



**LGCS Pty Ltd as Trustee for the LGCS Trust No 1,
trading as LGA Procurement –
Application for authorisation AA1000611
Interim authorisation decision
24 May 2022**

Decision

1. The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of application for authorisation AA1000611, lodged by LGCS Pty Ltd as Trustee for the LGCS Trust No 1 trading as LGA Procurement (LGA Procurement) on 26 April 2022.
2. Interim authorisation is granted to enable LGA Procurement on behalf of itself, 64 local government councils in South Australia and 7 associated local government entities (together, the Participating Entities) to prepare and release a joint invitation to tender for the supply of electricity services and jointly evaluate tenders, including negotiating with tenderers. Interim authorisation does not extend to the Participating Entities entering into agreements with suppliers of electricity services. The interim authorisation is granted in respect of the conduct which is described at paragraphs 12 to 13 below.
3. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (**the Act**) and section 45 of the Act.
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until interim authorisation is revoked.

Background

5. The application is made by LGA Procurement which is constituted as a body corporate and a public authority pursuant to the *Local Government Act 1999* (SA). LGA Procurement is constituted for the purpose of promoting and advancing the interests of local government in South Australia.
6. The Participating Entities are all either local government councils, authorities or entities associated with local government activity and operations, including entities which are regional subsidiaries of local government authorities and are formed to oversee management of a particular function, including, for example, waste management. The participating councils and associated entities are listed in [Annexure A](#).
7. LGA Procurement submits that the combined annual electricity consumption by the Participating Entities is approximately 0.11 terrawatt hours (TWh), representing approximately 1% of electricity consumption in South Australia.
8. LGA Procurement submits that the Proposed Conduct will deliver a range of public benefits including the potential for increased competition in the supply of electricity to the Participating Entities, increased environmental benefits, transaction cost savings, and greater economies of scale and efficiency. In particular, the Proposed Conduct will enable a number of the Participating Entities to meet their renewable energy targets and commitments.

The application for authorisation

9. The Proposed Conduct involves the pooling of individual electricity demand of the Participating Entities, placing a single tender calling for proposals for the supply of retail electricity services, and accredited renewable electricity and unspecified electricity from an electricity retailer, and each of the Participating Entities being able to make decisions regarding the administration and operation of their individual contract for the supply of electricity (the **Proposed Conduct**).

The authorisation process

10. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Request for interim authorisation

11. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
12. LGA Procurement has requested interim authorisation to issue the request for tender to the market for the Proposed Conduct to facilitate the tender process and the negotiation of the terms and conditions of the electricity supply agreement/s. LGA Procurement will not award the tender unless and until final authorisation is granted.
13. Specifically, LGA Procurement proposes to undertake a tender process for the supply of electricity services as follows:
 - a) The Participating Entities propose to collectively negotiate with electricity suppliers to secure cost competitive and reliable electricity supply. LGA Procurement, on behalf of the Participating Entities will conduct a tender process for the supply of retail electricity supply services including accredited renewable electricity and unspecified electricity from an electricity retailer. The process will be conducted in accordance with section 49 of the *South Australia Local Government Act 1999*, Contracts and Tenders Policies.
 - b) In regard to renewable electricity the tender will seek agreements between electricity suppliers for Accredited Renewable Electricity such that the combination of the mandatory Renewable Power Percentage (RPP) plus the balance in accredited GreenPower or Large Scale Generation Certificates (LGCs) to be voluntarily surrendered will be consistent with the Federal Government's Climate Active Electricity Accounting guidance.
 - c) Accredited Renewable Electricity purchased under the agreement must be sourced from a nominated renewable electricity facility or facilities that:
 - i. export electricity to the National Electricity Market (NEM)
 - ii. are accredited to register LGCs under the *Renewable Energy (Electricity) Act (2000)* and may in addition, be accredited as an accredited GreenPower generator; and
 - iii. generates electricity from wind, solar or any other renewable energy source approved by the Participating Entities in writing.
 - d) The tender will also include a committed volume arrangement whereby the Participating Entities commit to:

- i. specified volumes of electricity supply based on the historical and annual usage volumes provided by each Participating Entity or obtained via their current electricity retailers; and
 - ii. accepting the outcome of the tender process provided the outcomes fall within particular pricing parameters.
 - e) The tenders will be evaluated by LGA Procurement in conjunction with the project's energy advisors and the nominated Tender Evaluation Panel comprised of representatives of the Participating Entities. The tenderers will be evaluated with respect to each account category type (i.e., large, small, and unmetered accounts). This process will result in a summary report recommending one or more electricity suppliers which is provided to each of the Participating Entities prior to announcing an outcome. The Tender Evaluation Panel will review and either accept or reject the tender recommendation on behalf of the Participating Entities.
14. LGA Procurement seeks interim authorisation on the basis that contracts concerning the supply of electricity to the Participating Entities are approaching the end of their respective terms (namely in December 2022). LGA Procurement submits that there exists an urgency in respect of obtaining the interim authorisation, and it is justified in these circumstances, because:
 - a) carrying out the joint tender process is unlikely to have any impact on any relevant market, as it will not result in any change for the Participating Entities or LGA Procurement prior to entry into final contract
 - b) the Proposed Conduct was scheduled to go to tender in mid-April 2022, and is therefore ready to commence
 - c) any further delay to progressing the tender process will have significant effect on maintaining the expectations of the Participating Entities and their confidence and commitment in the Proposed Conduct as well as ensuring competitive prices are secured or the ability to purchase the supply of electricity on affordable terms.

Consultation

15. The ACCC invited submissions from a range of potentially interested parties including suppliers of retail electricity services, government and regulatory agencies and consumer and industry associations.
16. The ACCC did not receive any submissions in relation to the application for interim authorisation.
17. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

18. The ACCC has decided to grant interim authorisation under section 91(2) of the Act in respect of the conduct described at paragraphs 12 to 13. In granting interim authorisation, the ACCC considers that:
 - Granting interim authorisation would not permanently alter the competitive dynamics of the market or inhibit the market from returning to its state before interim authorisation if the ACCC denies final authorisation. The Participating Entities would not have concluded any supply agreements and could return to individual bargaining.
 - Interim authorisation would facilitate the tender process and negotiation of the terms and conditions of the electricity supply agreement/s and, if the ACCC

grants final authorisation, allow the arrangements to be established earlier than otherwise would be the case.

- The conduct appears likely to result in some public benefits, such as a path for some of the participating councils to meet their renewable energy targets, and some transaction cost savings and economies of scale.
- Potential suppliers, and potential competitors for that supply, are unlikely to be harmed if the ACCC grants interim authorisation.
- Given the small proportion of the size of the relevant market (whether it be the NEM or the South Australian market), the proposed conduct is not likely to materially impact competition nor confer to the Participating Entities significant market power, if any. Potential suppliers appear to have many alternatives.

Reconsideration of interim authorisation

19. The ACCC may review interim authorisation at any time, including in response to feedback received after the granting of this interim authorisation.
20. The ACCC's decision in relation to this interim authorisation should not be taken to be indicative of whether or not final authorisation will ultimately be granted.

Annexure 1 – Participating Entities

Applicant

1. LGCS Pty Ltd as Trustee for the LGCS Trust No 1, trading as LGA Procurement

Participating councils

1. Adelaide Hills Council
2. Adelaide Plains Council
3. Alexandrina Council
4. Barunga West Council
5. Berri Barmera Council
6. Campbelltown City Council
7. City of Burnside
8. City of Charles Sturt
9. City of Holdfast Bay
10. City of Marion
11. City of Mitcham
12. City of Mount Gambier
13. City of Norwood Payneham & St Peters
14. City of Onkaparinga
15. City of Playford
16. City of Port Adelaide Enfield
17. City of Port Lincoln
18. City of Prospect
19. City of Tea Tree Gully
20. City of Unley
21. City of Victor Harbor
22. City of West Torrens
23. City of Whyalla
24. Clare & Gilbert Valleys Council
25. Coorong District Council
26. Copper Coast Council
27. Corporation of the Town of Walkerville
28. District Council of Ceduna
29. District Council of Cleve
30. District Council of Elliston
31. District Council of Franklin Harbour
32. District Council of Grant
33. District Council of Karoonda East Murray
34. District Council of Kimba
35. District Council of Lower Eyre Peninsula
36. District Council of Loxton Waikerie
37. District Council of Mount Remarkable
38. District Council of Orroroo Carrieton
39. District Council of Peterborough
40. District Council of Robe
41. District Council of Streaky Bay
42. District Council of Tumby Bay
43. District Council of Yankalilla
44. Kangaroo Island Council

45. Kingston District Council
46. Light Regional Council
47. Mid Murray Council
48. Mount Barker District Council
49. Naracoorte Lucindale Council
50. Northern Areas Council
51. Port Augusta City Council
52. Port Pirie Regional Council
53. Regional Council of Goyder
54. Renmark Paringa Council
55. Southern Mallee District Council
56. Tatiara District Council
57. The Barossa Council
58. The Flinders Ranges Council
59. The Rural City of Murray Bridge
60. Town of Gawler
61. Wakefield Regional Council
62. Wattle Range Council
63. Wudinna District Council
64. Yorke Peninsula Council

Participating local government entities

1. Local Government Association of South Australia
2. Eastern Region Alliance Water
3. Eastern Waste Management Authority
4. Fleurieu Regional Aquatic Centre
5. Northern Adelaide Waste Management Authority
6. Centennial Park Cemetery Authority
7. Southern Region Waste Resource Authority