terms.

11 Conclusion

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