

Response to submission from interested party AA1000419

Opening Statement

The following submission is provided regarding the “Waste & Recycling Association of South Australia’s (**WRASA**) submission in response to Council Solutions Application AA1000420-2,” dated 18 June 2018.

Council Solutions’ note that although this submission is headed AA1000420 which is the reference for the Ancillary Services application, the content refers to processing service streams and it is with regard to AA1000419 that Council Solutions provides this submission.

However, Council Solutions’ also note that numerous sections of WRASA’s submission refer to collections services and are a direct “cut and paste” from WRASA’s submission regarding to AA1000414 (collection services). It appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Accordingly, a large proportion of the matters raised in this submission from WRASA have been addressed in the Council Solutions’ submissions:

- “AA1000414 Response to submissions from interested parties 18 May 2018”; and
- “AA1000420 Response to submissions from interested parties 27 July 2018”.

Council Solutions therefore responds in this submission to selected statements from the WRASA submission to AA1000419.

WRASA SUBMISSION (PART A) IN RESPONSE TO COUNCIL SOLUTIONS APPLICATION AA1000420-2 TO THE ACCC DATED MAY 4, 2018

Introduction

Of special note is the fact that the recycling industry is in crisis and so it is perhaps the worst time for Councils to enter into a joint contract removing their flexibility to move with market changes. Although the proposed contract term has been reduced by Council Solutions, it still commits all Councils jointly for three years initially (plus the period from now to contract commencement for which the Councils have committed to the Council Solutions proposed conduct) in an environment where factors are changing dramatically each week and no resolution to the Recycling Industry crisis arising from the Chinese National Sword Policy has been found.

As noted in AA1000419, Council Solutions and the Participating Councils acknowledge China’s ban on importing contaminated recyclable waste has created challenges in the Australian recyclables market. This has been taken into consideration in the proposed RFT structure for the processing of Recyclables including a shorter initial contract term, supported by extension options to provide greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall).

Council Solutions notes that any future changes in the market will occur irrespective of whether the Councils collaborate or go it alone. Without the Proposed Conduct, the potential suppliers affected by the China ban will still need to find alternatives and upgrade technology. However, without the pipeline of aggregated feedstock volumes provided by, and the coordinated and targeted

intervention and education initiatives at the kerbside across all, Participating Councils, this will be more difficult, possibly costlier and may take longer to achieve.

Council Solutions also notes as per the submission dated 6 June 2018 from the Local Government Association of South Australia (LGASA), the peak representative body for Local Government in South Australia:

“In addition to the general financial pressures being experienced by South Australian councils, the impacts of China’s National Sword Policy are substantial and have the potential to add millions of dollars to recycling costs for Councils in South Australia.

...the LGASA’s view is that, given the significant transition currently underway in the recycling and waste management industry generally, collaborative procurement processes may in fact offer a number of public benefits that may help to provide stability during this time of change.

In particular, collaborative procurement processes may help to provide the critical mass necessary to ensure the ongoing viability of smaller waste management entities and/or may help to provide the certainty necessary to secure investment in new technology or infrastructure that can open up local markets for recycled materials.”

Transaction Cost Savings

The tender process cost savings and efficiencies that will be achieved under the Proposed Conduct by reducing the replication of work for both Participating Councils and potential suppliers are clearly explained in the application AA1000419 (processing service streams) and include:

- A single tender will remove the duplication of work required to prepare, present, respond, evaluate and award suppliers for four Councils individually;
- Where a potential supplier tenders for more than one Processing Service Stream, additional duplication of work to prepare, present, respond, evaluate and award suppliers for each Participating Council across each Processing Service Stream will be further reduced;
- A single negotiation process for each Processing Service Stream will reduce the costs for the Participating Councils in procuring the Processing Service Streams;
- Receiving shared technical, legal and probity advice means these costs are shared between the Participating Councils rather than funded by each Participating Council individually; and
- A streamlining of contract management not only provides for a more collaborative and effective relationship between the parties, it also provides efficiency savings to both the Participating Councils and the successful supplier/s.

As noted in the application Council Solutions will perform numerous tasks instead of the Participating Councils, such as document preparation, evaluation of insurances, licenses, accreditations and referees, clarifications, negotiations, price review assessments and KPI collation and reporting. These are all tasks throughout the lifecycle of a procurement that each Council would need to undertake if conducting their own tender process. The benefit of this collaboration is that the cost of procurement is **shared** over four Councils.

Furthermore, refer extract below from the table of contents from the Tender Return Schedules for RFT 2: Processing. This comprises 17 Schedules to be completed and returned as part of the RFT process by potential suppliers.

When preparing a tender response for the joint tender potential suppliers will calculate aspects of pricing/ costing for different volumes. However, the other 16 Tender Return Schedules will need to be completed only once by potential suppliers responding to the joint RFT.

This compares to the equivalent of all 17 Tender Return Schedules needing to be completed four times (68 Tender Response Schedules) for any potential supplier wanting to tender to the 4 Participating Councils if they are required to conduct their own separate RFT process. Council Solutions submits the joint procurement is clearly more efficient both for potential suppliers who tender and for the Participating Councils.

SCHEDULE 1: TENDER FORM - FORMAL OFFER

SCHEDULE 2: STATEMENT OF CONFORMITY

SCHEDULE 3: COLLUSIVE TENDERING - STATUTORY DECLARATION

SCHEDULE 4: SERVICES TENDERING FOR

SCHEDULE 5: INFORMATION AND DETAILS ON PROPOSED SERVICE DELIVERY COMMITMENTS

SCHEDULE 6: VEHICLES, PLANT AND EQUIPMENT

SCHEDULE 7: ADDITIONAL INFORMATION & INNOVATION / IMPROVEMENT

SCHEDULE 8: MANAGEMENT, STAFF, RESOURCES AND SUBCONTRACTORS

SCHEDULE 9: EXPERIENCE, COMMITMENTS, BUSINESS CONTINUITY PLAN

SCHEDULE 10: CONTRACT PROGRAM

SCHEDULE 11: ENVIRONMENTAL MANAGEMENT SYSTEM

SCHEDULE 12: FINANCIAL DETAILS AND CAPACITY

SCHEDULE 13: INSURANCES AND LICENCES

SCHEDULE 14: QUALITY SYSTEMS

SCHEDULE 15: WORK HEALTH AND SAFETY

SCHEDULE 16: INDUSTRIAL RELATIONS & WORKFORCE PLAN

SCHEDULE 17: TENDER PRICING

(page 2)...The prices received under the current proposal will have the following detriment to the member Councils:

- (1) They will be inflated for risk associated with unclear disposal points; and
- (2) they will not include rates for collection and transport to processing facilities not inside Council Solutions' two disposal locations.

There will be no unquantifiable risks associated with disposal points that are priced into tendered rates.

WRASA have clearly misunderstood the scope of the Proposed Conduct under A1000419. For the processors, collection and transport is not an issue and thus the claim is irrelevant as it is the collection contractor who will transport to the processors. The use of centroids as locations for nominal facilities for delivery of wastes is not uncommon and the market is familiar with the approach. For processing tenderers (the subject of this application) there is no ambiguity on either receive facility locations or the tonnages on which tenders are sought.

For the collection tenderers to price with clarity and certainty, tender documents must set out the quantities of wastes that will be delivered to the nominated centroids, and this has been done in the tender specification for collections via a table setting out tonnage ranges against which collection contractors will submit a tender.

For the processing tenderers, tendering with certainty is guaranteed because the tenderer nominates the facility they intend to use as their receipt location for the waste streams they are tendering to process. Tenderers for processing assume full responsibility for tendered waste streams from the location they nominate in their tender. The tender documents clearly indicate that contracts will be awarded either for (a) all of a specified waste stream from all of the Participating Councils, or (b) all of the specified waste stream from nominated Participating Councils. There is no intention of splitting a waste stream from any individual Participating Council.

The tender documents clearly set out the tonnages of each waste stream generated by each Participating Council, and invite tenderers to submit tendered prices to receive and process wastes in specific tonnage bands from their nominated facility location. The bands allow tenderers to confidently estimate their tendered price for each tonnage band from their nominated facility. The tonnage bands have been structured to ensure that all of a particular waste stream from any one or more of the Participating Councils can be delivered to either of the centroid locations and fall within one of the tonnage bands.

(pages 2-3) With regards to the Processing and Disposal Services, a significant error has been made by Council Solutions in structuring their applications. Tenderers for processing and disposal for all three streams will not know if they are required to take material from the (1) hard waste collections, (2) multi unit bulk bins and (3) public waste streams, all of which are known to be quite different from kerbside collection material in terms of contamination and value/cost.

In respect of Hard Waste and Street Litter bin waste the claim is not relevant because the cost of managing these waste streams under a disposal agreement will not be significantly different from the cost of managing kerbside bin collected waste for disposal.

For multi-unit bulk bin collection, if the service provider already provides bulk bin services in the C&I market they will have pricing arrangements in place and can offer a collection and processing/disposal services. Alternatively, an operator may offer only a dedicated multi-unit bulk bin collection service without taking up the option to provide processing but rely on the Council Solutions processing arrangement under RFT2.

Improved Environmental Outcomes

Whilst there may be various opportunities and avenues for Councils across the Adelaide metropolitan area to collaborate on various initiatives, without contracted commitment for supply of waste for a medium- to long-term timeframe, new entrants will not be encouraged to commit the capital investment required to enter the market. The type of collaboration alluded to above by the SBC, does not involve the requisite long-term commitments of supply.

As per Application AA1000419 Processing Service Streams, *Section 11.2.3 Further environmental benefits*, for an existing or new potential supplier to invest in infrastructure, in the form of either upgraded or new facilities, availability and security of feedstock volumes are required to underpin and finance the investment.

Council Solutions submits the Proposed Conduct provides a single point of access to a significant pipeline of aggregated volumes in each Processing Service Stream underpinned by up to a 10-year contract commitment. This provides a level of support for infrastructure investment that would not be provided if the Participating Councils went to market separately.

This reduces operational risk to a potential supplier and provides support for an earlier return on investment on newly established infrastructure, the upgrade of existing infrastructure to new technology, or the commissioning of brand new facilities.

Education is one of the key tools available to governments at all levels to increase diversion and reduce generation. Consistency in messaging is critical to reinforcing the outcomes desired and the Proposed Conduct will include a consistent educative approach.

Currently each Participating Council has its own independently generated educational material available for their community. There is some consistency across this material, however there are also differences in presentation, content and detail. Where there is confusion amongst residents, they will typically either take the easiest option, which is to dispose to landfill, or try to 'do the right thing' and inadvertently contaminate the recyclable waste or organic waste streams. Contamination in Recyclables has a significant impact on how the recovered material can subsequently be on-sold and treated which has compounded the instability in this market. Education to reduce contamination at kerbside is one of a few strategic options that the Participating Councils and the successful supplier/s can implement to improve this situation. A consistent message that is widely reinforced across a group of Councils can help reduce contamination, increase diversion of waste and improve the quality of recovered resources.

With the focus on collaboration as a result of the Waste Management Services Project, the Participating Councils will work together to develop targeted educational material relevant to key issues, for example combined messaging across the Participating Councils where diversion is lowest, translated consistent messaging for those from non-English speaking backgrounds or targeted contamination reduction drives.

As there will be one Waste Collection Services contractor providing services for all four Participating Councils, initiatives that target known sources of high contamination, at neighbourhood, street or household level, will be more effective and based on a consistent data framework.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (*SA EPA*) with regard to AA1000419, dated 22 June 2018:

“The Council Solutions' application offers significant environmental benefits that align with South Australia's Strategic Plan target of a 35% reduction of waste to landfill by 2020...In particular the application has the potential to result in improved resource recovery by:

- reduced waste production and less contamination of recyclable, organic and residual waste streams, by better informed ratepayers due to combined education materials and better targeted and managed communication strategies,*
- better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- supporting innovation within the resource recovery sector through economies of scale.*

...The application also supports the waste management objective of the Environment Protection (Waste to Resources) Policy 2010 to achieve sustainable, best practice and accountable waste management by:

- having effective recording, monitoring and reporting systems for waste transport, resource recovery and waste disposal, and*
- within the community promoting environmental responsibility and involvement in waste avoidance, waste minimisation and waste management.”*

(page 4) As noted in our submission on Ancillary Services, we believe Council Solutions have made a major mistake by separating the disposal of waste and the processing of recycling and organics from the kerbside collection services from the disposal of waste and the processing of recycling and organics for the Ancillary Services. WRASA believes it is incredibly risky to combine the services creating undue complexity and detrimental distortion of the tender process. Tenderers for both processing/disposal (three streams) and Ancillary services (three services with three streams in each) will not have any clarity on whether they will be responsible for processing/disposal of ancillary services material (nine components, each separable in any combination).

As covered in the Council Solutions Response to submission from interested party AA1000420 dated 27 July 2018 regarding Ancillary Services, we restate:

The Ancillary Services RFT covers three primary service elements and only one service provider will be selected for Bulk Bin and Hard Waste Collection. For Street Litter Collection, the Participating Councils reserve the right to appoint up to two suppliers, but for each of the service streams, a single service provider will deliver the services to each Participating Council. Therefore, there will only be three (3) contracts involved at each Council.

The tender specification allows the option for tenderers to submit offers to collect only, and to collect and dispose/process. In the first instance, the successful tenderers will collect the relevant waste stream(s) and deliver those wastes to nominated facilities where contracts will already be in existence for the receipt and disposal/processing of those waste. In the latter instance, the successful tenderers will be responsible for both collection and disposal/processing of the respective waste streams at their discretion, subject to conditions relating to the efficacy of the disposal/processing arrangements tendered.

The reasons for this approach are as follows:

- for many of the small to medium businesses, for whom the separation of these Ancillary Services from the main kerbside collections has been designed, access to disposal/processing arrangements may not be easily or cost effectively negotiated thus inhibiting their potential of submitting a competitive tender for their primary strength area of collection;
- through RFT 2, Council Solutions will secure contracts for the receipt and disposal/processing of mixed waste, recyclables and organics for the kerbside collected waste streams. These will be substantial contracts and quite likely secured on favourable terms relative to prevailing market conditions. Therefore, these disposal/processing arrangements may be preferred outcomes for the wastes collected under the Ancillary Services RFT3 than those which the Ancillary Services providers might achieve individually. Hence the option reserved to Council Solutions of accepting either a collect only or collect and dispose/process tender.

This arrangement does not increase the number of contracts to be managed, and does not increase the number of service providers involved in the overall delivery of the services. This arrangement either:

- replicates what will pertain under RFT1 - collect and deliver to nominated facilities, or
- allows service provider of Ancillary Services the discretion (and responsibility) on the disposal/processing of the collected wastes.

Stimulation of competition

As per AA1000419, Section 11.2.2, the public benefit is “maximised competition” and Council Solutions maintains that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Processing Service Streams to compete and submit tenders when the RFT is called.

The feedback provided by potential suppliers across the Processing Service Streams to Council Solutions during consultation with market indicated that the contract opportunities presented by the Proposed Conduct is attractive. Receiving the maximum number of tenders will allow the Participating Councils to compare all service options available and unlock the best Value for Money. Additionally, where the successful supplier/s establishes new Reprocessing Infrastructure, such as energy-from-waste, there will also be increased competition for feedstock in the market for all Greater Adelaide Region Councils and this will support new levels of service.

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| (1) The proposal seeks to increase competition through combining Council tonnage from geographically separated and unclustered Councils. This forces a poorer solution requiring two or more sites to service distant Councils, which Council Solutions have indirectly conceded by nominating two disposal point centroids. |
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This claim is factually incorrect. In respect of disposal of waste, only one discharge location has been identified in the tender for collections – to the north – because the City of Marion has pre-existing disposal arrangements at a landfill in which it has an equity position.

The selection of two discharge locations for collected recyclables and organics (one to the north and the other to the south) has been implemented for the benefit of processing services providers, and is without any detriment to the collection contractors or their tendered rates.

In broad terms, the location of processing facilities for organics and recyclables are clustered towards the north and towards the south of the Adelaide metropolitan area. If collection vehicles were directed to discharge their wastes either to the north or to the south there would be considerable inequity in the processing market and a significant limiting of competition on the part of potential processing service providers.

To avoid this inequity and to widen the field and encourage greater competition, the tender documents for collections nominate two locations (one to the north and one to the south) where collected waste might be received for processing, thus providing a more even footing for existing processing service providers to tender on relatively equal terms.

- (2) As mentioned in our previous submissions, the only additional provider that showed interest and does not have a local presence was Phoenix (Waste to Energy provider), however their waste to energy plants require triple the contract term and five times the tonnes available (with the inclusion of Port Adelaide Enfield). The reality is no further competition other than current suppliers in the market will submit tenders. Council Solutions note Delorean as a potential processor. This demonstrates our point that Council Solutions proposed conduct is not required to attract new entrants to the market. Indeed the data shows that new entrants and innovation is largely present for small to medium manageable and lower risk contracts.

The statement or claim appears to imply that competition has a singular dimension – that of the number of parties tendering. However, Council Solutions contends that competition has additional dimensions, such as the quantity of supply on offer. And in this instance the tender process of the proposed conduct is triggering the quantity of supply aspect of competition between existing market participants.

In respect to the disposal of waste, the subject of this claim, combining the wastes from the three Participating Councils will present the market with a more attractive parcel of guaranteed waste supply than would be the case with the Councils tendering for disposal services separately and at different times. On this basis, it is reasonable to expect that existing disposal service providers, and any new entrants that may wish to consider entering the market, will compete more vigorously for the waste on offer – thereby increasing competition.

- (3) With regards to recycling, as mentioned previously and as the ACCC is no doubt aware, the Chinese National Sword Policy has established challenges for the recycling market in Australia (and globally) structurally and permanently. What is known is that the industry (Contractors, Government, Suppliers, etc.) is still uncertain as to how the challenges will be resolved. Many short-term arrangements are being negotiated. The Council Solutions proposal which suggests more than one drop off point for recycling (two centroids) will achieve no additional competition given each centroid may have maximum 22,500 tonnes per year. These tonnes are not considered to be sufficient even during stable market conditions. The Council Solutions proposed conduct may actually result in less competition as recycling companies are extremely hesitant to enter long term arrangements at present, or if they do contract their terms are unfavourable for Councils. These unfavourable contract terms will not only include higher gate fee charges, but additionally transfer the risk of market volatility onto the Councils.

As noted in AA1000419, Council Solutions and the Participating Councils acknowledge China's ban on importing contaminated recyclable waste has created challenges in the Australian recyclables market. This has been taken into consideration in the proposed RFT structure for the processing of Recyclables including a shorter initial contract term, supported by extension options to provide greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall). In the specification for RFT2 tenderers are invited to submit their proposals for alternative rise and fall indices where they are of the view that the index proposed in the specification is not appropriate to the prevailing conditions – a further commitment on the part of Council Solutions to risk sharing.

- (4) With regards to organics, any additional tenderers for the Council Solutions proposed contract is unlikely due to geographical spread of the Councils, including the late addition of Port Adelaide Enfield. The current participants in the organics market are demonstrating innovation and services to Council customers and soil product purchasers beyond other composters around the country. For example, Peats Organics is producing specialty soils from compost with specific nutrient contents for different agriculture crops such as vineyards or citrus. They are also providing tailored waste composting solutions for specific waste organics producers, for example, chicken farms or liquid waste producers.

Under the Proposed Conduct offering a larger amount of material for beneficial processing under a single combined tender is more likely to encourage new capital investment than would be the case with tenders run by individual councils. Nor is capital investment envisaged only in the circumstance where there is the entry of a new provider. Indeed, the surety of strong and significant future cashflows could be what a current provider needs to justify process improvements, productivity improvements and/or resource recovery improvements, which would otherwise not be financially viable if the councils were to put to the market separate tenders. For example, a provider may invest capital in the development of tailored products for niche markets that yield a premium sale price for those products. Drawing on that expected boost to sales and revenue, the supplier may view this as a competitive advantage and tender very competitively for the guaranteed supply of the

organic wastes. Under these circumstances, competition is heightened without any increase in the number of parties tendering for the services.

Council Solutions re-affirms that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Processing Service Streams to compete and submit tenders when the RFT is called. Again, WRASA has interpreted competition in the singular dimension of number of competitors, rather than seeing that competitive tensions can be increased when one supplier believes they have competitive advantage through products which differentiate them from their competitors.

Council Solutions does not accept the requirement to service all Participating Councils will prevent potential suppliers from participating in the RFT who could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region to confidently enter into an up to 10-year contract for any of the Processing Services. Rather, it is expected that the collaboration of the Participating Councils will entice more potential suppliers to respond to the RFT than an individual Council may attract on its own.

As evidenced below, within each of the Processing Streams, there is currently a single supplier who provides the service to all bar one of the Participating Councils who require each service. This distribution has arisen without the Proposed Conduct.

Recyclables Processing

- One supplier currently provides this service to 3 out of the 4 Participating Councils.

Organics Processing

- One supplier currently provides this service to 3 out of the 4 Participating Councils.

Residual Processing:

- One supplier provides this service 2 out of the 3 Participating Councils.

Each Participating Council's requirements and current contractor are as outlined in the Table below.

Processing Service Streams						
Council	Recyclables Processing		Organics Processing		Residual Processing	
	Stream Required (Y/N)	Current Supplier	Stream Required (Y/N)	Current Supplier	Stream Required (Y/N)	Current Supplier
City of Adelaide	Y	SKM Recycling	Y	Jefferies	Y	Transpacific Cleanaway
City of Charles Sturt	Y	Visy	Y	Jefferies	Y	TPI (Transpacific)
City of Marion	Y	Visy (via Solo)	Y	Peats (via Solo)	N#	SRWRA.
City of Port Adelaide Enfield	Y	Visy (via Cleanaway)	Y*	Jefferies	Y*	IWS

The City of Marion does not require Residual Processing as this is provided by SRWRA.
* These services will not be required by the City of Port Adelaide Enfield until existing arrangements have ended in 2024 at which time the City of Port Adelaide Enfield will confirm its requirements.

Without the stimulation of competition through the Proposed Conduct, the same scenario regarding the current or any future division of the respective markets may arise. If the Participating Councils each undertake their own separate RFT processes, they may still all appoint the same supplier or suppliers, as the case may be, that could be appointed under the Proposed Conduct. However, fragmented and inconsistent approaches would not provide the same public benefits that will occur due to the Proposed Conduct.

Facilitating Improved Efficiency in the Supply of Processing and Disposal Services

Recyclables Processing

(page 8) WRASA believe the following key points lead to the conclusion that it is unlikely a public benefit of increased competition would result from a joint waste services tender. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

- Council Solutions have conceded that two disposal points will be required
- The tender has been complicated by 2 centroids and uncertainty around which tonnes will be awarded to which successful tenderer for each centroid
- The contract term is not long enough to support any investment (even though it would be unlikely at this stage) and too long to responsibly deal with the current crisis
- Recyclables processing for ancillary services is not known to be included or excluded, and if it is included, in what combination of the 3 services; 1, 2 or all?
- Council Solutions lack of waste management experience will be a liability as the Councils try to make the best of the crisis in recycling through negotiations with all contractors, of which there could be 5 involved in recycling.
- With current MRF infrastructure likely, contractors prefer to win manageable, low risk contracts regularly over time rather than one large contract infrequently
- We reiterate that MRFs are designed to process kerbside recyclables. Commercial (C&I) material is often just cardboard, which is just baled. Some commingled recyclables are produced by C&I but the majority of this comes in on side loaders. C&D material is processed by totally different facilities and machinery.

Each of the claims relating to recyclables processing is addressed in turn below.

- **Two disposal points** – two drop-off points are included to maximise the opportunity for all potential service providers to compete on an even a basis as possible. WRASA is seeking to imply that the two drop-off points are necessary due to the locations on the Participating Councils – this is refuted and is not the case.
- **Two centroids** – WRASA fails to understand the essence and purpose of the centroid locations as designated points (+/- 5 km) from which processing service providers must accept the recyclables. For the processors there will be no confusion as they will tender from one or both centroid locations to receive and process recyclables in the tonnage bands set out in the specification.
- **Contract term not long enough** – the proposed term for the recyclables processing has been determined in consultation with relevant processing companies in the market and takes into account the current uncertainty in the markets and the agreed undesirability of fixing a long-term contract in the circumstances. This claim by WRASA is at odds with their claim that Council Solutions has not taken into consideration the current market conditions.

- **Recycling processing included in Ancillary Services** – The tenders for Ancillary Services are first and foremost tenders for the collection of the nominated waste streams, with tenders invited to tender prices for disposal or processing at the discretion of the tenderer. This optional invitation is because there is a clear recognition that difficulties in the receipt, processing and marketing of recyclables are manifest and unlikely to be resolved in the short term, and most likely best managed by a major company already operating in the market for receipt and processing of recyclables – allowing smaller collection operators to tender for collection without the need provide processing services.
- **Council Solutions lack of knowledge a liability** – this claim is refuted entirely. In negotiations with recyclables processor(s) Council Solutions will have the benefit of the collective knowledge and experience of all Participating Councils. In addition, they have retained experienced advisors, with a track record of dealing with issues in the recyclables market, to work with Council Solutions on development of tender specifications and evaluation of tenders. If required these services can be extended to include advisory input during negotiations.
- **Contractors prefer to win** – this claim is inconsistent with the advice that Council Solutions has received from recyclables processors during the industry consultation phase. The recyclables processing market in Adelaide is precarious for a number of reasons – one being the China Sword issue relating to products, another being the sustainability of the processing market locally in South Australia. A contract of the scale proposed by the intended conduct would clearly send signals into the market such that a degree of surety can be gained, which would not be anywhere near as clear a signal if the tenders were tendered separately and spaced over time.
- **MRFs and C&I** – this issue has been addressed elsewhere. The argument supporting the use of tonnages outside the domestic market is based upon the premise that market share goes beyond just tonnages and embraces both tonnages and revenues, since ultimately the market share a provider enjoys will reflect both factors. WRASA’s claim presumes that market share only relates to tonnage and is thus refuted.

Organics Processing

(page 9)...we note the most important piece of detail being that there will be two facilities required, represented by the two centroids. This further dilutes any benefit that aggregated volumes may have... We also note:

- the tonnes have reduced with Tea Tree Gully Council leaving the project
- Council Solutions have conceded that two disposal points will be required
- The tender has been complicated by 2 centroids and uncertainty around which tonnes will be awarded to which successful tenderer for each centroid
- Organics processing for ancillary services is not known to be included or excluded, and if it is included, in what combination of the 3 services; 1, 2 or all?
- Council Solutions lack of waste management experience will be a liability as the Councils try to further introduce organics collections in multi units, businesses and in public. This will be a difficult task to coordinate between up to 10 parties including the Councils and Council Solutions.
- Organics contractors prefer to win manageable, low risk contracts regularly over time rather than one large contract infrequently.
- Port Adelaide Enfield entering mid-term will be a complication.

Each of these claims is addressed one by one below.

- a) **there will be two facilities required:** this is not correct. The reason for two centroids is to ensure competitive tension and equity in the tendering for processing recyclables and processing organics due to the geographical location of processing facilities of the various providers which might tender.
- b) **the tonnes have reduced with Tea Tree Gully Council leaving the project:** this is correct.
- c) **Council Solutions have conceded that two disposal points will be required:** see above.
- d) **The tender has been complicated by 2 centroids:** this is incorrect and the tender specifications clearly set out the bands of tonnes for which tenders will be invited and how award(s) will be determined.
- e) **Organics processing for ancillary services:** The tenders for Ancillary Services are first and foremost tenders for the collection of the nominated waste streams, with tenders invited to tender prices for disposal or processing at the discretion of the tenderer. In the organics markets there are a number of well established processing operators, who by virtue of scale are most likely to be positioned to process organics at prices that are far more competitive than might be the case for the operator of the Bulk Bin collection services for organic waste – thus once again, it is not expected that tenderers for the Bulk Bin services (which will include organic wastes) will take up the option to tender for processing of the organics and also provide opportunity for smaller collection operators.
- f) **Council Solutions lack of waste management experience:** this is not the case. AA1000419 clearly details the roles and responsibilities of Council Solutions, the Participating Council's waste specialists and the specialist waste industry advisors to the procurement.
- g) **Organics contractors prefer to win manageable:** there is an implication in this claim that the proposed conduct involves a tender/contract with greater risk than might be the case were separate tenders to be called on a council-by-council basis – this claim is refuted.
- h) **Port Adelaide Enfield entering mid-term:** this claim seeks to imply confusion and complexity when none exist. The contract arrangements relating to Port Adelaide Enfield will be resolved and finalised at the same time as the contract arrangements with the other Participating Councils. The only difference is that the organics waste stream from Port Adelaide Enfield will start flowing to the successful supplier at a later date than the organics from the other Participating Councils.

Waste Disposal

(page 11) *a waste to energy facility typically requires a 20 year contract.* This claim is irrelevant. If a provider determines to tender on the processing or disposal of mixed waste employing waste to energy technology under the terms and conditions set out in the tender documents, that is a decision for the provider, and what might "typically" be an expected contract term is irrelevant if the provider accepts the terms and conditions of the tender.

.....*and the new facilities are situated to service a regional group of surrounding Councils rather than a geographically spread group* – this is factually not correct. There are many examples of waste to energy facilities where wastes are transported to the facility from significant distances – including via train. Proximity of waste sources to the facility is less of an issue than proximity of the facility to sensitive receptors.

Transporting extra distance quickly adds significant cost to disposal location solutions. Please refer to the prior response.

Further to the above:

- *Waste to energy facilities in Australia are unproven and extremely high risk.* This claim is false and misleading. To date, waste to energy has not been a central processing technology for wastes in Australia, primarily because the economic settings are not suitable – not because of safety or risk. It should be noted that the most successful and sustained waste to energy operation in Australia to date has been the ResourceCo facility in metropolitan Adelaide, providing some 80,000 tonnes per annum of manufactured fuel to the Adelaide Brighton cement works as a substitute for fossil fuels. This facility has clearly demonstrated that when the economic setting are appropriate waste to energy is a viable solution.

On that basis it is unlikely Council Solutions could deliver a best value garbage(residual) disposal solution – this is a statement of opinion and of little relevance as a claim.

- *The market is still working out the best solutions for extraction of resources prior to incineration (or similar) and end use of by products such as fly ash.* Whilst pre-sorting of waste to recover resources before processing may be slow to gain traction in the Adelaide market, this is not the case elsewhere. As the economic settings make resource recovery more attractive than disposal, the pre-sorting activities will increase. As for fly ash and other by-products from energy processes, there are many well demonstrated solutions for these materials and the claim is again false and misleading.

It is not prudent to accept tenders when all data claims are as yet unproven in Australia. This is a statement of opinion on the part of the claimant and bears no relationship to the risk appetite of the Participating Council who will be the final decision makers.

- *State governments are becoming more involved in waste as levies increase. Their input will be mandatory for waste to energy planning and approvals.* This is a statement of opinion on the part of the claimant and not relevant in this context.

- *The lead time for a waste to energy facility can be 5 years or more. The interim waste disposal period would likely be more expensive than straight forward and proven solutions and the project delayed beyond estimated timetables.* Whilst the first part of this statement may have an element of truth (i.e. it can take several years for approvals) there is nothing to say that a provider has not already commenced an approval process, and even then, with waste currently disposed to landfill, a tendered solution offering landfill on an interim basis followed by a suitable processing technology at a later date, the outcome from this transitioning solution would be significantly better than the status quo which sees all waste going directly to landfill.

- *Port Adelaide Enfield does not join in until 2024.* This is simply a statement of fact, but has little relevance.

- *The previous Regional Subsidiary established for garbage (residual) disposal (Wastecare SA) proved expensive for individual Councils and ended up failing after just 1 contract term.* This observation is not relevant in a claim relating to competition or public benefit. Indeed, if this was the prevailing view of society, the current successful waste to energy facility in Adelaide would not have been commissioned, nor would a parallel facility in Sydney by the same supplier. The risk associated with tendering a waste to energy solution rests with the service provider, and the risk associated with accepting such a tender rests with the Participating Councils.

Improved Efficiencies through Information Sharing and Cost Savings

(page 12)..... for the processing and disposal services, three main faults have been identified.

(1) *The contract terms are a compromise between the standard long contract (7-10 years) and short-term arrangements required during the current recycling market in particular. Recycling at 3 years would prove unsustainable in the current market and residual waste at 4 + 3 + 3 only allows for current operators to provide prices due to the timeframe to write off new capital. Council Solutions suggests it is for new technologies but these will not be contracted for 3 years or 3 + 3.*

This claim makes little sense and ignores the realities of dynamic markets. In the case of recyclables processing, consultation with industry clearly indicated that a medium- to long-term contract would be unworkable in the current climate and would undoubtedly lead to significant claims and variations as the market conditions change. The three-year term proposed, linked with a realistic approach to risk sharing and price adjustment is aimed at providing a measure of forward continuity assurance for the Participating Councils, whilst at the same time not attempting to lock-in suppliers to contract conditions that everyone accepts cannot pertain in the medium-term.

In the case of waste disposal there is no appetite for locking-in a commitment to dispose of mixed waste to landfill for a medium- to long-term. Indeed, in some jurisdiction this is prohibited by legislation, to ensure that alternatives to landfill are regularly considered. Under the circumstances in the current Adelaide market, the immediate solution would appear to be landfill disposal; however, as technologies emerge, as economic conditions change and as governments exercise discretion to shape markets towards higher levels of diversion from landfill, it is important to maintain a degree of flexibility in the options available for the mixed waste. For this reason, a total possible term of ten years is signalled, but with break points which allow for re-consideration of options.

(2) The geographic location of these Councils has forced Council Solutions to provide a convoluted qualification around two centroids which means tendering facilities cannot be certain of the tonnes to be received and must provide a collection of prices for all possible combinations of potential Councils. For recyclables and organics processing, the following combinations of pricing will need to be supplied by each tenderer.

The Tender Pricing Response Schedule for Residual Waste Processing and/or Disposal, Comingled Recycling Processing and FOGO Processing requires the tenderer to populate a single cell within a spreadsheet for each centroid with a \$/tonne rate for 3 volume bands (tonnes per annum) for each processing stream (Residual, Recycling, FOGO) that will result in a volume-based prices for each stream that applies to **all** the Participating Councils. In addition, it is optional to provide a price for collection & processing outside a centroid. Council Solutions will undertake a combination analysis to assess the optimal processing outcome for each stream for the Participating Councils.

Combination No.	Centroid 1	Combination No.	They may tender for Centroid two also
1	Port Adelaide Enfield 2024 (PAE 2024) alone	16	Port Adelaide Enfield 2024 (PAE 2024) alone
2	Charles Sturt (CS) alone	17	Charles Sturt (CS) alone
3	Adelaide City (ACC) alone	18	Adelaide City (ACC) alone
4	Marion (M) alone	19	Marion (M) alone
5	PAE + CS	20	PAE + CS
6	PAE + CS + ACC + M	21	PAE + CS + ACC + M
7	PAE + CS + M	22	PAE + CS + M
8	PAE + ACC + M	23	PAE + ACC + M
9	PAE + M	24	PAE + M
10	PAE + ACC	25	PAE + ACC
11	PAE + CS + ACC	26	PAE + CS + ACC
12	CS + ACC + M	27	CS + ACC + M
13	CS + ACC	28	CS + ACC
14	CS + M	29	CS + M
15	ACC + M	30	ACC + M

This table and speculation on the part of the claimant is an attempt to imply complexity and confusion, where none exists. Tenderers are invited to tender rates per tonne to receive and process waste streams for three bands of tonnage only. In the evaluation of tenders the evaluation panel will determine the best value for money arrangement.

Unfortunately, further complexity has been identified In the Ancillary Services application Council Solutions note that they can elect to use their disposal/processing contractor for any of the residual waste, recycling or organics if they think it is better than the solution provided by the respective collectors for each of the bulk bins from multi unit dwellings, public bins and hard waste. With reference to the recycling, we can advise, and any person in the waste industry will agree, that recycling from bulk bins and public bins has significantly greater contamination, therefore recycling processors will want to charge a higher gate fee for that material, especially with the new Chinese regulations. This means that for recycling, the table of 30 options above will need to be replicated for 3 different service combinations (6 combinations) and 4 different Councils (15 combinations). This equates to 90 combinations for 30 prices above, or 2700 prices, if Council Solutions wanted to accurately seek the best pricing for the tender structure they have proposed. Like the 22,000 pricing options for their Bitumen Supplies tender, the number of options either is impossible for the tenderers to correctly submit and/or impossible for Council Solutions to correctly assess.

As stated previously, the Ancillary Services RFT covers three primary service elements and only one service provider will be selected for Bulk Bin and Hard Waste Collection. For Street Litter Collection, the Participating Councils reserve the right to appoint up to two suppliers, but for each of the service streams, a single service provider will deliver the services to each Participating Council. Therefore, there will only be three (3) contracts involved at each Council.

The tender specification allows the option for tenderers to submit offers to collect only, and to collect and dispose/process. In the first instance, the successful tenderers will collect the relevant waste stream(s) and deliver those wastes to nominated facilities where contracts will already be in existence for the receipt and disposal/processing of those waste. In the latter instance, the successful tenderers will be responsible for both collection and disposal/processing of the respective waste streams at their discretion, subject to conditions relating to the efficacy of the disposal/processing arrangements tendered.

The reasons for this approach are as follows:

- for many of the small to medium businesses, for whom the separation of these Ancillary Services from the main kerbside collections has been designed, access to disposal/processing arrangements may not be easily or cost effectively negotiated thus inhibiting their potential of submitting a competitive tender for their primary strength area of collection;
- through RFT 2, Council Solutions will secure contracts for the receipt and disposal/processing of mixed waste, recyclables and organics for the kerbside collected waste streams. These will be substantial contracts and quite likely secured on favourable terms relative to prevailing market conditions. Therefore, these disposal/processing arrangements may be preferred outcomes for the wastes collected under the Ancillary Services RFT3 than those which the Ancillary Services providers might achieve individually. Hence the option reserved to Council Solutions of accepting either a collect only or collect and dispose/process tender.

This arrangement does not increase the number of contracts to be managed, and does not increase the number of service providers involved in the overall delivery of the services. This arrangement either:

- replicates what will pertain under RFT1 - collect and deliver to nominated facilities, or

- allows service provider of Ancillary Services the discretion (and responsibility) on the disposal/processing of the collected wastes.

(Page 13-14) Council Solutions have also defined the responsibilities of Council Solutions and the Councils...however these items would only total approximately 5% of the total time invested in contract management...The remaining 95% of time expended on managing the operations of the contract 5 days a week, 52 weeks a year is retained by each 4 Councils.

WRASA proposes a breakdown of time spent on contract management, with the Innovation, Value Adds and Maximising Performance, Compliance and Conformance tasks being allocated an estimated 5-10% of total time spent on contract management. WRASA allocates Operational tasks the balance of time.

Council Solutions rejects this allocation of contract management time and submits that as Council Solutions currently manages collaborative contracts under which Councils spend in excess of \$63.5 million annually, we are well placed to understand the time and effort associated with collaborative contract management within the South Australian local government sector. Time and resource constraints within Councils can lead to the strategic elements of contract management, such as Innovation, Value Adds and Maximising Performance being overlooked. Where this occurs and an unbalanced amount of time is spent on the Operational tasks, neither party receives the full benefit and value of the contract and a focusing 90-95% of effort on Operational contract management as submitted by WRASA is not best practice and will not be the approach adopted under the Proposed Conduct.

The Proposed Conduct will allow a central resource to focus on and manage these aspects and extract the maximum value and performance. In addition, this will ensure the data collected by the collection contractor through the use of any technology is not simply 'filed away', but analysed and compared across the Participating Councils to inform education programs, service delivery and contamination management within the Participating Councils. Additionally, it will also inform policy and strategy development and measure the effectiveness of education programs and community attitudes and behaviours, both at the Participating Councils and at a State level through consultation with GISA. GISA has supported this aim in their submission to the ACCC dated 12 April 2018.

Public Detriments

(page 15)...WRASA acknowledges that the 2018 application has separated the processing and disposal services so it is clear that a tenderer can tender for just Recyclables processing, for example. However, because all waste services are being tendered at the same time, Council Solutions will gravitate towards combined tenders.

The conclusion that “.....Council Solutions will gravitate towards combined tenders.....” is false and misleading. One of the key objectives for packaging the services as proposed is to encourage greater participation in the tenders and to specifically offer opportunity to small- to medium-sized service providers to participate on equal terms. WRASA fail to identify any potential service provider capable of providing all services across all three of the RFTs to all of the Participating Councils.

As previously confirmed by Council Solutions, the Participating Councils will **not** appoint a single supplier for provision of all service streams across the three RFTs.

(page 16)...WRASA believes that Council Solutions have been misleading in their presentation of market size statistics....

Council Solutions re-affirms the analysis provided in AA1000419, *Section 10.3 Market share* and that the market segment for the potential suppliers who might typically tender for Recyclables or Organics Processing will draw primarily from industry participants which are currently providing Waste Management Services involving Recyclables Processing from MSW, C&I and C&D source sectors or Organics Processing from MSW and C&I source sectors. The Proposed Conduct involves only a small number of councils from the municipal sector who collectively represent only a small fraction of the total market segment.

Claims that market share analysis should only relate to the tonnage of kerbside materials (e.g. only recyclables from municipal sources) are not valid and do not accurately represent the full market share as this considers only an element of one segment of the total market.

The potential suppliers of the Processing Service Streams have access to a significant pipeline of C&I, C&D and other Council opportunities. Aside from the four Participating Councils, there are up to an additional 23 Greater Adelaide Region Councils requiring the Processing Service Streams that periodically procure one or more of the services from the market via public, open tender processes. When considering market share from a business impact perspective, the analysis would typically consider the market share in terms of both the revenues and the tonnages that individual processors receive from deliveries of materials to be beneficially processed in their facilities. And those revenues and tonnages comprise inputs from materials received from multiple waste generating sources – municipal, commercial and industrial (C&I) and construction and demolition (C&D) sources.

The market share analysis used in the application is based on tonnage data only, because this is the only data reasonably available in the public domain and thus adopted as a surrogate for market share.

As Council Solutions 2018 proposal does not provide any evidence to counter the ... likely public detriments of reduced long-term competition in the Adelaide market.

Council Solutions rejects WRASA's assertion that there will be any reduction in competition as a result of the Proposed Conduct and note that WRASA provide no evidence to substantiate any reduction in competition. Future market competition will not be limited, and it is highly unlikely that any providers will exit the market as a result of the Proposed Conduct.

As detailed earlier in this response, and as evidenced below, within each of the Processing Streams there is currently a single supplier who provides the service to all bar one of the Participating Councils who require each service. This distribution has arisen without the Proposed Conduct and does not deliver the same public benefits that will be provided via a joint procurement for the Participating Councils.

Recyclables Processing

- One supplier currently provides this service to 3 out of the 4 Participating Councils.
- Under the Proposed Conduct, the Participating Councils reserve the right to appoint up to two suppliers.

Organics Processing

- One supplier currently provides this service to 3 out of the 4 Participating Councils.
- Under the Proposed Conduct, the Participating Councils reserve the right to appoint up to two suppliers.

Residual Processing:

- One supplier provides this service 2 out of the 3 Participating Councils.
- Under the Proposed Conduct, a sole supplier will be awarded a contract to service all Participating Councils requiring this service.

WRASA SUBMISSION (PART B) IN RESPONSE TO COUNCIL SOLUTIONS APPLICATION TO THE ACCC DATED MAY 2, 2018

A large proportion of the matters raised in this submission from WRASA have been addressed in the Council Solutions' submissions:

- *“AA1000414 Response to submissions from interested parties 18 May 2018”*; and
- *“AA1000420 Response to submissions from interested parties 27 July 2018”*.

Accordingly, Council Solutions responds below to selected statements from Part B below.

Executive Summary

1. Page 1, Clause 1 -The proposed contract is now three single contracts which binds all Councils for each of the three waste streams. This is being undertaken in the absence of a tender specification, contract document discussion and agreement process between the Councils and Council Solutions.

Council Solutions has developed the specification in consultation with representatives from each of the Participating Councils and the development of the specification and contract documents has not been difficult and is well advanced. Copies of the specification for each of the processing streams have been provided to the ACCC in confidence. To ensure a fair and equitable tender process, all relevant RFT documentation will be released to the market as a whole at the same time and by the same method (that is via the SA Tenders and Contracts website).

2. Page 1, Clause 1 - Council Solutions proposes to be the agent for procurement, negotiation and contracting. They have provided no further detail about how they will address their lack of waste industry knowledge and experience.

AA1000419 clearly details the roles and responsibilities of Council Solutions, the Participating Council's waste specialists and the specialist waste industry advisors to the procurement.

The Proposed Conduct

(page 23) b. Best practice for collection contract tendering is for a Council to confirm the disposal and processing locations prior to tendering for collection services. Changes to disposal and processing locations during a collection contract often leads to higher collection prices that are based on contracted 'alternate facility rates' that are ultimately funded by the ratepayer. Importantly, under this highly likely scenario where the successful tender's base price will have to be adjusted via a standard 'alternate facility transport rate', the market will be not tested as to the full costs of the previous collection Application with regards to the successful tenderer. This often results in higher costs to a Council, as against costs obtained by a variety of tenderers based on them tendering on known disposal and processing locations. This results in the likelihood that the successful tenderer is not the best value, once all the variables have been considered.

(page 24-24) d. The use of centroids, which although may be close to facilities, are not precise. This requires that risk will need to be added to the pricing for the extra distance that may need to be travelled within the radius. **For garbage alone this could amount to an estimated (with Marion excluded) 30 trucks x 10 minutes per load x 3 loads per day x 5 days x 52 weeks. This amounts to collection contractors having to cost in an additional 3,900 hours at a cost of approximately \$400,000 per year or \$4,000,000 over the contract term. For recycling and organics the cost could be the same fortnightly collection) or higher with contractors unable to substantiate which Councils they will win or if Ancillary Services (waste, recycling or organics) will be included or excluded.**

WRASA have clearly misunderstood the scope of the Proposed Conduct under A1000419. For the processors, collection and transport is not an issue and thus the claim is irrelevant as it is the collection contractor who will transport to the processors.

The use of centroids as locations for nominal facilities for delivery of wastes is not uncommon and the market is familiar with the approach. For processing tenderers (the subject of this application) there is no ambiguity on either receival facility locations or the tonnages on which tenders are sought, since the tenderers for processing actually nominate the facilities (and locations) at which they propose to receive the waste streams.

For the collection tenderers to price with clarity and certainty, tender documents must set out the quantities of wastes that will be delivered to the nominated centroids, and this has been done in the tender specification for collections.

For the processing tenderers, tendering with certainty is guaranteed because the tenderer nominates the facility they intend to use as their receival location for the waste streams they are tendering to process. Tenderers for processing assume full responsibility for tendered waste streams from the location they nominate in their tender. The tender documents clearly indicate that contracts will be awarded either for (a) all of a specified waste stream from all of the Participating Councils, or (b) all of the specified waste stream from nominated Participating Councils. There is no intention of splitting a waste stream from any individual Participating Council.

The tender documents clearly set out the tonnages of each waste stream generated by each Participating Council, and invite tenderers to submit tendered prices to receive and process wastes in specific tonnage bands from their nominated facility location. The bands allow tenderers to

confidently estimate their tendered price for each tonnage band from their nominated facility. The tonnage bands have been structured to ensure that all of a particular waste stream from any one or more of the Participating Councils can be delivered to either of the centroid locations and fall within one of the tonnage bands.

12. Page 8, Clause 4.2.2 – Council Solutions have failed in their application for processing services to clearly articulate the number of tonnes they are seeking to manage.

The Tender Pricing Response Schedule for Residual Waste Processing and/or Disposal, Comingled Recycling Processing and FOGO Processing requires the tenderer to populate a single cell within a spreadsheet for each centroid with a \$/tonne rate for **3 volume bands (tonnes per annum) for each processing stream (Residual, Recycling, FOGO)** that will result in a volume-based prices for each stream that applies to all the Participating Councils. In addition, it is optional to provide a price for collection & processing outside a centroid. Council Solutions will undertake a combination analysis to assess the optimal processing outcome for each stream for the Participating Councils.

The tables above show the simplicity of what is required from tenderers for pricing processing/disposal services. The processing/disposal volume bands (annual tonnes by service stream) provided in the tender clearly articulates the quantities to be managed.

Proposed Tender Response

(page 24) ... the workload for each Council to prepare and assess the tenders will be the same as the current situation...

AA1000419 and Council Solutions' submission "AA1000414 Response to submissions from interested parties 18 May 2018" clearly explain the roles and responsibilities of Council Solutions and the Participating Councils during the procurement process, including tender evaluation, and the tasks that Council Solutions will perform that will not need to be performed by each Participating Council, as would be the case if they are required to each undertake their own separate processes.

(page 24) ...a "Negotiation Plan" will be required which will (1) increase an individual Council's workloads surpassing an individual Council tender submission and (2) reduce each Council's ability to customise and refine their service requirements.

It is standard practice within the Participating Councils to develop a Negotiation Plan before undertaking tender negotiations. Accordingly, under the Proposed Conduct instead of four Participating Councils each developing four separate Negotiation Plans for their own tender processes, Council Solutions will develop a single Negotiation Plan. This plan will ensure the negotiation requirements of all Participating Councils are addressed.

15. Page 10, Clause 4.3.2 – Council Solutions state they will award all four (4) collection contracts to one (1) contractor. However, as is often the case, different Councils will see advantages, in particular pricing and service, from different supplier tender submissions and therefore some Councils will need to select a less preferable supplier to support the combined Council Solutions contract.

This claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

AA1000419 Section 4.3.2 Joint Request for Tender clearly states:

“Council Solutions will undertake a single competitive RFT process comprising all three Processing Service Streams. A potential supplier may tender for one, two or all of the Processing Service Streams, however each offer of a Processing Service Stream must be separable.”

16. Page 10, Clause 4.3.3 – WRASA wishes to stress the importance of the duties and responsibilities listed in this clause for each Council and Council Solutions. Council Solutions state that each Council will be responsible for the management of individual ratepayer queries, bin requests and new services. However, our member knowledge of waste collection contracts confirms there is an essential link between operational management and contract management.

This claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Rationale for the Proposed Conduct

Page 11, Clause 4.5.1 – As with the 2016 Application, Council Solutions have endeavoured to make the link between the state’s targets and their existence and objectives.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000419, dated 22 June 2018:

“The Council Solutions’ application offers significant environmental benefits that align with South Australia’s Strategic Plan target of a 35% reduction of waste to landfill by 2020...In particular the application has the potential to result in improved resource recovery by:

- *reduced waste production and less contamination of recyclable, organic and residual waste streams, by better informed ratepayers due to combined education materials and better targeted and managed communication strategies,*
- *better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- *supporting innovation within the resource recovery sector through economies of scale.*

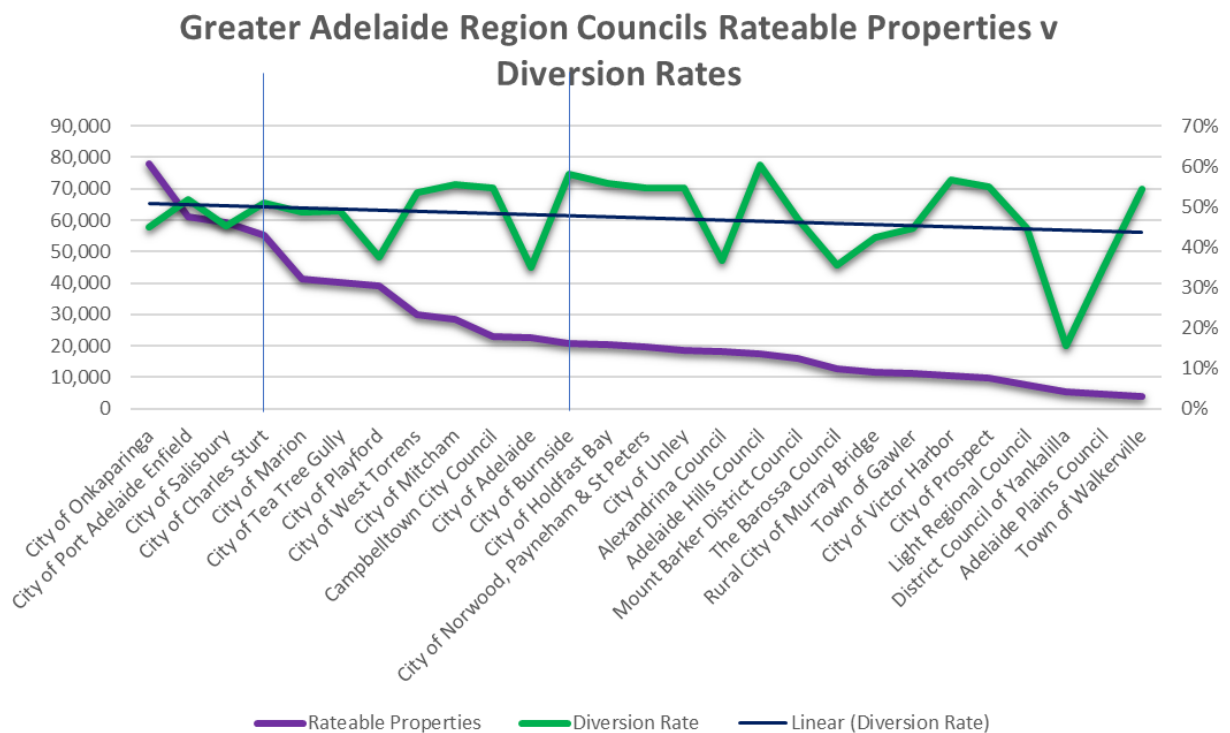
...The application also supports the waste management objective of the Environment Protection (Waste to Resources) Policy 2010 to achieve sustainable, best practice and accountable waste management by:

- *having effective recording, monitoring and reporting systems for waste transport, resource recovery and waste disposal, and*
- *within the community promoting environmental responsibility and involvement in waste avoidance, waste minimisation and waste management.”*

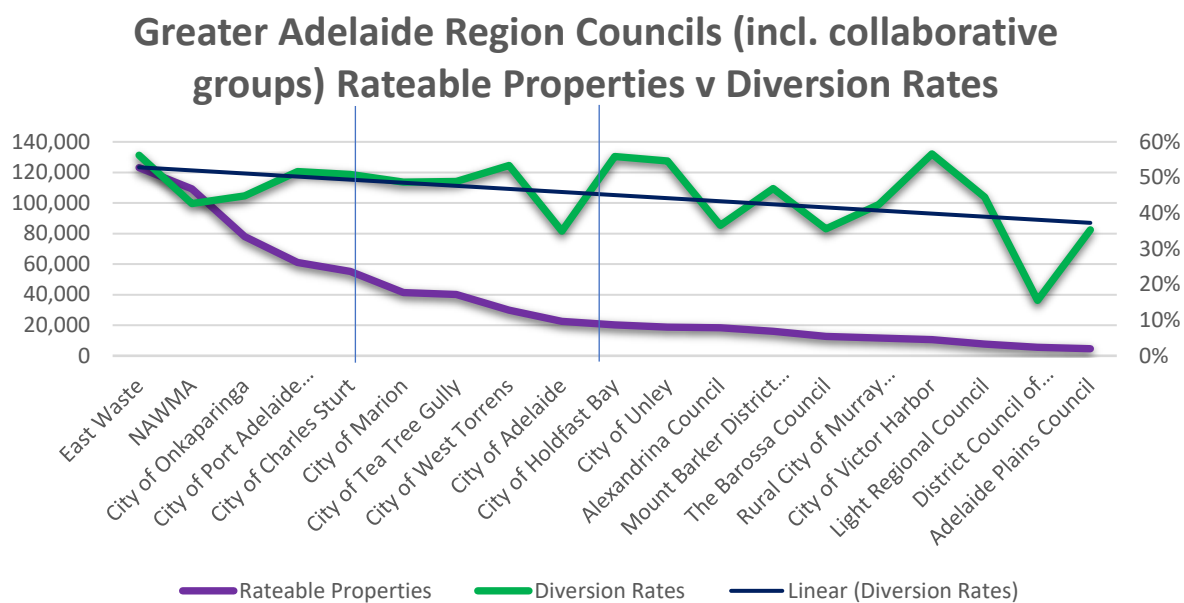
b. Investigation of the previous Application found that waste diversion percentages were poorer for large contracts and the Adelaide Metro ‘optimally sized’ Councils were already producing nation leading results.

Contract size (rateable properties) has little relation to diversion, although it can be seen that the average diversion rate **increases** as the size of the Council increases. This has been addressed in detail in Council Solutions’ previous submission “AA1000414 Response to submissions from interested parties 18 May 2018” (pgs 9-12), refer extract below.

What we actually see occurring in the Greater Adelaide Region is below:



As the above clearly shows, size has little relation to diversion, although it can be seen that the average diversion rate **increases** as the size of the Council increases. When the existing collaborations, East Waste and NAWMA, are put together, the diversion can be shown as follows:



As the above chart demonstrates, diversion rates are more consistent and on average higher the larger the number of Rateable Properties under a contract or arrangement. The so called “sweet spot”, particularly the lower end, however, is far less stable and has a lower average diversion rate.

Council Solutions does not directly correlate the number of Rateable Properties to diversion rates. Diversion is achieved through effective education, community awareness and the behaviour of the ratepayer. The Proposed Conduct will assist in these education programs being more effective through consistent messaging, awareness of policy, strategies and targets and reinforcement. The data collection and reporting the collection contractor will provide is one of the strongest tools to measure the success of these programs.

In addition, as also outlined earlier in this Council Solutions submission, WRASA’s submission that the optimal council size for collections is between 20000 and 50000 households cites multiple reference documents as the source of this number, all of which can be traced to an academic paper authored by Barbara J Stevens, first submitted for publication in September **1976**, with a revised edition in April **1977**. For multiple reasons the paper by Stevens is inappropriate in the context in which it has been used in the submissions and in our view has no relevance to this Application and should carry no weight with the ACCC for the following reasons:

- the study is based on data from the waste collection industry in the **USA**;
- the study represents an academic attempt to develop regression analysis on cost data provided by the various authorities and does not delve into the costs themselves;
- by its own admission the paper states that the scale range of the study is constrained – “*All cost comparisons across market structures must hold the scale of operation constant, at least for the range of markets where scale economies may be reached*” – a statement on page 439 of the article in the section headed Theoretical Framework;
- the data must obviously pre-date the submission date for the paper (circa 1976) and is therefore **over 40 years old**;
- the waste collection industry in the USA in the years preceding 1976 is vastly different from the waste industry in the Greater Adelaide Region in 2018; and

- the study was a comparison between the costs for collection of monopoly government providers and monopoly private sector providers – which bears no relationship to a competitively tendered contract in the Greater Adelaide Region, whether procured collaboratively or independently.

For these reasons alone we contend this paper, and thus every subsequent paper citing the relevant data from this paper, has no relevance to this submission and should be completely disregarded by the ACCC in reviewing this application.

Term of Authorisation

20. Page 12, Clause 4.6 – The contract term has been revised from Council Solution’s original term of approximately 14 years to 2 x 10 year terms over a 23 year period. Given the estimated useful life of collection vehicles is 8-10 years, there are no economies of scale to be achieved by having a collection contract term longer than 8-10 years.

This claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Market Information and Concentration

Relevant Industry

23. Page 13, Clause 5.2 – Council Solutions note they will appoint processors and disposal locations later. The preferred practice is to decide on processing and disposal locations before progressing to collection tenders. The reasoning is that different disposal locations have varying material, contamination and compaction requirements at differing locations, all of which have a direct and considerable impact on collection tender pricing.

Again, this claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Market Share

24. Page 14 & 15, Clause 5.3. - WRASA agrees with most of the figures that Council Solutions has tabled in this clause, however note the following:

- a. As the City of Onkaparinga perform their own garbage collection service.....

Again, this claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Competitive constraints

25. Page 16, Clause 5.4.1 – Council Solutions have raised the concept of competitors and noted that the other Councils are competitors for the acquisition of waste services. They have incorrectly identified their market position...

Again, this claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

As per Council Solutions’ submission “AA1000414 Response to submissions from interested parties 18 May 2018”, with respect, WRASA has not understood the position of Councils as competitors within the scope of the *Competition and Consumer Act 2010* (the **Act**). If the Councils were not competitors, the relevant provisions of the Act would not apply and authorisation would not be necessary. As such, Council Solutions submits the ACCC should not apply weight to the statements made in regard to this section of WRASA’s submission as it is founded on a fundamental misunderstanding of the Act.

Public Benefit

27. Page 17, Clause 6 – WRASA has consulted with our members and find the public benefit claims summarised in this clause totally misleading. Council Solutions continue to make statements that ignore the submissions by all interested parties during 2016 as well as the comprehensive ACCC Final Determination. Their statements are simply repeats of their 2016 claims and remain unsubstantiated....

Again, this claim appears to be a “cut and paste” from WRASA’s submission regarding to AA1000414 for collection services and it appears WRASA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Public Benefits That Will Occur

Tender Process Cost Savings and Efficiencies

Page 23, Clause 11.1.1 – Council Solutions have again argued that waste contractors’ workload increases significantly when submitting individual tenders. We reaffirm that our members would prefer to prepare, cost and submit individual tenders as (1) the risk (and therefore the cost to Ratepayers) of contracting separately for appropriately sized contracts is much lower and (2) the work involved in assessing each area material, contamination and risks still needs to be completed with only perhaps the basic insurance/company/quality type schedules work being reduced, which is literally only a few hours work. In total, a joint tender process only saves approximately 5% of tender preparation time, as approximately 95% of the time invested is on operational research, costings and pricing.

The tender process cost savings and efficiencies that will be achieved under the Proposed Conduct by reducing the replication of work for both Participating Councils and potential suppliers are clearly explained in the application AA1000419 (processing service streams) and include:

- A single tender will remove the duplication of work required to prepare, present, respond, evaluate and award suppliers for four Councils individually;
- Where a potential supplier tenders for more than one Processing Service Stream, additional duplication of work to prepare, present, respond, evaluate and award suppliers for each Participating Council across each Processing Service Stream will be further reduced;
- A single negotiation process for each Processing Service Stream will reduce the costs for the Participating Councils in procuring the Processing Service Streams;
- When preparing a tender response for joint tender potential suppliers will calculate aspects of pricing/ costing for different volumes. However, the other 16 Tender Return Schedules will need to be completed only once by potential suppliers responding to the joint RFT.

This compares to the equivalent of all 17 Tender Return Schedules needing to be completed four times (68 Tender Response Schedules) for any potential supplier wanting to tender to the 4 Participating Councils if they are required to conduct their own separate RFT process. Council Solutions submits the joint procurement is clearly more efficient both for potential suppliers who tender and for the Participating Councils.

SCHEDULE 1: TENDER FORM - FORMAL OFFER

SCHEDULE 2: STATEMENT OF CONFORMITY

SCHEDULE 3: COLLUSIVE TENDERING - STATUTORY DECLARATION

SCHEDULE 4: SERVICES TENDERING FOR

SCHEDULE 5: INFORMATION AND DETAILS ON PROPOSED SERVICE DELIVERY COMMITMENTS

SCHEDULE 6: VEHICLES, PLANT AND EQUIPMENT

SCHEDULE 7: ADDITIONAL INFORMATION & INNOVATION / IMPROVEMENT

SCHEDULE 8: MANAGEMENT, STAFF, RESOURCES AND SUBCONTRACTORS

SCHEDULE 9: EXPERIENCE, COMMITMENTS, BUSINESS CONTINUITY PLAN

SCHEDULE 10: CONTRACT PROGRAM

SCHEDULE 11: ENVIRONMENTAL MANAGEMENT SYSTEM

SCHEDULE 12: FINANCIAL DETAILS AND CAPACITY

SCHEDULE 13: INSURANCES AND LICENCES

SCHEDULE 14: QUALITY SYSTEMS

SCHEDULE 15: WORK HEALTH AND SAFETY

SCHEDULE 16: INDUSTRIAL RELATIONS & WORKFORCE PLAN

SCHEDULE 17: TENDER PRICING

However, Council Solutions seem to be remiss in not mentioning that they will charge an administration fee for their involvement as an extra level of administration, which is believed to be around 1%, or approximately \$5 million for the group of services to be tendered.

Council Solutions confirms again, as it did at the industry and association briefing day attended by a representative from WRASA, and to every stakeholder in one-one-one consultations when asked, **no administration fee** will be applied as part of the Proposed Conduct.

Environmental Benefits

36. Page 27, clause 11.1.2 – we fail to understand how Council Solutions propose to minimise education campaign costs when they need to deal with 3 bin systems, hard waste systems, bulk bin systems that are all completely different between Councils. The first job of alignment, which seems to be their inference, will either require a multi million dollar bin replacement or retrofit program or they will be forced to simply replicate the work of 4 individual councils as the changes they proposed are too problematic.

It is difficult to fathom the relevance of these claims in relation to the application to hand – i.e. AA1000419 (processing service streams) as the claims relate to the collections of wastes that were dealt with under application AA1000414. Notwithstanding this lack of relevance, the notes below address the claims.

Two issues are at play in this muddled claim by WRASA. The first relates to extracting efficiencies from education initiatives across the Participating Councils, while the second relates to the issue of providing MGBs.

In respect of the education initiatives, WRASA have not had opportunity to review the tender documentation and thus are not aware of moves between the Participating Councils for alignment of service standards. With alignment of service standards, education messages and initiatives will also be aligned and efficiencies will be extracted when compared with councils acting alone.

In respect of the issue of providing MGBs, each of the Participating Councils is in the process of auditing their MGB stocks to ascertain the serviceability and suitability of the current bins to be used in future collection contracts. This is not an unusual situation between collection contracts and councils may determine to replace some or all of their bin stock at the time of a new contract, depending on the circumstances.

b. Council Solutions hopes to gain efficiencies from a joint education program. It may gain some printing cost savings but there remains the fundamental problem of all of the participating Councils having different bin colours. These are perhaps the major part of education in each community as the primary identifier of bin type and waste stream.

Again, this claim relates more to AA1000414 (collection services) than it does to AA1000419 (processing service streams), and this issue was addressed at the time the WRASA claim was submitted regarding the collection services. WRASA appear fixated on a view that the status quo in respect of service standards and design will pertain into the new contracts – this is not the case, and will become evident when tender documents are released to the market. The education initiatives employed to improve the quality of materials set out for collection go well beyond printed material and involve people and equipment resources that are engaged to target hot spots for contamination. With a common collection contractor across all Participating Councils there will be a focused common approach to reducing contamination and improving waste stream quality that will deliver superior results than would be achieved if the councils operated individually.

c. with two centroids, and therefore two contractors for each of recycling and organics, Council Solutions will need to combine the plant and contract requirements of those 4 facilities into a combined education program. This is highly unusual. We have not been able to identify any other contract in Australia with two MRFs and two organics facilities. Even if all Council systems were the same, there is no evidence that the Council Solutions team, with no waste education experience, can perform better than Council staff with experience and operational knowledge. This would be in contradiction to established education outsourcing in a field where the proven best way to reduce waste to landfill is by rejecting and tagging bins at the time of collection.

WRASA have jumped to a conclusion that in the processing contracts for both recycling and organics, both centroids will be used and that each will involve different service providers. This conclusion jumping is another attempt to imply complexity and confusion when such is unlikely to pertain. For example, in the organics processing market there are service providers with processing facilities that are well situated to access depots within the circle delineated around both of the nominated centroids, meaning that a single organics processing contractor could be selected to service all Participating Councils using both nominated centroids.

In respect of the competence of Council Solutions to manage the contracts, this is refuted and this issue has been addressed elsewhere. And the relevance of the last sentence in relation to the other claims regarding multiple contracts etc and the competence of Council Solutions is unclear.

Page 38 – Regarding contributing to state government targets, WRASA members find it arrogant and misguided that Council Solutions suggests that with no waste experience and without providing any plans or evidence, that they will achieve targets that the industry and Councils have been unable to achieve....

Council Solutions provides the following from the submission made by the Environmental Protection Agency with regard to AA1000419, dated 22 June 2018:

“The Council Solutions' application offers significant environmental benefits that align with South Australia's Strategic Plan target of a 35% reduction of waste to landfill by 2020...In particular the application has the potential to result in improved resource recovery by:

- reduced waste production and less contamination of recyclable, organic and residual waste streams, by better informed ratepayers due to combined education materials and better targeted and managed communication strategies,*
- better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- supporting innovation within the resource recovery sector through economies of scale.*

...The application also supports the waste management objective of the Environment Protection (Waste to Resources) Policy 2010 to achieve sustainable, best practice and accountable waste management by:

- having effective recording, monitoring and reporting systems for waste transport, resource recovery and waste disposal, and*
- within the community promoting environmental responsibility and involvement in waste avoidance, waste minimisation and waste management.”*

They also state that the proposed conduct is more likely to promote infrastructure investment. This is false because:

- i. their tonnes on offer are geographically spread requiring multiple centroids
- I. their tonnes are insufficient for any waste to energy facility
- II. the recycling market will not want to invest over the next few years in large new plants
- III. history shows innovation is more prevalent in small to medium contracts and given the tonnes and market conditions in this instance this is likely to remain true

As per Application AA1000419 Processing Service Streams, *Section 11.2.3 Further environmental benefits*, for an existing or new potential supplier to invest in infrastructure, in the form of either upgraded or new facilities, availability and security of feedstock volumes are required to underpin and finance the investment.

Council Solutions submits the Proposed Conduct provides a single point of access to a significant pipeline of aggregated volumes in each Processing Service Stream underpinned by up to a 10-year contract commitment. This provides a level of support for infrastructure investment that would not be provided if the Participating Councils went to market separately.

This reduces operational risk to a potential supplier and provides support for an earlier return on investment on newly established infrastructure, the upgrade of existing infrastructure to new technology, or the commissioning of brand new facilities.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000419, dated 22 June 2018:

“In particular the application has the potential to result in improved resource recovery by:

- *better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- *supporting innovation within the resource recovery sector through economies of scale.”*

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000420, dated 22 June 2018:

“In particular the application has the potential to result in improved resource recovery by:

- *better management of collected waste streams driven by secure contracts of larger volumes and an improved focus on the processing of recyclables, organics and residuals from these waste sources due to ancillary services being contracted separately, rather than as an add-on to kerbside waste contracts,*
- *supporting innovation within the resource recovery sector through economies of scale, including the potential trial and deployment of smart technology in public bins,”*

Public Detriment

38. Page 39, Clause 12 – Council Solutions summarise their Application by suggesting “there will be negligible to no public detriment” despite failing to address the three (3) Public Detriment concerns expressly raised in the ACCC’s 2016 Final Determination or by providing evidence to counter the following concerns:

1. Making it difficult for potential suppliers to submit bids that are competitive and are certain to be assessed diligently and selected in the face of numerous contracts, alternative tenders, submissions for combination of services and potentially thousands of pricing options. This claim appears to have been made with the earlier application in mind. The separation of the tenders into three clearly identifiable packages simplifies the tendering process and focuses the attention of tenderers of their areas of core competence and areas where they specifically see their service offering as being competitive and attractive. There will not be thousands of pricing options and WRASA are again trying to imply complexity when in fact there is none.

2. Reducing competition for the supply of waste services to participating Councils in the longer term. This claim is completely refuted and it is difficult to see the rational for the claim in respect of the current application AA1000419 (processing services). Indeed, the packaging proposed will see increased competition as each of the separable service streams are opened to allow tenderers of all sizes to compete on a level and equitable field.

3. Reducing competition for the supply of waste services to non-participating Councils. There is no evidence to support this claim and it is difficult to see the rational for the claim in respect of the current application AA1000419 (processing services).

39. Page 40, clause 12 – mitigating factors. WRASA provide the following comment on Council Solutions’ purported mitigating factors against public detriment:

a. public tenders are standard practice. Even with probity it is possible (and probable) that assessment is not thorough when the complexity of thousands of options must be considered – there will not be thousands of options, either for tenderers to contemplate in their tenders or for the evaluation teams to consider as they seek the best solutions.

b. the maximum term is 10 years, but the recycling and waste terms extension options are impractical and the garbage(residual) is insufficient for any new technology. This issue has already been addressed earlier and the terms proposed are considered to be appropriate for the terms and conditions that pertain in the current markets.

c. the extension terms are a token attempt to reduce the risk of this sort of tender in the current market. The terms will still yield a poor result for ratepayers and individual Councils. This is incorrect. The terms, and extensions proposed, are designed to achieve manageable risks for both service providers and the Participating Councils, given the conditions prevailing. On this basis it is argued that risk premium pricing will be minimised and the consumers will get a better and more sustainable price outcome.

d. the Councils have committed to the tender process but they can still reject all tenders or ultimately determine their final path. Council Solutions needs this contract to remain financially viable and the Councils can allow them to “test the waters” without fully committing. This assertion is mischievous and refuted. Councils have demonstrated their support in their letters and are committed to proceed with the tenders and contract awards.

e. the RFT is for four Councils and three separable processing streams but within that contains a lot of uncertainties and potential for pricing combination requirements in the thousands. Also, the other waste services are being tendered under a separate application but at the same time so even more complication with alternative tenders combining, for example, collection and processing streams or collection and ancillary services, is certain. This claim has been previously addressed and again attempts to imply confusion and complexity where none exists. The proposed suite of tenders simplified the tendering and evaluation processes, when compared with the earlier application, and provides a level of clarity and focus for tenderers to concentrate on their core competitive competencies.

f. stakeholder engagement consisted of 1 session where Council Solutions advised brief details of what they planned to do to get their second applications to the ACCC. They did not seek feedback. Tender briefing sessions are common place but the important task is preparation of the tender specification, which is overdue and pivotal. This claim is refuted entirely. Council Solutions engaged with interested parties in group sessions and in one-on-one discussions. Indeed, WRASA was invited to nominate relevant members of WRASA with whom one-on-one discussions could be arranged, but declined the opportunity.

g. suppliers can compete for other tenders but the proposed conduct obviously dries up the opportunities over the next decade and favours the largest companies. This is incorrect and the current proposed packaging specifically provides opportunities for small- to medium-sized suppliers to tender.

As has been demonstrated several times, a potential supplier cannot simply switch to C&I and C&D sectors for tonnes given the current competition in those sectors, requirement for other expensive trucks, plant and equipment, and different processes and systems. We agree that MSW, C&I and C&D are all in the same waste industry but Council Solutions' statement is akin to a state-wide bread manufacturer and distributor being told they can easily switch to manufacturing and distributing butter. Even harder for a small food manufacturing company. The analogy is meaningless and casts no fresh light on what WRASA is seeking to claim. As has been stated elsewhere, there is significant overlap in the waste services market between municipal, C&I and C&D services and providers, and in many instances overlap in the types of equipment deployed to deliver services. The currently proposed packaging opens up the tendering opportunities to a significantly wider number of suppliers that was earlier the case and provides an equitable basis for fair competition between providers of all size.

h. there may be no barriers to submitting a tender however will the way in which it is being presented to market mean that competition is lessened or the public receive a large, inflexible, inefficient and complicated to assess contract? Definitely yes. WRASA correctly state that opportunities for participating in the tenders has been enhanced and some barriers to tendering have been removed when compared with the earlier application. However, WRASA has incorrectly answered its own question and falsely asserted that the process will lead to complexity and inflexibility.

i. again, suppliers can tender for any services they choose, which is common and almost always allowed through alternative tenders, encouraged by Councils at the time of tender. The question is the likelihood of Council Solutions being able to assess thousands of prices in the interest of 5 parties with interests and services that currently vary significantly. And what is the likelihood of high quality contracts for ratepayers with 4 Councils, Council Solutions and a potential for 7

contracts with further contracts possible. This muddled claim has been answered elsewhere. The current packaging arrangement offers superior opportunity for participation and competition in the tenders – relative to both the earlier application and to the traditional approach where there is considerable bundling, especially in the collections area. There will not be thousands of prices or combinations of prices, tenderers have clear and well articulated targets for their tenders and the evaluation teams will similarly have a clear and uncomplicated task.