



Australian
Competition &
Consumer
Commission

Determination

Application for authorisation

lodged by

North East Waste and
Resource Recovery Group

in respect of

joint procurement of waste and resource recovery
services and equipment

Date: 2 February 2017

Authorisation number: A91551

Commissioners: Sims
Court
Featherston

Summary

The ACCC has decided to grant authorisation to North East Waste and Resource Recovery Group (NEWRRG), on behalf of itself and a number of Councils and Alpine Resorts in Northern Victoria to enable them to jointly procure waste and resource recovery services and equipment.

The ACCC grants authorisation until 24 February 2028.

The application for authorisation

1. On 31 August 2016 North East Waste and Resource Recovery Group (NEWRRG) on behalf of itself and the Victorian councils of Alpine Shire, Benalla Rural, Indigo Shire, Mansfield Shire, Towong Shire, Rural City of Wangaratta, the City of Wodonga, and the Falls Creek, Mt Hotham and Mt Buller Mt Stirling Alpine Resort Managements (the Constituted Councils) (together, the Applicants) lodged application A91551 with the ACCC seeking authorisation for the Conduct described below.
2. The Applicants seek authorisation to jointly tender and negotiate for the supply of the following waste services:¹
 - the collection of materials from transfer stations, resource recovery centres and landfills
 - transport of materials from the collection locations to the processing sites
 - processing at the processing sites of
 - metal recyclers
 - tyre recyclers
 - plastic recyclers
 - electronic waste recyclers
 - mattress recyclers
 - concrete crushing and garden waste chipping on site
 - receiving and processing of organics (together with the above, the Service Streams); and
 - purchase of waste and resource recovery infrastructure such as bins (referred to in this determination as 'equipment')
(the **Conduct**).
3. In particular, the Applicants seek authorisation for:²
 - NEWRRG, on behalf of the Constituted Councils, to conduct collaborative competitive tender processes for services within the Service Streams (including the sharing of information), to evaluate the responses in collaboration with the Constituted Councils and to negotiate on behalf of the Constituted Councils the contractual framework

¹ NEWRRG's Application for Authorisation A91551, p. 3.

² NEWRRG's Application for Authorisation A91551, p. 3.

- the Constituted Councils to individually enter into separate contracts on identical or near identical terms with each Supplier/Operator (the contracts for all services within the Service Streams will be on the same general terms and conditions) and
 - certain decisions regarding the ongoing administration and management of the resultant contracts to be made jointly by NEWRRG and/or particular Constituted Councils.
4. The Applicants seek authorisation for a total period of 11 years, comprising a three year period for joint procurement processes and operating terms of three to eight years.
 5. On 12 December 2016, the ACCC issued a draft determination proposing to grant authorisation for 11 years.

The Applicants

6. NEWRRG is one of seven waste and resource recovery groups in Victoria established under the *Environment Protection Act 1970* (the EPA).³ It was formed on 1 August 2014 with legislative functions to coordinate joint procurement, facilitate and manage the ongoing administration of the supply contracts, plan for future infrastructure needs, facilitate infrastructure development, work with and advise Sustainability Victoria (Victorian State Government), councils, businesses and communities and to support collaborative forums and undertake projects funded by government or industry.⁴
7. The Constituted Councils are all local governments under the provisions of the *Local Government Act 1987* (VIC) (LGA) and provide services outlined in the LGA. The alpine resort management boards are all established under the provisions of the *Alpine Resorts (Management) Act 1997* (VIC) (ARM Act) and provide services under the ARM Act.

Background

8. The north east region comprises seven local government and three alpine resort areas. The region is situated around the Hume Freeway in north east Victoria bordering NSW at the Murray River.
9. The current permanent population for the region is close to 118,000. Visitors to the alpine resorts alone total around 576,000 per year.⁵

Table 1 Councils and alpine resorts in the north east region

Council/resort	Abbreviation	Main centre(s)	Permanent population ⁶
Alpine Shire Council	Alpine	Mt Beauty, Bright, Myrtleford	11,881
Benalla Rural City	Benalla	Benalla	13,647

³ About Us – NEWRRG, <http://www.newrrg.vic.gov.au/about-us/> viewed 2 November 2016.

⁴ NEWRRG supporting submission to Application A91551, p. 1.

⁵ NEWRRG supporting submission to the application, p. 2.

⁶ ABS, *Census Data by Local Government Area 2014*

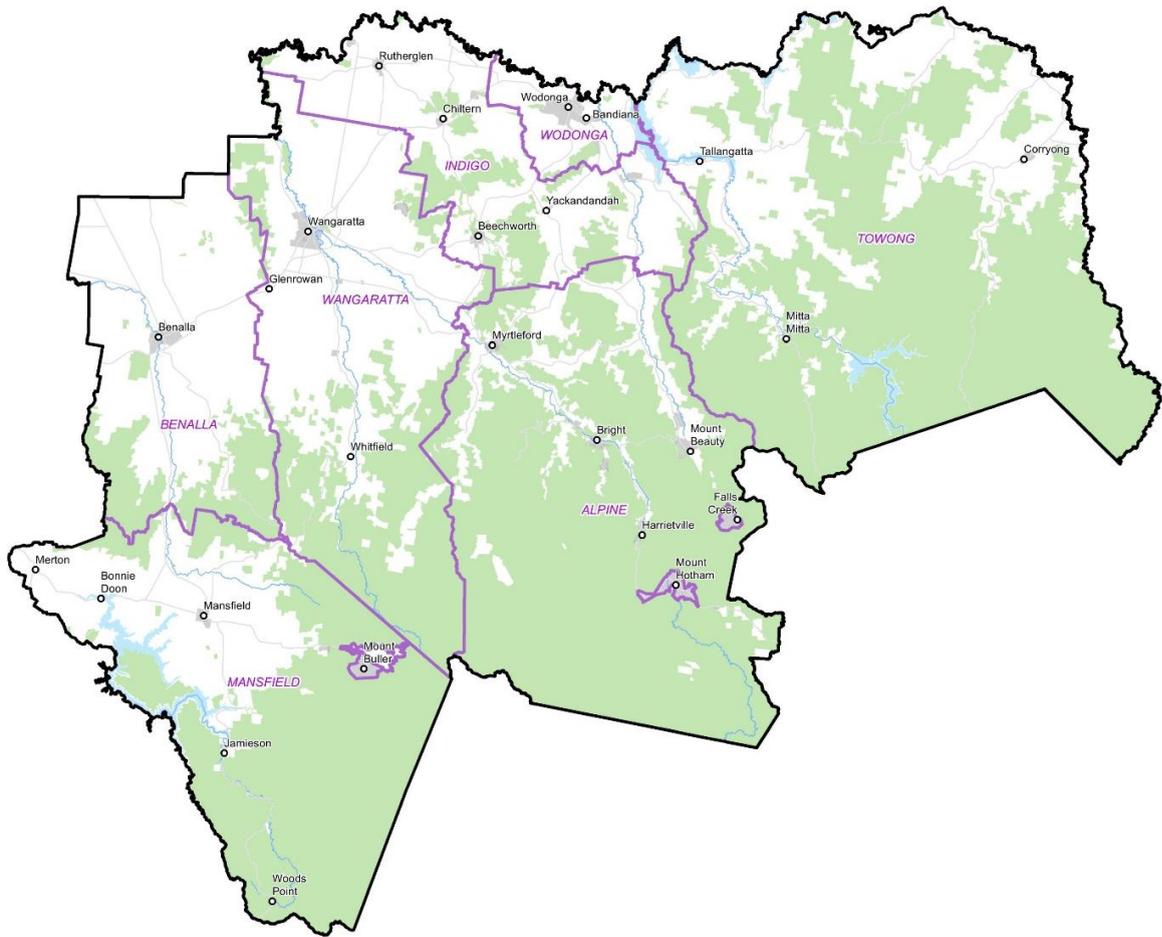
Council/resort	Abbreviation	Main centre(s)	Permanent population ⁶
Council			
Indigo Shire Council	Indigo	Beechworth, Chiltern, Rutherglen, Yackandandah	15,178
Mansfield Shire Council	Mansfield	Mansfield	7,893
Towong Shire Council	Towong	Tallangatta, Corryong	5,891
Rural City Of Wangaratta	Wangaratta	Wangaratta	26,815
City of Wodonga	Wodonga	Wodonga	35,519
Mount Buller & Mount Stirling	Mt Buller & Mt Stirling		472 ⁷
Mount Hotham	Mt Hotham		122 ⁸
Falls Creek			225 ⁹

⁷ ABS, *Census data 2011*

⁸ ABS, *Census data 2008*

⁹ ABS, *Census data 2011*

Figure 1 Location of municipal districts and alpine resorts in Victoria



Victorian Government waste and resource recovery policy

10. The Victorian Minister for the Environment has recognised the need for accumulation of waste quantities and has legislated the functions of the waste and resource recovery groups under section 49H b-d of the EPA as follows¹⁰

- b. To facilitate the provision of waste and resource recovery infrastructure and services by councils within its waste and resource recovery region; and*
- c. To facilitate the development of contracts for the joint procurement of waste management facilities and waste and resource recovery services within its waste and resource recovery region; and*
- d. To manage contracts in the performance of its objectives and functions.*

11. NEWRRG, formerly NevRwaste, has been facilitating joint procurement for councils in the north east region since 2000.¹¹

¹⁰ NEWRRG supporting submission to the application, p. 3.

¹¹ NevRwaste was established in 2000 and was responsible for procurement for a number of councils which are applicants in this application. The EPA consolidated the council regions for the purposes of waste and resource recovery in 2014, forming NEWRRG.

12. The Victorian Government developed the Victorian Waste and Resource Recovery Planning Framework (including Division 2AB of the EPA) to assist with ensuring waste is managed in a strategic, streamlined manner with infrastructure placed in the right place at the right time. The key objectives of the framework are to:¹²

- Provide a longer term strategic plan for infrastructure at state and regional levels.
- Facilitate the integration of the Statewide Waste and Resource Recovery Implementation Plan and the Regional Waste and Resource Recovery Implementation Plans.
- Enable infrastructure planning to be integrated with land use and transport planning and policy.¹³
- Enable infrastructure planning decisions to be made at the appropriate level in the framework.

Waste and resource recovery in the north east region

13. Recent modelling by Sustainability Victoria indicates that the region now generates approximately 254,000 tonnes of waste annually. Around 34% is landfill while 66% is recovered.¹⁴

Table 2 - Waste and material streams generated in 2013-14 (tonnes)¹⁵

Material category		Victorian total	North East total	Percentage
Organics	Food	820,000	19,500	2.37%
	Garden	570,000	12,700	2.23%
	Wood/timber	360,000	8,500	2.36%
	Other organics	280,000	7,000	2.5%
Paper/Cardboard		1,800,000	38,800	2.1%
Glass		220,000	5,100	2.3%
Plastics		490,000	11,600	2.3%

¹² Metropolitan Waste and Resource Recovery, Strategic Framework, 21 July 2016.

<https://www.mwrrg.vic.gov.au/about-us/strategic-framework/>, viewed 31 October 2016.

¹³ Outline of Process: Statewide Waste and Resource Recovery Infrastructure Scheduling, Sustainability Victoria, <http://www.sustainability.vic.gov.au/our-priorities/statewide-waste-planning/2015-2020-priorities/regional-waste-and-resource-recovery-implementation-plans>, viewed 31 October 2016.

¹⁴ North East Waste and Resource Recovery, Implementation Plan consultation draft May 2016, p. 5.

¹⁵ Data collected from 2013-14 available in North East Waste and Resource Recovery, Implementation Plan consultation draft May 2016, p.23 and Investment Facilitation Factsheet – Victoria’s waste and resource recovery sector, Sustainability Victoria <http://www.sustainability.vic.gov.au/invest>

Rubber	90,000 (tyres only)	600 (all rubber, including tyres)	0.6%
Metals	1,600,000	37,000	2.3%
Aggregates including masonry and soil	4,300,000	92,500	2.1%
Textiles	130,000	3,200	2.4%
E-waste	No data	200	x
Other	No data	11,500	x
Total	11,000,000	244,900	2.14%

14. In terms of waste and resource recovery facilities in the north east region:

- NEWRRG notes that the existing resource recovery centre and landfill infrastructure provides the capacity to manage current waste volumes for at least the next 10 years. Existing reprocessing infrastructure includes capacity for timber and garden waste, and paper and cardboard. There is a need for reprocessing capacity for some material streams like plastics, e-waste and an increased capacity for organic processing¹⁶
- in the Sustainability Victoria Infrastructure Plan, the Victorian government notes that smaller landfills in the region may be consolidated to allow transitioning one or more of the remaining landfill sites to resource recovery centers.¹⁷

Service streams

15. The Applicants intend to undertake a number of competitive tender processes for the services within the following Service Streams.

Waste and resource materials collection and transport services

16. The Applicants note that many of the providers of the processing services outlined below also offer collection and transport of the relevant materials but some offer processing only. In light of this, the Applicants may seek to jointly procure

- collection of waste and resource materials from transfer stations, resource recovery centres and landfills and
- transport of materials from the collection locations to processing sites.

17. Separate collection and transport suppliers typically offer specialised collection infrastructure such as bundled pallets or skip bins. These suppliers collect the receptacles and transport the materials to processing facilities, most of which are located in metropolitan Melbourne.

¹⁶ North East Waste and Resource Recovery, Implementation Plan consultation draft May 2016, p. 5.

¹⁷ Sustainability Victoria, Statewide Waste and Resource Recovery Infrastructure Plan June 2015, p. 132

Waste and resource materials processing services

18. The Applicants seek to jointly procure the following processing services:

- Metal recycling for mixed metals and car batteries. Tendering for this will occur in 2018/19.
- Tyre recycling for re-processing end of life tyres. Tendering for this will commence in 2017.
- Recycling of post industry and post consumer plastics. It is not clear if and when tendering for plastic reprocessing services will be undertaken.
- Electronic waste recycling, which is mostly done by a hand disassembling process, often but not exclusively by social enterprise. Tendering for this will commence in 2016/17.
- Mattress recycling which includes shredding, hand disassembling or machine disassembling. Tendering for this will commence in 2018/19.
- Concrete crushing and garden waste chipping, which is usually performed on site and the resulting product remains council property. Tendering for this will commence in 2016/17.

Receiving and processing of organics

19. There are two main forms of organic waste: garden waste, such as grass clippings, pruning material, weeds and leaves, and food waste and scraps. Under a waste collection contract, organics will be delivered to a transfer or receiving facility.

20. The receiving and processing of organics requires a single or multiple transfer or receiving facilities to sort the organics to remove contaminants, compost to produce an end product (such as organic fertilizers, soil conditioners and mulches, renewable energy), and then market and sell the end product.

Waste and resource recovery equipment

21. Waste and resource recovery equipment includes litter and waste collection vessels, and bin surrounds.

Previous authorisations

22. The ACCC has authorised a number of other groups of councils around Australia to jointly tender and contract for waste management services. Many of these have involved the procurement of processing services.

23. The ACCC has previously granted authorisations to one of the other seven waste and resource recovery groups in Victoria established under the EPA Act:

- A91414 & A91415 - Metropolitan Waste Management Group which involved the eight councils jointly procuring contracts for the supply of organic waste processing services, and

- A91489 & A91490 - Metropolitan Waste and Resource Recovery Group & Ors (previously Metropolitan Waste Management Group) which involved the four councils jointly procuring services for the receiving, sorting, compacting and processing of kerbside collected recyclable materials.
 - A91445 & A91446 – Metropolitan Waste and Resource Recovery Group & Ors which involved five councils jointly procuring organic waste processing services.
24. Previous authorisations concerning the joint procurement of processing services have typically been granted for periods ranging from 5 to 21 years.
25. The ACCC notes that some of the services which the Applicants propose to jointly procure in this case have not been the subject of previous authorisations. In particular, concrete crushing and garden waste chipping; and waste and resource recovery infrastructure.

Submissions received by the ACCC

26. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
27. The ACCC sought submissions from interested parties potentially affected by this application, including a number of waste and resource recovery service businesses.
28. Prior to the draft determination, one submission in support of the application was received from Cleanaway.
29. Following the draft determination, one submission was received from Greenchip Recycling with some clarifying factual information. No pre-decision conference was requested following the draft determination.
30. A summary of the public submissions received from the Applicants and interested parties follow.

The Applicants

31. The Applicants consider that without the Conduct:¹⁸
- NEWRRG could not fulfil their legislative functions under the EPA to procure infrastructure and services and to manage contracts on behalf of the Councils,
 - there would be negative environmental impacts through a reduction in resource recovery especially in the smaller more remote councils.
 - there would be a financial impact on the Councils and therefore rate payers due to the rising cost of resource recovery.

¹⁸ NEWRRG supporting submission to the application pp. 3-4.

32. For example, Mansfield Shire Council has a population of 7,893 and is located off the Hume highway. The Applicants submit Mansfield Shire has traditionally found it difficult to source viable waste service solutions and would not generate a sufficient size of alternative waste (such as mattress collection) to attract service operators.

33. The Applicants submit that:

- The Conduct will result in significant and sustained improvements to community welfare in the form of cost savings, efficiency improvements, environmental benefits and attraction of investment.
- There will also be benefits for small rural councils and alpine resorts that would not attract waste and resource recovery industry service provision due to long distances and small quantities of materials.
- Tendering processes in Victoria are onerous and involve considerable resources.
- Joint tendering will be efficient and derive financial benefits through eliminating the duplication of work by each council and alpine resorts as well as the tenderers.
- Further economic benefits are realised through the aggregation of materials. All cost savings will directly benefit the rate payers and enable councils and alpine resorts to provide other services to benefit their residents.

34. The Applicants consider that authorisation of the Conduct will not deliver any anti-competitive detriments.

Interested parties

35. Cleanaway submits that it has no issues in principle with the concept of NEWRRG jointly procuring waste and resource recovery and processing services on behalf of the constituted councils. Cleanaway notes that it holds current municipal, recycling and organics collection contracts with some of the councils and would expect that these will not be included in the procurement process until the contracts and their extensions have ceased. NEWRRG has confirmed that this is the case.

36. Greenchip Recycling submits that it is not correct to say, as the ACCC's Draft Determination did, that there are no existing hubs of importance to the State within the north east region, noting that it operates an organics processing facility capable of meeting the needs of the north east region. The ACCC has removed that statement from this Determination.

37. The views of the Applicants and interested parties are considered in the evaluation chapter of this determination. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.

ACCC evaluation

38. The ACCC's evaluation of the Conduct is in accordance with the relevant net public benefit tests contained in the Act.¹⁹ The relevant tests broadly state that the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result.

39. In its evaluation of the Conduct, the ACCC has taken into account:

- The application and submissions received from NEWRRG and interested parties;
- Information available to the ACCC from consideration of previous relevant matters;
- The likely future with and without the Conduct for which authorisation is sought
- The relevant areas of competition likely to be affected by the Conduct.
- The 11 year period for which authorisation has been sought.

Relevant areas of competition

40. The ACCC considers that the relevant areas of competition for assessing the Conduct include:

- the supply of waste and resource materials collection and transport services in north east Victoria
- the supply of the following processing services in north east Victoria:
 - metal recycling
 - tyre recycling
 - recycling of post industry and post consumer plastics
 - electronic waste recycling
 - mattress recycling
 - concrete crushing and garden waste chipping
- the supply of organic waste processing in north east Victoria
- the supply of waste and resource recovery equipment in north east Victoria

The future with and without

41. To assist in its assessment of the Conduct against the authorisation tests, the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future without the conduct that is the subject of the authorisation. The ACCC compares the public benefits and detriments likely to arise in the future where the Conduct occurs against the future in which the Conduct does not occur.

¹⁹ Subsections 90(5A), 90(5B), 90(6) and 90(7) of the Act.

42. In the future without the Conduct, the ACCC considers that each Council and alpine area would separately tender for a provider of the required services independently of each other.
43. In the future with the Conduct, the Applicants would continue the current joint procurement of waste and resource recovery services. NEWRRG will conduct collaborative competitive tender processes for the Service Streams and each council will individually enter into separate contracts on identical or near identical terms with each supplier or operator.

Public benefit

44. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes: “...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.”²⁰
45. The ACCC considers that the Conduct is likely to deliver public benefits in the form of:
- transaction cost savings
 - improved efficiencies
 - improved environmental outcomes.
46. The ACCC’s assessment of the likely public benefits from the Conduct follows.

Transaction cost savings

47. The ACCC considers that the Conduct is likely to result in transaction cost savings compared to the scenario where each Council conducts its own separate tender processes.
48. The Conduct will enable each Council to avoid expending time and resources associated with calling separate tenders, including some duplicated administrative costs.
49. The Conduct may also result in transaction cost savings for waste and resource recovery service providers that bid to supply services to the group of Constituted Councils. Those providers will only be required to participate in one tendering process per stream, potentially reducing their administrative burdens.
50. The ACCC notes that any transaction cost savings from joint procurement are likely to be offset to some degree by the additional costs that the Constituted Councils incur to coordinate internally within the bargaining group.
51. The ACCC considers that, all things being equal, the larger the number of councils and service streams in a collective arrangement for the procurement of

²⁰ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

municipal waste services, the greater the need for coordination within the bargaining group and the higher the coordination costs.

52. In this case, the potential for the Constituted Councils to achieve net transaction cost savings may be limited by the relatively large number of Councils within the group and the number of service streams involved. The Councils will also be actively involved in the decision making process and perform their own due diligence to be satisfied that a preferred bidder offers better contract outcomes than the Council could achieve by not participating in the Conduct.
53. Overall, the ACCC considers that the Conduct is likely to result in some transaction cost savings relative to each Council individually tendering for the services.

Improved efficiencies

54. The ACCC considers that the aggregation of the Councils' waste services requirements is likely to allow suppliers to realise a number of efficiencies.
55. The ACCC accepts that the Applicants aggregating demand and appointing a single supplier might facilitate the realisation of (further) economies of scale, compared to individual supply arrangements for each applicant, if the cost per unit of production of the relevant good or service falls as volume increases. This benefit is likely to be realised if each supplier is not already achieving available economies of scale, and if the Applicants' aggregated demand meaningfully impacts each supplier's ability to realise scale economies.
56. The ACCC considers that, compared to the scenario where the Constituted Councils procure individually, the Conduct is likely to:
- make it easier for an incumbent or new entrant resource recovery service provider to achieve or maintain an efficient scale of operation in the relevant Service Streams and
 - reduce the risk associated with investment in waste and resource recovery technology and facilities.
57. The ACCC concludes that the aggregation of the Constituted Councils' waste volumes under the Conduct is likely to result in public benefit in the form of improved efficiencies in the Service Streams.

Improved environmental outcomes

58. The ACCC notes the Conduct is consistent with the Victorian Waste and Resource Recovery Planning Framework, which has the objective (among other things) of protecting the environment and public health from the risks that arise from waste materials. The strategies utilised under this policy by groups such as NEWRRG include²¹
- minimising the environmental and public health impacts of waste and resource recovery facilities

²¹ Victorian State Government, Getting Full Value – The Victorian Waste and Resource Recovery Policy (VWRRP), April 2013, p. 42.

- prioritising actions that minimise the short and long term environmental impacts of organic waste
- facilitating the long term purpose of hubs²², such as landfills to be for receiving and treating residual waste, and ensure a range of support mechanisms for closed landfills.

59. The Victorian Government further notes that the move from landfilling towards resource recovery has seen an increase in the numbers of waste transfer stations, composting facilities and waste to energy and other new waste technologies.²³

60. The ACCC considers that the Conduct is likely to result in public benefit in the form of improved environmental outcomes to the extent that it assists diverting waste from landfill into alternative waste and resource recovery programs.

Summary of public benefits

61. In summary, the ACCC considers that the Conduct is likely to result in public benefits, including some overall transaction cost savings, improved efficiencies and improved environmental outcomes.

Public detriment

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

“...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.”²⁴

63. The ACCC considers that the Conduct is likely to result in minimal public detriment. The ACCC considers that the tender processes will ensure that there is competition between waste and resource recovery service providers to win the contract in each Service Stream. Each process will be open to all suitably qualified operators and/or suppliers to bid for the contracts and for each process, NEWRRG will follow state government guidelines for procurement including establishment of a probity plan.

Balance of public benefit and detriment

64. The ACCC may grant authorisation if it is satisfied that, in all the circumstances, the Conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment constituted by any lessening of competition.

65. For the reasons outlined in this determination, the ACCC is satisfied that the likely benefit to the public would outweigh the minimal likely detriment to the public constituted by any lessening of competition.

²² Hubs are a facility or group of facilities that manage waste and material streams. They can undertake a range of activities including sorting, consolidation, reprocessing or landfill

²³ VWRP, p. 43.

²⁴ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

66. Accordingly the ACCC is satisfied that the relevant net public benefit test is met.

Length of authorisation

67. The Act allows the ACCC to grant authorisation for a limited period of time.²⁵ This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
68. Given the ACCC's conclusion on the likely public benefits and detriments, the ACCC grants authorisation for 11 years.

Determination

69. On 31 August 2016, NEWRRG lodged application for authorisation A91551 with the ACCC. Application A91551 was made using Form B, Schedule 1, of the Competition and Consumer Regulations 2010.
70. The application was made under subsection 88(1) and (1A) of the Act as the Conduct may contain a cartel provision and may have the effect of substantially lessening competition within the meaning of section 45 of the Act.

The net public benefit test

71. For the reasons outlined in this determination, pursuant to subsections 90(5A), 90(5B), 90(6) and 90(7) of the Act, the ACCC considers that, in all the circumstances, the Conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the Conduct.

Conduct for which the ACCC grants authorisation

72. The ACCC grants authorisation to allow NEWRRG and the Constituted Councils to jointly discuss the procurement of waste and resource recovery services, jointly tender and negotiate for the supply of resource recovery services including site collection, transport and processing of waste and resource materials and the purchase of resource recovery equipment.

Date authorisation comes into effect

73. This determination is made on 2 February 2017. Applications for review must be lodged within 21 days of the date of the determination. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), the determination will come into force on 24 February 2017.
74. This authorisation will expire on 24 February 2028.

²⁵ Subsection 91(1).