Dear Mr Jones

Loddon Mallee Waste and Resource Recovery Group – applications for authorisation

As you know, we act for Loddon Mallee Waste and Resource Recovery Group (LMWRGG), a Victorian statutory body corporate established under section 49C of the Environment Protection Act 1970 (Vic). LMWRGG is responsible for planning and facilitating best practice in waste and resource recovery services in the Loddon Mallee region of Victoria, and, in that capacity, works with local Victorian councils to co-ordinate efficient procurement of waste and resource recovery services.

LMWRGG is applying for authorisation on behalf of itself and the Victorian councils of the City of Greater Bendigo, Rural City of Mildura, Rural City of Swan Hill, Gannawarra Shire, Loddon Shire, Buloke Shire, Mount Alexander Shire and Macedon Ranges Shire in relation to the joint procurement of waste and resource recovery services. Attached are the following:

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. correspondence dated 15 August 2017 from the Australian Competition and Consumer Commission (ACCC) granting LMWRGG a partial fee waiver in this matter; and
5. EFT remittance advice for the payment of $4,000, in respect of the total lodgement fees (representing the reduced fee of $2,500 in relation to the Form A application, and a concessional fee of $1,500 in relation to the Form B application).
Please contact us if the ACCC would like any further information in respect LMWRGG's applications.

Yours faithfully
Corrs Chambers Westgarth

Alistair Newton
Special Counsel
Karen Fazzani
Loddon Mallee Waste Resource Recovery Group

By email: Karen.fazzani@lmwrrg.vic.gov.au

Dear Ms Fazzani

Fee waiver request

Thank you for your email of 10 August 2017 to the Australian Competition and Consumer Commission (ACCC) asking that we waive the fee in whole or in part for the Loddon Mallee Waste Resource Recovery Group (LMWRRG) and others’ application for authorisation.

In support of your request, among other things, you submitted that LMWRRG is a not-for-profit government entity whose activities are primarily funded by State government grants, and that any fee paid by LMWRRG in relation to the authorisation application would divert resource away from sustainability and waste resource recovery initiatives in the region.

I have considered the information provided and, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I have decided that the application fee to be paid by LMWRRG and others will be waived in part. An application fee of $2500 will apply for the application for authorisation to be lodged by LMWRRG and others.

This decision will remain in force for a period of three months. The three month period will expire on 14 November 2017.

A copy of this letter should accompany the application for authorisation to be lodged by LMWRRG and others. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by LMWRRG and others after 14 November 2017, a full application fee of $7500 will apply, unless a subsequent request for a fee waiver is made and approved by the ACCC.

If you have any queries in relation to this matter, please contact Hannah Ransom on (02) 6243 1255.

Yours sincerely

David Jones
General Manager
Adjudication
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

1. Applicant

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

Loddon Mallee Waste and Resource Recovery Group (ABN 91 646 029 563) (LMWRGG) on behalf of itself and the Victorian councils of the City of Greater Bendigo, Buloke Shire, Gannawarra Shire, Loddon Shire, Mount Alexander Shire, Macedon Ranges Shire, Mildura Rural City and Swan Hill Rural City (together, the Participating Councils).
(b) Description of business carried on by applicant:
(Refer to direction 3)

LMWRRG is a Victorian statutory body corporate established under section 49C of the Environment Protection Act 1970 (Vic). LMWRRG’s role is to plan for the future waste and resource recovery needs of the Loddon Mallee region, and to work with local stakeholders, including the Participating Councils, to facilitate best practice in waste and resource recovery services in the community.

The Participating Councils are responsible for, amongst other things, providing waste and resource recovery services within their respective municipalities.

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

Alistair Newton
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: alistair.newton@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)

LMWRRG and the Participating Councils propose to jointly procure certain waste and resource recovery services, including domestic kerbside waste and recyclables collection, specific waste material collection and other associated 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)

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 waste and resource recovery services, including domestic kerbside waste and recyclables collection, specific waste material collection, and other associated services. Refer to the supporting submission for further details.
(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:

16 years. Refer to the supporting submission for the grounds supporting that period.

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 of LMWRRG and each of the Participating Councils is provided below.

**Loddon Mallee Waste and Resource Recovery Group**
125 High Street
Wedderburn VIC 3518

**City of Greater Bendigo Council**
195-229 Lyttleton Terrace
Bendigo VIC 3550

**Buloke Shire Council**
367 Broadway
Wycheproof VIC 3527

**Mount Alexander Shire Council**
27 Lyttleton Street
Castlemaine VIC 3450

**Macedon Ranges Shire Council**
129 Mollison Street
Kyneton VIC 3444

**Gannawarra Shire Council**
Patchell Plaza, 47 Victoria Street
Kerang VIC 3579

**Swan Hill Rural City Council**
45 Splat Street
Swan Hill VIC 3585
Loddon Shire Council
41 High Street
Wedderburn VIC 3518

Mildura Rural City Council
79 Deakin Avenue
Mildura VIC 3490

(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)

Refer to 3(a).

4. Public benefit claims

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

The proposed conduct will result in substantial public benefits, including transaction cost savings for the parties, efficiency improvements, enhanced competition for waste and resource recovery services in the Loddon Mallee region, environmental benefits, the inclusion of smaller industry participants, and the fulfilment of LMWRG's statutory functions.

(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)

The proposed conduct will have no discernible public detriments.

(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)

Not applicable.

(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)

Not applicable.

(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:

Not applicable.

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?

Not applicable.
(c) If so, by whom or on whose behalf are those other applications being made?

*Not applicable.*

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:

*Alistair Newton*

*Corrs Chambers Westgarth*

*Level 22, 567 Collins Street*

*Melbourne VIC 3000*

*Email: alistair.newton@corrs.com.au*

Dated: 17 August 2017

Signed by/on behalf of the applicant:

\[Signature\]

Alistair Newton

(Full Name)

Corrs Chambers Westgarth

(Organisation)

Special Counsel

(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

1. Applicant
   (a) Name of Applicant:

   Loddon Mallee Waste and Resource Recovery Group (ABN 91 646 029 563) (LMWRG) on behalf of itself and the Victorian councils of the City of Greater Bendigo, Buloke Shire, Gannawarra Shire, Loddon Shire, Mount Alexander Shire, Macedon Ranges Shire, Mildura Rural City and Swan Hill Rural City (together, the Participating Councils).
(b) Short description of business carried on by applicant:

(Refer to direction 3)

LMWRRG is a Victorian statutory body corporate established under section 49C of the Environment Protection Act 1970 (Vic). LMWRRG’s role is to plan for the future waste and resource recovery needs of the Loddon Mallee region, and to work with local stakeholders, including the Participating Councils, to facilitate best practice in waste and resource recovery services in the community.

The Participating Councils are responsible for, amongst other things, providing waste and resource recovery services within their respective municipalities.

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

Alistair Newton
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: alistair.newton@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)

LMWRRG and the Participating Councils propose to jointly procure certain waste and resource recovery services, including domestic kerbside waste and recyclables collection, specific waste material collection and other associated 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, 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 waste and resource recovery services, including domestic kerbside waste and recyclables collection, specific waste
material collection, and other associated services. Refer to the supporting submission for further details.

(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:

16 years. Refer to the supporting submission for the grounds supporting that period.

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 addresses of LMWRG and each of the Participating Councils is provided below.

**Loddon Mallee Waste and Resource Recovery Group**
125 High Street
Wedderburn VIC 3518

**City of Greater Bendigo Council**
195-229 Lyttleton Terrace
Bendigo VIC 3550

**Buloke Shire Council**
367 Broadway
Wycheproof VIC 3527

**Mount Alexander Shire Council**
27 Lyttleton Street
Castlemaine VIC 3450

**Macedon Ranges Shire Council**
129 Mollison Street
Kyneton VIC 3444

**Gannawarra Shire Council**
Patchell Plaza, 47 Victoria Street
Kerang VIC 3579
(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)

Refer to 3(a).

4. Public benefit claims

(a) Arguments in support of authorisation:

(Refer to direction 6)

The proposed conduct will result in substantial public benefits, including transaction cost savings for the parties, efficiency improvements, enhanced competition for waste and resource recovery services in the Loddon Mallee region, environmental benefits, the inclusion of smaller industry participants, and the fulfilment of LMWRRG’s statutory functions.

(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)*

The proposed conduct will have no discernible public detriments.

(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)*

Not applicable.

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

Not applicable.

(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:

Not applicable.

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.*

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

Not applicable.
(d) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

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

Alistair Newton
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: alistair.newton@corrs.com.au

Dated: 17 August 2017
Signed by/on behalf of the applicant

.........................................
(Signature)
Alistair Newton
(Full Name)
Corrs Chambers Westgarth
(Organisation)
Special Counsel
(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.
Application for authorisation to jointly procure waste and recycling services – supporting submission

Loddon Mallee Waste and Resource Recovery Group on behalf of itself and the local councils of the City of Greater Bendigo, Rural City of Mildura, Rural City of Swan Hill, Gannawarra Shire, Loddon Shire, Buloke Shire, Mount Alexander Shire and Macedon Ranges Shire

17 August 2017
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Executive Summary

Loddon Mallee Waste and Resource Recovery Group (LMWRRG) and the Victorian councils of the City of Greater Bendigo, Buloke Shire, Gannawarra Shire, Loddon Shire, Mount Alexander Shire, Macedon Ranges Shire, Mildura Rural City and Swan Hill Rural City (together, the Participating Councils) propose to jointly procure certain waste and resource recovery services.

LMWRRG is a Victorian statutory body corporate established under the Environment Protection Act 1970 (Vic) (EP Act), whose role includes the coordination and facilitation of joint procurement of waste and resource recovery services for municipal councils in the Loddon Mallee region.1

Under the auspices of the EP Act, LMWRRG and the Participating Councils propose to jointly conduct tenders for, and negotiate contracts in relation to, the following waste and resource recovery services:

- domestic kerbside collection, acceptance and processing of waste (including recyclables and organic waste);
- the supply, collection, acceptance and processing bulk bins and skips; and
- the collection, processing and/or disposal of specific material streams (such as e-waste, mattresses, tyres and certain plastics).

It is proposed that LMWRRG and the Participating Councils will seek tenders from, and assist in negotiating contractual terms with, prospective suppliers of the required services (Service Providers). On completion of the tender and negotiation process, Participating Councils will enter agreements with the selected Service Provider(s), either jointly or individually.

The proposed conduct will involve two successive joint tenders for domestic kerbside waste (including recyclables and organic waste) collection, acceptance and processing, and services relating to the supply, collection, acceptance and processing of bulk bins and skips. The first of these will include Participating Councils whose existing contracts for waste and resource recovery services are due to expire in 2018. These are the City of Greater Bendigo, Macedon Ranges Shire, and Mount Alexander Shire. Interim authorisation is requested to enable these Participating Councils to immediately progress their joint procurement and to provide sufficient time to put in place arrangements before relevant contracts expire. A second joint tender process is proposed to be conducted in 2019 for further Participating Councils.

Separately, the proposed conduct will also involve joint tenders including all Participating Councils for services relating to the collection, processing and/or

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1 Environment Protection Act 1970 (Vic), section 49H.
disposal of specific material streams. The joint tenders for these waste material streams are proposed to be conducted on an ad-hoc basis as required by the Participating Councils.

LMWRRG and the Participating Councils submit that the proposed conduct will not result in any material public detriment, and will result in significant public benefits, including:

- transaction and other cost savings for the Participating Councils;
- economies of scale;
- enhanced competition for the provision of waste and resource recovery services in the Loddon Mallee region;
- improved services for residents living in the municipalities of the Participating Councils;
- environmental and public health benefits arising from more efficient collection and disposal of waste, and the diversion of organic materials from landfill; and
- the potential inclusion of smaller Service Providers in the tender process.

For the purposes of this application, LMWRRG together with the Participating Councils are referred to collectively as the Applicants.

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. Subject to the below, this information must not be disclosed to any third party without the express written consent of the Applicants. The Applicants:

- acknowledge that there is no restriction on the internal use, including future use, that the ACCC may make of confidential information consistent with the ACCC’s statutory functions;
- consent to the disclosure of confidential information to the ACCC’s external advisers and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- acknowledge that the ACCC may disclose confidential information to third parties (in addition to its external advisors and consultants) if compelled by law or in accordance with section 155AAA of the Competition and Consumer Act 2010 (Cth) (CCA).
3 Waste and resource recovery services to be procured

Each of the Participating Councils is responsible for conducting certain residential waste and resource recovery functions in their respective municipalities under the Local Government Act 1989 (Vic) (LG Act). The waste and resource recovery services that are proposed to be jointly procured by the Participating Councils are the following:

- domestic kerbside waste, recyclables and organic waste collection;
- domestic kerbside recyclables acceptance and processing;
- domestic organic waste (including food organics and green waste) acceptance and processing;
- supply and collection of bulk bins and skips; and
- collection and processing of specific material waste streams.

Further detail regarding each of these services is provided below.

(a) Domestic kerbside waste, recyclables and organic waste collection

Each of the Participating Councils currently provides:

- domestic waste collection, including general household waste that is not classified as either recyclable or organic waste; and
- co-mingled recyclable waste collection, including recyclable material such as paper, cardboard, liquid paperboard (used in milk and juice cartons), glass, plastic and certain metals which can be reprocessed into products with productive uses.

Domestic kerbside waste collected by the Participating Councils that is not classified as either recyclable or organic waste (general domestic waste) is sent to landfill. Recyclables that are collected by the Participating Councils may be sorted and processed following collection (discussed in section 3(b) below).

In addition to the above, the councils of the City of Greater Bendigo, Gannawarra Shire and Swan Hill Rural City provide some form of domestic organic waste kerbside collection services. Currently, the City of Greater Bendigo collects domestic food organic waste (in other words, food waste such as fruit, vegetable and meat scraps), while Gannawarra Shire and Swan Hill Rural City collect domestic green organic waste (which includes garden materials such as grass clippings, tree prunings, timber or other natural waste). Over the next one to three years, Gannawarra Shire and Swan Hill Rural City councils intend to introduce a domestic food organic waste kerbside collection service. Macedon Ranges Shire, Mount Alexander Shire and Mildura Rural City councils are also considering introducing domestic food organic waste and/or green waste kerbside collection services, over the same period.
(b) Recyclables acceptance and processing

Domestic recyclables may be collected through kerbside collection services provided by councils (as described above), through private sector providers, or through drop-offs at public recycling facilities. This application for authorisation relates only to the receiving and processing of recyclables that are collected as part of kerbside collection services.

Recyclables acceptance 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.

A number of different types of facilities carry out recyclables acceptance and processing services, including transfer stations, drop-off centres, resource recovery centres and materials recovery facilities (collectively, resource recovery facilities). There are 42 resource recovery facilities located in the Loddon Mallee region.

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 aluminium cans.

In most cases, acceptance and processing services are undertaken by the same Service Providers that are contracted to provide collection services for the Participating Councils. In certain municipalities, however, acceptance and processing services may be conducted by different Service Providers to those that provide kerbside collection services.

(c) Organic waste acceptance and processing

Domestic organic waste includes domestic food organic waste and domestic green waste that is collected through kerbside collection services. This waste is either sent to landfill, or reprocessed at a reprocessing facility. Currently only domestic green waste is reprocessed in the Loddon Mallee region, while domestic food organic waste is reprocessed outside the region. Organic waste that is reprocessed can be recovered for reusable products such as mulch, compost products or fertilisers, or energy sources.

(d) Supply and collection of bulk bins and skips

Each of the Participating Councils collects waste and recyclables through bulk bins and skips. A skip is a large open-topped container used for collecting
waste, designed to be easily loaded on to a collecting truck. Currently, the Participating Councils supply bulk bins and skips at landfill or transfer stations, where they are used to collect waste and recyclables before being transported to other waste and resource recovery facilities for processing.

(e) Collection and processing of specific material streams (tyres, mattresses, e-waste and plastics)

Participating Councils currently have ad-hoc arrangements in place for the collection and processing of specific material streams including tyres, mattresses, e-waste and plastics. However, the low residual value of these materials, and distances and costs involved in collecting them in the Loddon Mallee region, currently make it difficult to attract Service Providers to provide these services for the Participating Councils.

The Participating Councils are considering procuring these services jointly every one to three years, or on an ad-hoc basis, as and when the need for their collection arises. By offering these materials jointly, the Participating Councils expect that these collection and processing services will be enhanced in the region.

3.2 LMWRGG

LMWRGG is one of seven regional waste and resource recovery groups established under section 49C of the EP Act. Broadly speaking, LMWRGG’s role is to plan for the future waste and resource recovery needs of the Loddon Mallee region, and to work with local stakeholders, including the Participating Councils, to facilitate best practice in waste and resource recovery services in the community.

LMWRGG’s objectives are set out in sections 49G of the EP Act, and include:

- facilitating efficient procurement of waste and resource recovery infrastructure and services through collective procurement;
- undertaking waste and resource recovery infrastructure planning;
- integrating regional and local knowledge into State-wide waste and resource recovery market development strategies;
- educating businesses and communities to reduce waste going to landfill by using waste and resource recovery infrastructure and services efficiently; and
ensuring that the regional waste and resource recovery implementation plans required to be prepared under section 50B of the EP Act (RWRRIP), are informed by local government, business and community, and are used to inform State-wide waste and resource recovery planning and programs.²

Under section 49H of the EP Act, LMWRRG may facilitate the development of joint procurement contracts for waste and resource recovery services, and/or manage contracts in respect of those services. LMWRRG and the functions that it performs are a key component of the Victorian Government’s broader economic and environmental strategy, discussed further in section 3.4 below.

3.3 Participating Councils

Each of the Participating Councils is responsible for providing residential waste and resource recovery services within the boundaries of its respective local municipality. The locations of the Participating Council municipalities are shown in Figure 1 below.

² The RWRRIP are plans developed by each regional waste and resource recovery group that set out, amongst other things, how the waste and resource recovery infrastructure needs of the relevant region will be met over a 10 year period.
Figure 1: Map of the Participating Councils

Table 1 below shows the approximate annual volumes of domestic waste, recyclables and organic waste collected by each of the Participating Councils, and the status of any existing contracts with private Service Providers for the collection of those materials.
3.4 Victorian Government policy on waste and resource recovery

In 2014, the Victorian Government passed amendments to the EP Act through the Environment Protection and Sustainability Victoria Amendment Act 2014 (Vic), with the stated purpose of (amongst others):

"provid(ing) for a consistent and coordinated approach to waste and resource recovery across the State by aligning the governance of Waste and Resource Recovery Groups and integrating State-wide and regional waste and resource recovery infrastructure planning and implementation"
To facilitate this co-ordinated approach to waste and resource recovery in Victoria, the amended EP Act directs Sustainability Victoria to develop the Statewide Waste and Resource Recovery Infrastructure Plan (SWRRIP). It also directs the seven statutory waste and resource recovery groups, including LMWRRG, to each develop a RWRRIP. The SWRRIP and the seven RWRRIPs form the Victorian Waste and Resource Recovery Infrastructure Planning Framework (the Framework).

The Framework seeks to achieve long term planning for waste and resource recovery infrastructure at state and regional levels, integrated with land-use and transport planning systems. The Framework establishes an integrated state-wide waste and resource recovery management system to:

- effectively manage the expected mix and volumes of waste;
- support a viable resource recovery industry;
- reduce the amount of valuable materials going to landfill; and
- reflect environmental justice principles to ensure that impacts on the community, environment and public health are not disproportionately felt across communities.

4 Joint procurement of waste and resource recovery services

Authorisation is sought for LMWRRG and the Participating Councils to make and give effect to contracts, arrangements or understandings in relation to the joint procurement of waste and resource recovery services.

These contracts, arrangements or understandings relate to:

- the joint development of requests for tenders (RFTs) by LMWRRG and each of the Participating Councils in respect of waste and resource recovery services;
- the negotiation with selected Service Providers of joint arrangements between multiple Participating Councils for the delivery of services; and/or
- the ongoing administration and management of contracts where joint arrangements for the acquisition of waste and resource recovery services are entered into by multiple Participating Councils.

(a) Overview and commercial rationale
The joint procurement arrangements are intended to encourage resource sharing and efficiencies, and to support the “best value principles” outlined in section 208B of the LG Act. Under the best value principles, Victorian councils are (amongst other things) required to meet certain quality and cost standards, and achieve continuous improvement in the provision of municipal services.3 Victorian councils may, under the LG Act, seek partnerships with other councils and/or the State government in applying the best value principles required under the LG Act.4 The proposed conduct is intended to further these statutory objectives by enabling the Participating Councils to share costs, and their respective experience and expertise in waste and resource recovery in the region, in the procurement process.

The Participating Councils also recognise that potential Service Providers may be reluctant to provide services for individual councils in the Loddon Mallee region due to the costs of servicing remote locations across expansive geographic distances, and the volumes of waste associated with some of the region’s relatively smaller populations. As a result, the Participating Councils are seeking to enter into joint procurement activities to attract a greater number and variety of Service Providers, and to promote competition for the relevant services. By attracting a greater number of Service Providers, the proposed arrangements will provide the Participating Councils with improved access to

3 Local Government Act 1989 (Vic), section 208B.
4 Ibid, section 208C.
waste and resource recovery services, and greater certainty that Service Providers will respond to their specific needs.

(b) **Collaborative aspects of the procurement process**

Under the proposed conduct, the Participating Councils will collaborate in respect of certain aspects of the procurement process, with the aims of sharing resources, costs and expertise, and encouraging proposals from a broad variety of Service Providers.

As a result, certain activities are proposed to be conducted jointly between the Participating Councils and LMWRRG, including the following:

- development of RFTs and advertising for the relevant services;
- evaluation of proposals submitted by prospective Service Providers, and the preparation of recommendations to assist in evaluating proposals received;
- evaluation of, and contribution to, the costs of conducting the joint procurement;
- joint negotiations, including joint arrangements between Participating Councils, in the event that a Service Provider is selected to provide services to multiple Participating Councils; and
- where joint agreements are entered into by multiple Participating Councils, those councils may elect to form a group or committee for the ongoing management of those agreements.

To facilitate the joint activities contemplated under the proposed conduct, a group of representatives from each of the Participating Councils that opts-in to the arrangements, as well LMWRRG, will be established (the Working Group). The Working Group will prepare and publish an RFT with input from the Participating Councils, who will have separately determined their own service requirements. The Working Group will also nominate a consultant (Tender Coordinator), who will co-ordinate certain aspects of the procurement process (including the preparation of tender documentation), and act as the primary contact for administrative aspects of the joint procurement process.

The Working Group will then be responsible for receiving and evaluating proposals submitted by Service Providers in response to the RFT. The Working Group’s consideration of these proposals will be documented in a report (Joint Report), to be circulated amongst the Participating Councils that have opted into the joint process. The Joint Report may contain the recommendations of the Working Group regarding preferred bidders (based on the criteria in the joint tender), and will be used by the Participating Councils in their selection of Service Providers for further negotiations.
(c) Voluntary participation in joint procurement activities

The proposed joint arrangements will be voluntary for each of the Participating Councils. Participating Councils that do not opt-in to the proposed conduct may choose to “go it alone” if they prefer, and continue to individually procure their own waste and resource recovery services.

Participating Councils that opt-in to the joint procurement arrangements will also be required to refrain from individually negotiating with Service Providers while the joint tender is ongoing. However, Participating Councils will not be required to accept the proposals recommended by the Working Group in the Joint Report, or to enter into any arrangements with Service Providers that submit bids in the joint process. In addition, Participating Councils will be free to withdraw from the joint procurement arrangements at any time following consideration of the Joint Report.

It is proposed that the joint procurement process will also provide flexibility for Service Providers in the bidding process, by enabling them to bid for:

- the provision of services to all Participating Councils;
- the provision of services to a single Participating Council; and/or
- the provision of services to a cluster of the Participating Councils determined by geographic proximity, volume or any other relevant factors.

In the event that proposals are received for the provision of services to multiple Participating Councils, the relevant Participating Councils may choose to jointly evaluate those proposals, with the assistance of LMWRG. The relevant Participating Councils may also seek to jointly negotiate with the relevant Service Providers with a view to entering joint arrangements between them for the services (as discussed in section 4(e), below).
(d) **Role of LMWRRG in the procurement process**

LMWRRG’s role will be to facilitate a collaborative procurement process for the Participating Councils, including through the following:

- co-ordinating and leading meetings between representatives of the Participating Councils and/or any potential Service Providers;
- developing and advertising RFTs, as well as legal and probity services as needed by the Participating Councils;
- applying for funding to defray the costs incurred by the Participating Councils in the joint procurement process; and
- assisting the Participating Councils in the evaluation of proposals received from prospective Service Providers.

Once the proposals received under the RFT are evaluated, and the Joint Report (including any relevant recommendations) has been submitted to the relevant Participating Councils, LMWRRG’s role in the process will cease. It is proposed that Participating Councils will individually determine whether they wish to negotiate, and enter into contracts with (either jointly or individually), the selected Service Provider(s).

(e) **Ongoing administration and management of arrangements**

Following the joint tender process, it is proposed that each Participating Council will negotiate and enter into arrangements with the successful Service Providers. Each Participating Council will be responsible for managing arrangements with contracted Service Providers on an ongoing basis. LMWRRG will not play a role in the ongoing administration or management of waste and resource recovery contracts on behalf of the Participating Councils.

Where joint arrangements are sought between multiple Participating Councils and/or multiple Service Providers, these may be jointly negotiated by a group of representatives from the relevant Participating Councils. Any joint arrangements that are concluded for this purpose will be managed on an ongoing basis by representatives of the relevant Participating Councils.

Joint decisions regarding the ongoing administration of arrangements involving multiple Service Providers may also include decisions regarding the allocation of volumes of waste or recyclables between one or more Service Providers. For example, the relevant Participating Councils may make joint decisions regarding the allocation of volumes in order to direct waste to underutilised infrastructure in the region, maximise efficiencies by using better suited facilities for certain waste materials, or to minimise transport distances where possible.
5 Period for which authorisation is sought

The parties seek authorisation for a total period of 16 years, comprising:

- an 18-month period for the initial joint procurement process, (including negotiation/execution of contracts) for the first group of Participating Councils;
- a further 18-month period for a second joint procurement process commencing in 2019 (including negotiation/execution of contracts), for the second group of Participating Councils whose existing contracts will expire from 2019 to 2021; and
- proposed 11 year contract terms for both groups of Participating Councils, the second of which will commence in 2022 and expire in 2033.

The above proposed 11 year contract terms are proposed in respect of services relating to the collection, acceptance and processing of domestic kerbside waste, recyclables and organic waste, and the supply, collection, acceptance and processing of bulk bins and skips. These contract terms are intended to allow the parties to secure competitive tender submissions that allow Service Providers to realise a return on any capital investments undertaken to the relevant services. LMWRRG and the Participating Councils expect that Service Providers will make capital investments in the form of new collection trucks, skips/bulk bins and processing infrastructure, and may upgrade existing waste and resource recovery facilities, or construct new ones. Capital investment in these areas are likely to improve resource recovery rates for waste (including organic waste) and recyclables in the Loddon Mallee region, reduce environmental hazards in collecting and processing waste, and support local employment and economic growth in the relevant communities.

Ongoing contracts will not be sought for services relating to the collection and processing of specific materials streams such as mattresses, tyres, e-waste and certain plastics. The Applicants propose that these will be procured jointly on ad-hoc basis, to be conducted periodically as the need for collection of specific materials arises in the Loddon Mallee region.

6 Request for interim authorisation

Interim authorisation is sought for the immediate progression of joint procurement by the Participating Councils that have entered into the joint arrangements (City of Greater Bendigo, Mount Alexander Shire and Macedon Ranges Shire).

Interim authorisation is required in order to conduct the necessary planning and advertising to secure arrangements for waste and recy...
Participating Councils adequate time to put in place any required infrastructure for any new arrangements with Service Providers, and ensure there is no disruption to waste and resource recovery services in their municipalities.

7 Market definition
LMWRRG notes that, in previous determinations regarding authorisation applications for joint procurement of waste management services by municipal councils, the ACCC has not considered it necessary to precisely define the relevant market.

LMWRRG considers that the relevant area of competition is at least as large as the market for the supply of services collecting, receiving and processing/disposing waste, recyclables and organic waste in the Loddon Mallee region.

The geographic area of the Loddon Mallee region is illustrated in Figure 1 above, and has a population of approximately 276,000. This population is projected to increase by approximately 18% over the next 10 years. Overall volumes of waste (including recyclables and organic waste) currently generated in the region is estimated to be over 540,000 tonnes per annum. This amount is expected to grow to over 800,000 tonnes per annum by 2045.

LMWRRG notes that the Participating Councils have a preference that selected Service Providers’ facilities are located within the Loddon Mallee region, to minimise transport inefficiencies. However, the Participating Council will consider proposals by Service Providers with facilities outside the region, provided they can demonstrate efficiencies or other advantages that will support delivery of the relevant services.

8 Counterfactual
LMWRRG has not formed a final view on the appropriate counterfactuals should the proposed conduct not be authorised. However, it has considered that the following two counterfactuals are possible:

- the Participating Councils could individually develop their own tenders and negotiate for the supply of the relevant services; or
- the Participating Councils could structure their procurement plans to engage in a modified form of collaboration, that relies on the joint venture and collective acquisition exceptions from the relevant prohibitions in the CCA.

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6 Ibid (based on 2013/14 estimates) page iii
7 Ibid, 26.
If either approach above were adopted, LMWRRG considers that this would likely diminish the substantial public benefits sought by the proposed conduct. Specifically, LMWRRG considers that either approach would result in:

- higher transaction costs, as each Participating Council would have to evaluate and negotiate large parts of the proposals by Service Providers themselves. These costs would ultimately be borne by residents and rate-payers of the communities in each municipality;
- fewer Service Providers responding to tenders for the relevant services, given the reduced certainty of obtaining contracts for multiple Participating Councils;
- reduced economic efficiencies through the smaller scale of potential contracts; and
- reduced opportunities to obtain expertise in evaluating and negotiating such tenders through the collaboration of LMWRRG and the various Participating Councils.

9 Public benefits

The proposed conduct will result in substantial public benefits for the communities in the Loddon Mallee region, including the following.

- **(Transaction cost savings)** The joint procurement process will deliver transaction costs savings to each Participating Council, compared with each council separately running its own procurement process. The participation of LMWRRG in the joint procurement process will also provide technical expertise that can be used collectively by the Participating Councils, and will avoid the costs of each council engaging separate expert advice. The reduced expenses will benefit residents and rate-payers of the respective Participating Councils, as the cost savings can be redirected to other municipal services in the affected local areas.

- **(Efficiency improvements)** The proposed conduct will lead to efficiency improvements when combining volumes of waste and recyclables across the Participating Councils. In addition, the proposed conduct will enable the allocation of waste and resource recovery to underutilised facilities in the region, and reduce transport costs by allowing Service Providers to service multiple locations through combined programs.

- **(Enhanced competition)** The joint procurement process will likely enhance competition for waste and resource recovery services in the Loddon Mallee region, as the combination of volumes and services by the Participating Councils will incentivise additional Service Providers to bid for services.
(Service delivery improvements) The proposed conduct is likely to facilitate improvements to waste and resource recovery services in the region through increased investment in services and facilities. This is also likely to provide innovations to services, for example in the acceptance, sorting and reprocessing of materials, as private Service Providers are better equipped to introduce technological improvements than some of the Participating Councils.

(Environmental and health benefits) Joint procurement and improvements to service delivery in the region are expected to deliver improved waste management and recovery rates. These will benefit the environment and public health in the affected communities by reducing the amount of waste that is sent to landfill, increasing the rates of recovery for recoverable waste (such as recyclables or organic waste) and improving treatment of hazardous or environmentally unsafe materials.

(LMWRRG’s statutory objectives) The proposed conduct will support the key statutory functions of LMWRRG under the EP Act, and the objectives of the Victorian Government in respect of waste and resource recovery planning, including under the Framework.

(Inclusion of smaller participants) The proposed conduct will enable smaller industry participants to bid for service contracts, by allowing proposals for only one of the Participating Councils, or only certain waste and resource recovery services. Service Providers participating in the joint procurement process will not be required to bid for multiple services or Participating Councils, although they may choose to do so.

10 Public detriment
LMWRRG submits that the proposed conduct will not result in any discernible public detriments for the following reasons:

(Open and transparent process) the joint procurement process will be competitive and transparent, and the Working Group will have regard to objective criteria in evaluating proposals by Service Providers. LMWRRG has engaged an independent probity auditor in this regard to oversee the joint procurement process. The probity auditor will also be tasked with reporting to the Working Group regarding compliance with certain protocols that are designed to support the objective evaluation of Service Provider proposals;

(Competitive tenders) the participation of smaller players or new entrants to the market will enhance competition for the supply of waste and resource recovery services in the Loddon Mallee region;

(Voluntary participation) the participation of each of the Participating Councils is voluntary. Participating Councils may choose not to opt-in
to the joint procurement process, or withdraw from the process after it has commenced;

- **(Flexibility for Participating Councils)** Participating Councils may, after consideration of the Joint Report or other issues arising from the joint procurement process, elect to determine their own arrangements with Service Providers separately; and

- **(Flexibility for Service Providers)** Service Providers will remain free to compete for other waste and resource recovery services to customers other than the Participating Councils. The proposed conduct only affects a maximum of eight local councils in Victoria out of a total of 79, and it is possible that not all of the Participating Councils will opt-in to the joint procurement process. In addition, Service Providers will be able to bid for one or multiple Participating Councils, or to provide multiple services across Participating Councils.

11 Conclusion

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