

WRASA SUBMISSION (PART A) IN RESPONSE TO COUNCIL SOLUTIONS APPLICATION AA1000420-1 TO THE ACCC DATED MAY 4, 2018.

THIS SUBMISSION BENCHMARKS TO THE 2016 ACCC FINAL DETERMINATION FOR A91520

Introduction

The following report reviews the conclusions formed in the 2016 ACCC Final Determination and benchmarks these against the revised 2018 Council Solutions application for Ancillary Services. Like the Waste Collection Services Application we believe the new application varies only marginally to the original application, provides little to no substantiation to support their public benefit claims and does not address the public benefit and public detriment concerns specified by the ACCC in the 2016 Final Determination denying approval of the proposed conduct. Therefore, after assessing each claimed public benefit claim and potential public detriments in detail we respectfully request the ACCC deny this application.

Many of our comments replicate our comments made about the Waste Collection Services Application. Similarly, the Council Solutions Application for Ancillary Services borrows most of its content from their Waste Collection Services Application.

Transaction Cost Savings

ACCC Final Determination December 2016

111. Taking all of these considerations into account, on balance, the **ACCC is not persuaded there will be a net public benefit** as a result of the proposed conduct in the form of transaction cost savings.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that no public benefit would result from the Transaction Cost Savings asserted in the 2016 Council Solutions application. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

*103. In this case, the ACCC considers that **the proposed conduct is likely to reduce or remove some duplication by participating councils** of tender-related tasks such as the preparation of tender documents, advertising of tenders, information sessions for prospective bidders, and some aspects of contract preparation.*

*104. However, the **transaction cost savings for participating councils are likely to be significantly offset by the additional costs required to coordinate internally within the group of councils.***

*105. The ACCC considers that, all things being equal, **the larger the number of councils and service streams in a collective procurement arrangement and the greater the complexity of the tender process, the greater the need for coordination within the bargaining group and the higher the coordination costs.** In this case, under the proposed conduct, the tender process is complex, and each council will remain significantly involved in the tender evaluation and assessment process, and will have to liaise with each other council in addition to Council Solutions when selecting service providers.*

WRASA acknowledge that savings may (or may not) be made for probity and legal costs but this is minor compared with the added costs resulting from the additional layer of administration added by the Council Solutions proposal. As no reduction in Council labour is proposed, the addition of Council Solutions procurement team is a direct additional cost. Additionally, as Tea Tree Gully Council has elected not to participate in the 2018 procurement any claimed transaction cost savings are further eroded versus their 2016 application.

In Council Solutions 2018 proposal, each step of the tender process from the development of the tender specification, contract development to tender submission reviews and assessments still needs to be reviewed and agreed to by each Council through their independent internal review processes. Therefore, with the need to negotiate and agree with the other Councils and Council Solutions the work involved is greater and more complex than current practice, increasing coordination costs.

Furthermore, the full tender process proposed by Council Solutions, involving all Councils, may need to be repeated at a later date when Council Solutions subsequently elect to tender for waste disposal, recycling processing and organics processing further increasing each Councils time on tendering. As detailed in the Victorian procurement guidelines, optimal tender practice is to initially tender for disposal and processing locations. Once the locations are confirmed, collection tender complexity is reduced proportionately for all Councils. However, under the framework of Council Solutions 2018 proposal, complexity is increased.

Two very important faults exist with the new Application for Ancillary Services relating to Tendering Costs;

(1) the 3 services; bulk bins, hard waste and public litter, all use completely different vehicle equipment for lifting and loading. This is front lift or rear lift for bulk bins, manually loaded rear loader or tray truck for hard waste and side loaders for public litter. I.e., the 3 Ancillary services have no reason to be grouped together in one Application or tender process with the services often being provided by 3 separate companies.

(2) the participating Councils may choose to take the disposal/processing component of each of the Ancillary Services providers. With 3 services and 3 (garbage, recycling and organics) waste streams a simple tender price for collection of a waste stream now needs to include combinations for inclusion or exclusion of disposal or processing for garbage, recycling and organics, for each of hard waste, multi unit bulk bins and public bins. This becomes incredibly complex for relatively small contracts with highly variable risk profiles for tenderers and difficult to assess and compare submissions.

Public Benefit

As the Council Solutions 2018 proposal does not substantially differ from their 2016 application and fails to address the ACCC's co-ordination costs and increased complexity concerns raised in the 2016 Final Determination (see reference 106, 110 and 111), we believe there is **no public benefit**.

Improved environmental outcomes

ACCC Final Determination

229. The ACCC notes the potential for the proposed conduct to facilitate improved environmental outcomes, such as a waste to energy solution, through efficiencies or innovation in each service stream. The ACCC has already considered these issues above in respect of each service stream and concluded that there is likely to be some minimal benefit in respect of improved efficiencies in processing of recyclables and organics, **and no likely benefit in respect of waste collection and waste disposal**.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that no public benefit would result from Improved Environmental Outcomes for waste collection as asserted in the 2016 Council Solutions proposal. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

*225. As indicated earlier, the ACCC considers that each participating council already has significant incentives to reduce the volume of waste going to landfill and these incentives will increase as the SWL rises over coming years, both with and without the proposed conduct. **It is therefore not clear that the proposed conduct would alter these incentives.***

*228. However, the ACCC notes that the participating councils can and do undertake their own community education programs, and so any environmental benefit from improved education is likely to be small. **Therefore, the ACCC considers that the proposed conduct is likely to result in a small public benefit in the form of improved environmental outcomes.***

229. The ACCC notes the potential for the proposed conduct to facilitate improved environmental outcomes, such as a waste to energy solution, through efficiencies or innovation in each service stream. The ACCC has already considered these issues above in respect of each service stream and concluded that there is likely to be some minimal benefit in respect of improved efficiencies in processing of recyclables and organics, **and no likely benefit in respect of waste collection and waste disposal**.

Council Solutions have made a major mistake by separating the public bins from the kerbside collection services as they both use the same trucks in the same streets, often on the same collection days. Any environmental outcome is lost as kerbside collectors do not know if they can combine the similar residential kerbside and public bin services.

For education purposes, multi unit dwelling bulk bins should obviously be part of the education campaign being delivered to other dwellings in each street. By separating it from the waste collection services tender and combining it with incompatible hard waste, tenderers cannot assume they are providing both services and therefore delivering an education service that is consistent from property to property along each street and to public street and park bins and hard waste. This Application is worse off for environmental outcomes than all other previous Applications.

WRASA agrees with the ACCC's 2016 final determination that there could be small environmental benefits from joint community education initiatives but the fact that the services have been split and disposal and processing responsibilities are uncertain means that this would only happen from Council coordination in spite of the contracts rather than because of them.

We also note in 228 above, that the ACCC states that "councils can and do undertake their own community education programs" and wish to stress that Councils nationwide can and do already share educational resources without the need for a joint collection tender. Furthermore, the most proven method of reducing contamination is via collection drivers tagging contaminated bins. As this is achieved on a house by house basis, no benefit can result from a joint collection tender, especially when different contract arrangements may exist between neighbouring properties.

In Council Solutions 2018 application they devote 3 pages to increased environmental outcomes from education, but fail to address the ACCC's concern that no public benefit is likely from joint collection services. Despite this, they claim environmental benefits will result from a joint collection tender without providing any direct evidence to support this assertion. In fact, this proposal seems to be the worst solution for environmental outcomes.

Public Benefit

In summary, we believe Council Solutions are being misleading and claiming the benefits from one activity (education) on another independent activity (collection). Therefore we support the ACCC's 2016 final determination that no environmental benefit will result from a joint collection tender.

Stimulation of competition

ACCC Final Determination

208. In these circumstances, based on the information available, **the ACCC is not persuaded that the aggregation of volumes and contracts would be likely to result in a public benefit** in the form of stimulation of competition.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we 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:

205. The ACCC notes that the proposed conduct is likely to result in a larger number of collection points and larger volumes of recyclables, organics and residual waste being offered for tender in a single process, compared to the future without the proposed conduct.

206. The ACCC considers that a larger contract (in terms of scale and value) under the proposed conduct has the potential to stimulate competition in the supply of waste disposal services by attracting bidders (including potentially new suppliers) and helping to make previously uneconomic technologies and services viable.

207. However, previous tenders for waste collection, recyclables and organics appear to have been the subject of a high degree of competition and that a number of multinational companies are already present or interested in the relevant markets. The ACCC also notes that any benefit in the form of attracting bidders to the tender is likely to be offset by the detriment caused by parties being deterred or prevented from tendering (see detriments section from paragraph 232).

For Ancillary Services, compared with the conclusions made for Waste disposal and waste collection above, keeping in mind that all 3 Council Solutions appear to be scheduled for tender release at the same time, the Council Solutions combined Ancillary Services will definitely reduce a competitive environment. Smaller to medium sized businesses may tender but they will find it very difficult to win as alternative tenders for all waste services will be submitted by the bigger companies and the complex tender combinations that will eventuate will see Council Solutions gravitate towards simpler decisions, as was the case with the Bitumen Supplies tender, which had 22,000 pricing options.

The proposed conduct will definitely not attract additional players to the market, or, to be more relevant, give a new player a good chance of being successful so they can bring more competition to the market.

As with the Waste Collection Services Application, Council Solutions does not address the industry concerns raised in 2016 that a tender of this size may in fact deter companies from tendering due to smaller organisations having limited access to the large capital requirements and bank guarantees required to be competitive for a tender of this magnitude. Council Solutions have not addressed this concern as raised by industry and supported by the ACCC in the Final Determination, paragraph 255, where they state "Accordingly, the ACCC concludes that **the proposed conduct is likely to result in some public detriment constituted by a lessening of competition** by deterring or preventing some suppliers from participating in the tender process or submitting competitive bids."

In summary, the ACCC concluded in paragraph 283, "The ACCC considers **the proposed conduct is likely to result in some public detriment constituted by a lessening of competition** through:

- *detering or preventing some suppliers from participating in the tender process or submitting competitive bids*
- **reducing competition** for the supply of waste services to participating councils in the longer term
- **reducing competition** for the supply of waste services to non-participating councils

Public Benefit

As the 2018 Council Solutions applications fails to address the ACCC's public detriment concerns above, we respectfully request the **ACCC deny the 2018 application.**

Facilitating improved efficiency in the supply of waste collection services

ACCC Final Determination

143. Therefore, while the ACCC recognises the potential for aggregation of the participating councils to result in improved efficiencies in the supply of waste collection services, **it considers that such benefits would be unlikely in this case** for the group of councils and services concerned. This is particularly so given the **geographic spread of the councils**, the **small degree of shared boundaries** and the **evidence presented as to the optimal size for efficient waste collection services**.

Accordingly, on balance, **the ACCC is not persuaded that the proposed conduct is likely to result in a net public benefit** in the form of improved efficiencies for the supply of waste collection services.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points (replicated in the Waste Collection Services) lead to the conclusion that a public benefit is unlikely to result from the asserted improved waste service efficiencies 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:

137. The ACCC notes WRASA's submission that the **optimal size of a municipal waste collection service is between 20,000 and 50,000 households**. The table below provided by Council Solutions sets out the number of premises entitled to receive a municipal waste collection service in each participating council.

138. *The ACCC observes that **four of the five participating councils individually have more than 20,000 service entitled premises and three have less than 50,000 service entitled premises.***

141. *The ACCC ...considers that the **proposed conduct is likely to enable waste collectors servicing the participating councils to reduce costs by:***

- *helping them to achieve or maintain efficient scale to the extent that an individual council is not fully able to do so in the future without the proposed conduct*
- *providing opportunity for the **design of more efficient collection routes** across participating councils*
- ***reducing the number of spare trucks** needed to cover repairs and breakdowns across participating councils.*

142. *However, the ACCC considers that the opportunity for such **cost savings is likely to be confined to participating councils that are geographically proximate** and therefore would not extend to the City of Marion, since it is located about 12-15 km to the south of the closest participating councils (being Adelaide City Council and the City of Charles Sturt). Also, such **cost savings depend upon participating councils being prepared to share services across council boundaries**, which may involve complexities in identifying costs relevant to their respective ratepayers.*

In determining that a joint tender is unlikely to produce any net public benefit from collection efficiencies, the ACCC clearly listed substantiated 3 reasons. For the Ancillary Services Council Solutions 2018 application specifically, these three issues are not even acknowledged and their proposal resorts to mere claims based on assumption.

1. In paragraph 143, the ACCC confirm that due to the "**geographic spread of councils**" improved efficiencies are unlikely. As this has not changed, a net public benefit cannot be claimed and public detriment is the likely outcome.
2. The ACCC also acknowledge that the "**small degree of shared boundaries**" make it unlikely that improved efficiencies will result. Again, as this has not changed nor has Council Solutions addressed the invoicing concerns raised by the ACCC in paragraph 142, a net public benefit cannot be claimed. This is magnified for the separated Ancillary Services as the work volume is much lower than the larger Waste Collection services. To reaffirm, Council Solutions have mistakenly separated multi unit dwelling bulk bins, hard waste and public bins from kerbside collection services instead of the most efficient solution

of combining each respective Councils' ancillary services with its own kerbside collection services. As noted, the Councils are inefficiently located relative to each other and have an optimum number of households to allow efficient individual contracts, as proven by the available data.

3. Further to point 2 above, the ACCC refers to “***evidence presented as to the optimal size for efficient waste collection services***” that was supplied by Professors Dollery and Burgan in 2016 confirming the optimal council size for collections is between 20000 and 50000 households and that diseconomies of scale are present in larger contracts, proving “bigger is not always better”. Again, this evidence and the ACCC's concerns has been overlooked by Council Solutions showing their intent to implement a service that will result in diseconomies of scale providing a net public detriment, as opposed to the claimed net public benefit. This mistake is exacerbated further in 2018 by combining three operationally unrelated services.

As with the waste collection services submission from WRASA, Council Solutions further presume that efficiencies will be gained via reduced spare vehicles. However, it is currently standard practice of collection contractors to use trucks that are shared across council areas for front loaders, rear loaders and tray trucks. I.e., businesses around Adelaide are currently permitted to use shared trucks and not new trucks for services such as hard waste or bulk bins. Combining 4 geographically spread councils into 1 contract cannot possibly provide a more efficient solution and will quite likely see higher prices, especially if Council Solutions broadly specify new trucks or exclusive use of trucks. Therefore, as this saving is already available to Councils who tender independently, a net public benefit cannot be claimed and a detriment is highly likely.

Public Benefit

As the Council Solutions 2018 proposal fails to acknowledge or address the 3 reasons the ACCC detailed in rejecting their service efficiency claim in 2016, **a public benefit cannot be substantiated** and therefore cannot be claimed.

Improved Efficiencies through Information Sharing and Cost Savings

ACCC Final Determination December 2016

126. Overall, the ACCC considers that:

- **No public benefit is likely** in respect of better contract management as increased costs of coordination are likely to offset any efficiencies in coordination.
- Some small public benefits are likely to result from efficiencies in delivering community education programs.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

We note that in this Application has separated ancillary services from the rest of the waste collection services. Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that a public benefit is unlikely to result from the asserted improved efficiencies through information sharing and cost savings from the 2016 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:

*122. The ACCC notes that, while Council Solutions will have a role in the ongoing contract management, **day-to-day operational contract management would be undertaken by each participating council**. Any efficiency benefit would therefore be based on broader contract management issues common to each council's individual contractual arrangement.*

123. The ACCC accepts that the proposed conduct is likely to result in increased information sharing and collaboration between participating councils and Council Solutions, and that this in turn may enhance the Applicants' ability to negotiate with service providers during the life of their contracts.

*124. However, compared to the future without, where each council would manage its contract independently, **in the future with the proposed conduct each council would be likely to incur additional coordination and administration costs** through the establishment and implementation of*

*the Contract Working Group, and the need to coordinate responses to broader contract management issues with up to six parties (five councils plus Council Solutions). The ACCC considers that **this increased cost of coordination is likely to offset any benefits gained through collaboration and coordination.***

*125. In relation to the potential for improved efficiency through the joint delivery of community education programs, the ACCC accepts that the proposed conduct would be likely to allow the participating councils to improve efficiency in the development and implementation of community education programs ... However, the ACCC notes that the participating councils can and do undertake their own community education programs. Therefore, while the ACCC accepts this public benefit, it considers that **any efficiencies that would be likely to be gained** when compared to the future where each council undertakes its own community engagement programs **are likely to be small.***

WRASA believe that although the Ancillary Services theoretically represent a small portion of the total waste services, due to the way Council Solutions have structured their Applications, a potentially crippling element exists which will see information sharing and cost savings not only improbable but likely to render the tender process and contract poisoned with an insurmountable hurdle. With all Councils required to agree on 1 contract for each of the Ancillary services, possibly combined with other Ancillary services and other waste services, and with each ancillary service either including or excluding garbage, recycling and/or organics disposal and processing, and some Councils having different arrangements for disposal in the Waste Disposal Application, the joint procurement exercise proposed by Council Solutions sets the scene for a lowest common denominator solution for the Councils arrived at through difficult and unsatisfying discussions amongst the participating Councils and Council Solutions.

WRASA note that Council Solutions have attempted to streamline the contract management component of their 2018 application by reducing the number of Council representatives. However, by reducing their representation, creating only one service specification and not allowing Councils to opt out of the service, each Council will, for Ancillary Services especially, lose the ability to customise the service expected by their ratepayers, which currently has differences amongst the Councils. This will result in a net public detriment.

As with the WRASA's Waste Collection Services, analysing Council Solutions' summary of their contract management duties and each Councils', it appears as though the proposed conduct will add another layer of administrative cost and bureaucratic complexity without reducing workloads for Councils. We have defined the responsibilities of Council Solutions and the Councils in an attempt to reduce the Contract Management complexity as follows:

Responsibility	Owner	Est.% of Time
1.Innovation, value adds & maximising performance	Council Solutions	5 - 10%
2.Compliance	Council Solutions	
3.Conformance	Council Solutions	
4.Operational	Councils x 4	90 - 95%

As with the other Applications, the Councils will still perform a majority of the work. This is particularly the case for the Ancillary Services as they are specific to each Council's parks, roads, beaches, CBD areas and high density living zones.

WRASA are certain that the Ancillary Services application in particular has been structured for a poor result for Councils and ratepayers and will be extremely difficult for Council Solutions and participating Councils to assess and decide on tenders.

Community education will suffer due to incorrect separation of each Council's multi unit dwelling bulk bin, public bin and hard waste from other waste collection services. We note in paragraph 228 above, that the ACCC states that "councils and do undertake their own community education programs" and wish to stress that Councils nationwide can and do already share educational resources without the need for a joint collection tender. Furthermore, the most proven method of reducing contamination is via collection drivers tagging contaminated bins. As with the Waste Collection Services, as this is achieved on a house by house basis (or public bin by public bin, or apartment block by apartment block), it is not dependent upon a joint collection tender and is in fact severely comprised by the proposed conduct, even more than in 2016.

Public Benefit

As the Council Solutions 2018 proposal for Ancillary Services is poorer for Councils and ratepayers than their 2016 application or address the ACCC's concerns in paragraph 124, we believe education, administration and Contract Management costs will be higher and results far worse. Therefore, on balance, we believe there is **public detriment**.

Public Detriments

ACCC Final Determination December 2016

283, "The ACCC considers ***the proposed conduct is likely to result in some public detriment constituted by a lessening of competition*** through:

- *detering or preventing some suppliers from participating in the tender process or submitting competitive bids*
- ***reducing competition*** for the supply of waste services to participating councils in the longer term
- ***reducing competition*** for the supply of waste services to non-participating councils

ACCC Decision Rationale applied to the 2018 Proposed Conduct

In the ACCC's final determination, 11 pages are dedicated to assessing and concluding that a public detriment will result from the proposed conduct. In their 2018 Application, Council Solutions make no reference to the ACCC's findings.

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that 3 public detriments are likely to result from the proposed conduct. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns.

1. *Deterring or preventing some suppliers from participating in the tender process or submitting competitive bids*

251. *The ACCC notes that there is **significant uncertainty about the extent to which the arrangements would attract tenders** from waste services providers that would not otherwise participate in tenders to supply the participating councils in the likely future without the proposed conduct. This, combined with the **likelihood that some potential tenderers will not participate in the RFP due to its increased scope and complexity and the greater costs involved**, leads the ACCC to conclude that there is a real chance that the proposed conduct will lead to **fewer participants** in the tender process than would be the case without the proposed conduct.*

252. *The ACCC considers that **fewer participants in the tender process would reduce the competitive tension between tenderers and therefore be likely to result in public detriment**.*

255. *Accordingly, the ACCC concludes that the **proposed conduct is likely to result in some public detriment** constituted by a **lessening of competition** by deterring or preventing some suppliers from participating in the tender process or submitting competitive bids.*

WRASA acknowledges that the Ancillary Services 2018 Application has reduced in scope to multi unit dwelling bulk bins, hard waste and public bins only. However, this restructure of the waste services applications generally by Council Solutions is worse than 2016 as (1) they are all being tendered at the same time anyway, (2) the 3 ancillary services are incompatible with each other and (3) three disposal/processing streams that could be in or out magnifies the complexity of the process. These factors will ensure all potential collection contractors will find the tender less attractive due to risk and potential for success.

2. *Reducing competition for the supply of waste services to participating councils in the longer term*

271. While the participating councils have both financial and statutory obligations to provide cost-effective waste services to ratepayers, **the ACCC considers that the proposed conduct has the potential to result in the awarding of a contract or contracts which substantially reduce the overall number of suppliers of waste services to the participating councils**. This could occur **within service streams** where there are currently multiple providers or across councils where there are, in some cases, different providers of services to different participating councils.

272. The ACCC is of the view that, compared to the likely counterfactual, the proposed conduct would be likely to:

- **reduce the ability of existing providers to innovate and continually improve** their offers to supply waste services over time through successive and frequent opportunities
- **make entry into the supply of waste services** in metropolitan Adelaide less likely by making entry on an incremental basis more difficult.

273. The ACCC accepts that the RFP is intended to generate competition 'for the market' in respect of the waste service requirements for the participating councils. However, **the ACCC is concerned that if the proposed conduct results in fewer waste service providers** in metropolitan Adelaide, **competition for provision of these services to the participating councils will be lessened in the longer term** as existing suppliers are likely to be in a stronger position to compete in subsequent tender processes.

274. Overall, the ACCC considers that there is a real chance that **the proposed conduct will result in fewer providers of waste services providers** in metropolitan Adelaide and that this is likely to constitute some **public detriment** in the form of reduced competition in the longer term.

WRASA agree with the ACCC and are certain that for all three 2018 Applications and the Ancillary Services viewed alone, fewer providers will be the result, possibly reducing the number of suppliers from 12 to 1.

3. *Reducing competition for the supply of waste services to non-participating councils*

281. *However, for the reasons set out at paragraphs 270 to 274, the ACCC considers that the proposed conduct is likely to result in fewer waste service providers in metropolitan Adelaide and is likely to advantage existing suppliers in future municipal waste tender processes in Adelaide. The ACCC considers that this is likely reduce competition for the provision of waste services to other councils in Adelaide that do not participate in the Council Solutions arrangement.*

282. *Overall, the ACCC considers that there is a real chance that the proposed conduct will result in some public detriment in the form of reduced competition in the supply of waste services to councils in Adelaide that do not participate in the Council Solutions arrangement.*

WRASA acknowledges that this particular 2018 application has reduced in scope to ancillary services only. However, the awarding of 3 contracts, each being made up of 4 Councils, in one tender, will reduce the attractiveness of the Adelaide market to unsuccessful tenders and potential new entrants, thus reducing competition in the long run.

With regards to Ancillary services, small businesses have been successful in providing tailored and innovative services to the Adelaide market with manageable contract sizes and low risk specifications. Council Solutions proposal would reduce ratepayer and Council benefit by forcing a lowest common denominator solution with extremely high risk and complexity.

Public Detriment

As Council Solutions 2018 proposal does not provide any evidence to counter the ACCC's concerns regarding the likely public detriments of **reduced long-term competition** in the Adelaide market, other than an unfounded "belief" that there won't be any detriments, we respectfully ask the ACCC to **deny the application**.

Summary

Claimed Public Benefit	2016 ACCC Final Determination	Addressed Council Solutions Proposal	2018 Public Benefit Assessment
Transaction Cost Savings	111. ACCC is not persuaded there will be a net public benefit	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	No public benefit
Improved Efficiencies through Information Sharing and Cost Savings	126. No public benefit is likely in respect of better contract management as increased costs of coordination are likely to offset any efficiencies in coordination	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	No public benefit
Facilitating improved efficiency in the supply of waste collection services	143. ... such benefits would be unlikely in this case	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	No public benefit
Improved environmental outcomes	229. no likely benefit in respect of waste collection and waste disposal	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	No public benefit
Stimulation of competition	208. , the ACCC is not persuaded that the aggregation of volumes and contracts would be likely to result in a public benefit	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	No public benefit
Public Detriments	The ACCC considers the proposed conduct is likely to result in some public detriment constituted by a lessening of competition	Worse than 2016 due to poor grouping of incompatible services and uncertain extent of work.	Public Detriment

Based on the above assessment, WRASA believes the new application for Ancillary Services is worse than the 2016 proposal for ancillary services, providing little to no substantiation to support their public benefit claims and does not address the public detriment concerns specified by the ACCC in the 2016 Final Determination denying approval of the proposed conduct. Therefore, after assessing each asserted public benefit claim and the potential public detriments in detail we respectfully request the ACCC **deny this application**.

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

WRASA has reviewed the new 2018 Council Solutions application FOR Ancillary Services and provide the comments below.

The following introductory points should be noted:

- I. Although Council Solutions engaged Wright Corporate Strategy (clause 4.2.1), no evidence has been conveyed by Council Solutions from Wright in the Application and a copy, or excerpts from the Wright report have not been included at all.
- II. No reference is made to the findings from the 2016 ACCC Final Determination, nor does the new Application recognise the issues raised by the ACCC.
- III. As was the case throughout Council Solution's 2016 Application to the ACCC, Council Solution's new Application has provided a collection of unsubstantiated statements with no further evidence provided. Many statements made in the new Application were found by expert evidence and the ACCC determination to be false in 2016 however they have been repeated in the new 2018 Application. These statements are referred to throughout this submission.

Working through the new Application we provide the following comments:

Executive Summary

1. Page 1, Clause 1 -The proposed contract is now 3 single contracts which binds all Councils for each of the 3 Ancillary Services. This is being done in the absence of a tender specification or contract document discussion and agreement process between the Councils and Council Solutions.
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.
3. Page 1, Clause 1 – Council Solutions again make a set of claims for public benefit that have already been exhaustively investigated during all of 2016 by many stakeholders, plus the ACCC. In addition to WRASA's submission Part B below, please also refer to the WRASA'S submission Part A titled 'Council Solutions 2018 Application benchmarked to the 2016 ACCC Final Determination'.

Parties to the Proposed Conduct

4. Page 4, Clause 3 – We note that the City of Tea Tree Gully Council has abandoned the project
5. Page 4, Clause 3.1 – Council Solutions note \$63.5 million of Council expenditure in total for their procurement services for any Council service they have tendered. The combined operating expenditures of the constituent Councils for just 12 months is approximately 10 times that at \$698 million or over \$1 billion including capital expenditure programs. Or even more if other Participating Councils were included. This indicates that Council Solutions is an unproven part of the Councils' procurement process reinforced by the fact that since 2016 only 8 tenders have been advertised on Tenders SA by Council Solutions on behalf of a variety of combinations of the Councils, continuing the extremely low representation leading up to 2016. Tenders SA records show that 0 of the 8 tenders have been awarded suggesting that decision making is difficult and timeframes and costs are extended. In addition we note that Council Solutions financial health continues to deteriorate with their 2016/17 financial report showing a loss increase from \$6,000 in the previous year to \$76,000. Their website shows no upcoming tenders whereas their constituent councils individual websites show a combined 12 current tenders, including a new Pest Control tender which Council Solutions are currently administering and many tenders for which other Councils would have a need. The

evidence suggests that from the beginning of this process, Council Solutions has sought to secure a massive combined waste contract as it provides them with an essential cash injection to prop up what appears to be a floundering operation.

Item 1 – Council Solutions website shows zero upcoming or current tenders

UPCOMING TENDERS

There are currently no advance notices of upcoming tenders.

UPCOMING TENDERS

All of Council Solutions' tenders are released via the SA Tenders & Contracts website. The best way to be notified when a tender is released is to register with that website.

Item 2 – Tenders SA website shows no current Council Solutions tenders

Find Tenders

Find tenders that match a specified criteria. When signed in, you can also configure saved searches and set up new ter
(Clicking detailed help will open a new browser window)

No results found! [Click here to refine your search.](#)

You searched for tenders with 'Open' state issued by 'Council Solutions'

Search Criteria

Keywords

Tender State

Tender Type

Category

Issued by

6. Page 5, Clause 3.2 – We note that the number of rateable properties tabled by Council Solutions fall within or close to the “sweet spot” for municipal collection contract size as highlighted by Professors Dollery and Burgan in our 2016 submissions. No new evidence has been provided that would suggest any net public benefit. For Ancillary Services specifically, depending on the service and Council, contractors are permitted to use trucks they use for other work so any claim that Council Solutions proposed conduct would be more efficient is false as contractors can currently add resources to their fleet for total workload as required.

7. Page 6, Clause 3.2 map – A major issue with the previous Application was the wide spread of the 5 Councils over 3 state government designated regions. The new Application sees 4 Councils in 3 regions. This has resulted from the Council Solutions process of inviting all or a majority of Adelaide metropolitan Councils to participate but because only 4 Councils have elected to participate, there is a wide geographical spread between the 4 Councils which undermines the capability of Council Solutions achieving waste collection cost savings. We emphasise the fact that the model from other states where Councils work within state government defined procurement regions (when it is determined to be beneficial) is necessary to avoid unclustered Councils establishing inefficient and disruptive groups that can cause long term negative impacts to its own ratepayers and also neighbouring Council ratepayers. In Adelaide, in conjunction with the federal government’s Regional Development Australia program, the state government has established the four South Australian Government Regions for metropolitan Adelaide as follows from the RDA website (www.rdametroadelaide.com.au/node/25):

The Adelaide Metropolitan region may be described as the region that includes the four South Australian Government Regions which in turn comprise the 17 respective local councils.

Eastern Adelaide Government Region

City of Prospect
 Corporation of the Town of Walkerville
 City of Norwood Payneham and St Peters
 Campbelltown City Council
 Adelaide City Council
 City of Burnside
 City of Unley
 City of Tea Tree Gully

Western Adelaide Government Region

City of Port Adelaide Enfield
 City of Charles Sturt
 City of West Torrens

Northern Adelaide Government Region

City of Playford
 City of Salisbury

Southern Adelaide Government Region

City of Mitcham
 City of Marion
 City of Holdfast Bay
 City of Onkaparinga

These are the clusters in which the Councils should be assessing collaborative procurement (if deemed necessary by respective Councils), not Council Solutions type groups where only 1 or 2 Councils are taken from each region.

8. Page 7, Clause 3.2 – Council Solutions submit that section 7 of the Local Government Act states that each Council must provide services and facilities that benefit **its** area, support programs that benefit **its** area and plan for the requirements of **its** area. No new evidence has been provided by Council Solutions to suggest that the new Application will now help each individual Participating Council ensure that it is ensuring **its** area and ratepayers are prioritised over an uncertain and unclustered **group** tender, for which the only evidence submitted to date, and in the absence of tender specifications, suggests a compromised result for ratepayers.

The Proposed Conduct

Description of the Proposed Conduct

9. Page 7, Clause 4.1 - The new Application now requires that the Participating Councils commit to a joint contract for each of the 3 Ancillary Services. At this point, with no specification written (more advanced Victorian collaborative procurement guidelines require a specification for ACCC approval), and evidence presented thus far showing that Councils (and ratepayers) will be worse off and ongoing contract management by an inexperienced Council Solutions team in a dynamic industry with recycling in crisis, establishing a joint contract commitment with little knowledge of the final product and ongoing challenges is extremely likely to deliver net public detriment and negative distortions to the Adelaide markets, which pricing and recycling evidence indicates is the most progressive and cost effective waste industry market in Australia.

Context to the Proposed Conduct

10. Page 7, Clause 4.2.1 – Council Solutions state that the Wright Corporate Strategy report advises significant benefits however no evidence is provided and they seem to repeat benefits submitted by Council Solutions in 2016 which were considered by the ACCC to be unproven or hopeful at best. These are unsubstantiated claims and no new evidence has been provided that would suggest any net public benefit.

11. Page 7, Clause 4.2.1 – Council Solutions advise that this Application is for a joint contract. With regards to the ancillary services (which arguably should be separated given different equipment) it is concerning that:

a. If permission is granted by the ACCC for the collection services then it would be difficult for the ACCC to refuse permission for ancillary services.

b. Best practice for collection contract tendering is for a Council to confirm the disposal and processing locations prior to tendering for collection services, including ancillary 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 collection as Council Solutions will be obliged to apply the ‘alternate facility transport rate’ of the successful tenderer only, which often results in higher costs to a Council, as against costs obtained by a variety of tenderers based on them knowing where the disposal and processing locations are. This Application also has the problem of who will be responsible for disposal and processing for each of the 3 + waste streams for each of the 3 ancillary services.

c. We note that at a “consultation” briefing in Oct, 2017 one of our members was advised that all tenders (collection, processing, disposal, etc.) would be released around the same time. This would promote the scenario that attracted heavy criticism in 2016 due to the variety of possible submission combinations and also provide an opportunity for only a limited few out of the many current operators in Adelaide i.e. large multinationals with the capital backing to submit alternate tenders for all services, to the ultimate detriment to the public due to the loss of players in the industry resulting in reduced competition in the medium to long-term.

12. Page 8, Clause 4.2.2 – As was the case with the Council Solutions Application for processing services, they have been misleading in suggesting in this clause that C&I and C&D waste is relevant to the proposed conduct. All Ancillary Services only service households, both single and multi units, public street and park bins. No commercial premises are served in the proposed conduct.

Any ability for Council Solutions to gain any savings in education programs that may extend to Ancillary Services (which it should to align with standard household services in the Council area) is severely hampered as each of the Council areas have different arrangements for multi unit dwellings, hard waste and public bins.

As was the case with the different bin systems for standard kerbside collection where all Councils had different coloured wheelie bin systems, systems refined over many years to suit each individual Council will need to be aligned to the lowest common denominator if Council Solutions are to be able to effect any sort of common education activity.

As was the case with the Collection Services Application significant additional cost would apply to the Councils to try to align the ancillary bin systems to allow not only common education activities but contract administration that is not incredibly confusing with different rules for different councils.

13. Page 8, Clause 4.2.3 – Council Solution’s proposal is that 4 wheeled bulk bins, as opposed to 2 wheeled bins constitute these services. These bins are generally 660 litres or 1100 litres. It is unclear as to whether Council Solutions are suggesting that commercial properties be included in the services (they are referenced along with hospitality, retail and industrial, which in waste management are all “commercial”) as this would take the Councils into territory they all currently avoid as it is serviced under private arrangement between waste companies and businesses.

Council Solutions note that the processing/disposal of collected material is included, which is highly unusual if Council has a processor. Council Solutions detail later how they may decide to have their processing/disposal contractors accept the material if that is deemed better.

Bulk bins for recycling and organics have generated major issues to date as the anonymity tied to bulk bins at apartment blocks sees contamination rates that are of concern to MRF operators. Combinations of bulk bins for garbage and 2 wheeled bins for recycling and organics is sometimes used but our concern is that Council Solutions have glossed over the complexity of what they are proposing by submitting what sounds like a basic operational activity. In reality for bulk bins Council Solutions will have to manage:

- Alignment of bulk bin services between the participating councils in a service where some properties are developed to allow for specific bulk bin or wheelie bin storage and access space, i.e., its not easy to change the bins for most locations
- Contamination in bulk bins, especially recycling and organics but also bulk items being thrown in the garbage bin
- Education to apartment blocks from the Adelaide CBD to the suburbs for 4 different systems
- Complaints from residents who have an established and effective waste system when it is changed for the purpose of “alignment”
- Working out disposal costs for each separate Council for truck loads that include material collected from other areas as well
- Disputes between the bulk bin contractor and the waste collection services contractor when services for new or changing properties are taken off one and given to the other

14. Page 9, clause 4.2.4 – Again, the disposal/processing is included. But it may be taken away if Council Solutions’ garbage disposal processing contractor works better. For hard waste though it must go to a transfer/resource recovery centre first before going to landfill to allow for extraction of recyclable materials.

The Hard waste Ancillary Services contract would pose an incredible challenge for Council Solutions. Managing one hard waste contract, often as part of the kerbside collection contract, but sometimes separately, is challenging given the fluctuating demand during the year, placement of illegal items, excess material and managing the lead times for collection. If Council Solutions were to extract the smallest efficiency from administration perhaps, they would need to align services from 4 Councils that are currently completely different:

Council	Name of Service	Collections per year	Amount allowed	Extra collections
Port Adelaide Enfield	Hard Refuse	4	2 cubic metres (described as 2 x 6x4 trailers)	No
Charles Sturt	Hard Waste	2	2 cubic metres (described as 2 x 1 x 1 metres)	No
Adelaide City	Residential Hard Waste (due to large commercial activity in CBD)	2 per dwelling for blocks with 6 dwellings or less 12 per site for blocks with 7 dwellings or more	2 cubic metres	Yes \$70
Marion (provided in house so may not be included)	Hard Rubbish	2	1 cubic metre	No

15. Page 9, clause 4.2.5 – Again, for street litter, disposal and processing is included, which is highly unusual. We would suggest this is being done to avoid the issue where a contractor may collect material from more than 1 Council in a load making accurate invoicing impossible. However, because the public litter has not been grouped with waste collection services (with the same truck on the same collection schedule generally the case) the street litter contractor must now add in disposal to their collection rates, which will of course be increased for the risk of high disposal costs. We doubt also that the Council Solutions contract would allow for increases in disposal gate fees (on top of CPI and the levy).

Regarding smart bins, the data proves that innovation is more readily and successfully introduced into individual or sweet spot contracts rather than larger contracts. As Council Solutions say, they have already been trialled. They are more likely to succeed for the ratepayers of each Council area if the Council has its own contract rather than having to coordinate addition, payment, maintenance, performance and supply with Council Solutions and three other councils.

Proposed Tender Structure

16. Page 10, Clause 4.3.2 – Council Solutions note that evaluation criteria will be established and communicated, which has been standard practice for many years. Council Solutions listing of parties involved sounds reasonable however as articulated and proven in 2016, having Council Solutions manage the tender process does not take work away from assessment staff at each individual Council.

It is very unlikely that a Council tendering for multi million dollar waste services contracts via Council Solutions will only have one Council representative involved in the assessment and decision making process. In fact, as the contract will still have the same value for the Council it will need to be diligent and retain an evaluation team, rather than one Council representative.

As Council Solutions note, the staff on the evaluation team at each Council will still need to submit their individual requirements for the tender specification, approve probity plans, tender schedules, pricing combinations, evaluation criteria, and conditions of contract. The result is that the workload for each Council to prepare and assess the tenders will be the same as the current situation and each Council's Probity Officer will still be obliged to monitor and review the work of the respective Council staff.

Not mentioned to date in our other submissions is the difficulty that individual Councils will have in resolving customer complaints or contract issues. If there is a problem with the operations, instead of the Council going direct to the Contractor, the Council may need to go to Council Solutions, who may need to seek agreement from all other Councils on some issues, which then goes back to the Contractor, who provides a response to Council Solutions who then pass on the response to the Councils. In a state where customer service is being handled as quickly as anywhere in Australia due to the prevalence of contractors taking customer calls, the addition of an extra layer of bureaucracy will result in a clear detriment to ratepayers and individual Councils.

Additionally, the Council Solutions proposal differs greatly to standard practice and the Victorian procurement model where the tender specifications are completed prior to confirming each Councils commitment to the project and prior to requesting the ACCC approval. This provides Councils and subsequently the ACCC with detailed plans to allow each party to make an informed decision regarding the impact of the services being offered. Council Solutions note that 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. As concluded in the 2016 final determination, this phase of joint procurement increases coordination time, adds complexity and ultimately increases costs to Councils and ratepayers

17. Page 11, Clause 4.3.5 – 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 contracts confirms there is an essential link between operational management and contract management. Council Solutions will be responsible for KPIs, data, contract options and pricing reviews, even though they have NO experience in waste contracts. From our members we know that different Councils have different internal reporting, KPIs, systems and processes for data, pricing, contract compliance and day to day political requirements involving waste services. Again, many changes will need to be made to each Councils' waste management processes and compromises made to align with the service that Council Solutions will provide, which is yet to be specified. It is important to note the emphasis that the control of the waste management contract will be largely removed from each Council ("central contract management role" for Council Solutions versus "retain some contract management responsibility" for each Council.) Council Solutions lack of experience, track record on this project to date, poor financial strength, baptism with a massive contract (possibly half a billion dollars with other services) and geographical structure which sets the scene for major contract difficulties is a major concern for WRASA members. These concerns were not addressed by Council Solutions in 2016 and they have not been addressed with this new Application.

18. Page 11, Clause 4.3.5 –Table 2 clearly highlights that each Council must still go through every step of a standard tender process. In addition it makes no mention of the need to negotiate and compromise with other Councils and Council Solutions.

Relevant Provisions of the Competitions and Consumer Act 2010

19. Page 12, Clause 5 – As industry has previously responded to a very similar Council Solutions Application in 2016, resulting in the ACCC undertaking a thorough assessment of the evidence supplied by industry, we believe this revised Application should be assessed for ANY evidence that address the issues raised by the ACCC in their Final Determination denying approval. No references have been made to the issues from the ACCC Final Determination in 2016 and, like 2016, the new Application contains only unsubstantiated claims, most of which are repeats of 2016 Council Solutions submissions. For all of the reasons uncovered during 2016 by a number of parties and further reasons presented by interested parties this year, it is clear that the proposed conduct will NOT provide any public benefit and WILL substantially lessen competition through their cartel like conduct. In fact, net public detriment could be substantial because of the way that Council Solutions have now separated the ancillary services from the other waste collection services.

Rationale for the Proposed Conduct

20. Page 12, Clause 6.1 – As with the 2016 Application, Council Solutions have tried to make the link between the state’s targets and their existence and objectives. On this:

- a. Council Solutions have provided no detailed targets, objectives, plans or contract specifications. Council Solutions state that the Councils have plans that align with the state targets. Therefore, the Councils are already well positioned to address targets, compared with Council Solutions, who have no waste management experience.
- b. Investigation of the previous Application found that waste diversion percentages were poorer for large contracts and Adelaide metro “sweet spot” Councils were already producing nation leading results.
- c. The truth is that the Councils have been performing well already, progressing with new waste diversion initiatives throughout current and previous contracts. The evidence suggests that the Councils have a better chance through “sweet spot” size, flexibility and adaptability to meet targets than they would if they became a part of a Council Solutions controlled contract.
- d. The next major increase in diversion percentages will possibly be made through taking garbage to a waste to energy facility. The 2016 ACCC process found that the tonnes available from a Council Solutions tender were totally insufficient for a waste to energy facility, which would require a state coordinated effort using established regions for transport efficiency. This is further amplified by Council Solutions splitting garbage disposal into possibly 4 different providers (kerbside, bulk bin, hard waste, street litter).

Term of Authorisation

21. Page 13, Clause 7 – The contract term has been revised from Council Solution’s original term of approximately 14 years to 1 x 10 year term over a 13 year period. More problems are created here by the way Council Solutions have split up the waste services. In the processing contracts, terms for recycling or garbage may only be 3 or 4 years however providers of ancillary services must provide prices for garbage(residual), recycling and organics processing or disposal for the 10 year contract term. This is obviously highly risky for contractors and will only add cost to pricing for these services for ratepayers and individual councils.

We reiterate the findings regarding diseconomies of scale that exist in larger contracts, as confirmed by Professor Brian Dollery’s review of the impacts of Council mergers:

*However, due to the effects of these forced amalgamations nearly a quarter of all councils (13 councils) were now found to exhibit diseconomies of scale. The proportion of Queensland residents represented by local governments **operating in the diseconomies of scale segment of the cost curve in 2009/10 had thus increased to 84%**.*

*However, in the disaggregated analysis performed by Drew, Kortt and Dollery (2016) **economies of scale were only observed for expenditure on parks and gardens, which constitute around 5% of ongoing Queensland council expenditure. On the other hand, no scale economies were observed for either road or domestic waste collection and removal expenditure.*** (See attached report p 11).

Documents to be Submitted to the Board

22. Page 14, Clause 8 – Council Solutions proposal states here that ‘Relevant papers have been provided to the ACCC at Annexure 1...’. As a minimum, Council Solutions should provide excerpts from the ‘Relevant papers’ to industry to substantiate the unsupported claims and respond to the concerns raised in the ACCC Final Determination in 2016.

Market Information and Concentration

Market Definition

22. Page 14, Clause 10.1 – Council Solutions note that the Councils are legally obliged to make decisions that benefit their ratepayers. It is therefore imperative that Council Solutions provide substantiation to support their claims of Net Public Benefits and more importantly provide evidence responding to the Net Public Detriment concerns raised in the ACCC’s Final Determination. This will ensure that Council Solutions and neighbouring Councils ratepayers are not disadvantaged by the proposed conduct.

Relevant Industry

23. Page 14, Clause 10.2 – We are unsure why Council Solutions has included C&I source sector in the relevant industry. The Ancillary services are services to households, not businesses. Some special exceptions may exist but we have only been able to identify a few Council properties with bulk bins.

Council Solutions also note that businesses are the beneficiary of the services and noted several industry participants that would “typically tender” but show no history of doing so such as industrial services companies, document collection companies, used oil collection and disposal companies, grease trap cleaning companies. Even bulk bin suppliers would only be a supplier to the successful contractor, rather than tender itself. Building and demolition waste s are collected using larger skips, specifically excluded by Council Solutions earlier in their document.

Market Share

24. Page 16, Clause 10.3. - WRASA notes the following regarding the information provided in this clause:

- a. for bulk bins, their Table 4 notes that the Councils have significantly different bulk bin services at present, which Council Solutions would seek to align, to the detriment of the ratepayers in each Council.
- b. as mentioned previously, bulk bin services are currently performed by contractor trucks that can perform other services, due to Council bulk bin demand only being low. Although we don’t believe the figure is important we note that Council Solutions have shown a low 1.04% of the bulk bin market but compared actual bins with the number of commercial properties. This obviously ignores collection frequency, the number of bulk bins at commercial properties (most use wheelie bins) and much shorter collection and disposal contracts associated with commercial services.

c. With regards to hard waste, using Council Solutions' figures, we believe that it will lessen competition if more than one third of available hard waste work is tendered together, once a decade. For hard waste many contracts are short, perhaps even 1 year. By conglomerating the work as well as extending the contract term by up to 1000% on some existing hard waste tenders, the opportunity to tender regularly over time is significantly reduced.

d. Street litter bins have the same circumstances and similar data to hard waste. The main mistake here though is not including street bin servicing with the household kerbside collections as the bins can be picked up on the same routes as the household bins and disposal can be performed with the household material, removing the difficult complexity in the proposed conduct where the disposal of street bin material is unknown.

Competitive Constraints

25. Page 22, Clause 10.4.1 – As noted in our other submissions, 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. Simply put, the very few larger organisations that would be capable of tendering for the proposed Council Solutions contract would be willing to perform all Adelaide Councils, although perhaps not all at once. For that reason, other Councils are NOT competitors. If Council Solutions awards a contract, that tenderer is able to win other contracts.

In fact, Council Solutions is the entity seeking approval and they have NO competitors. From the start of the process to the end of the contract they have no other entities that are able to compete to manage the work, due to the entity being established by the Councils, and then, with internal management, having a drive of its own to financially succeed.

With regards to waste companies being competitors for the work available, this is more applicable given that the ACCC is trying to determine whether there will be a lessening of competition in the market.

In fact, with the way in which Council Solutions have split the services into different tenders and contracts, and left the disposal and processing unknown and high risk, Councils are likely to get poorer competition for Ancillary Services contracts.

As was proven with factual statistics and other local market information in 2016, larger municipal contracts:

- a. Favour a smaller number of larger suppliers (for example, Brisbane City Council where only 2 companies (both large multinationals) submitted tenders)
- b. Attract fewer tenderers
- c. Establish a foundation for the successful tenderer to dominate surrounding areas in other services

26. Page 23, Clause 10.4.3 – There are many erroneous statements in this clause including:

- “Potential suppliers have strong bargaining power and are able to exert strong influence,” but actually Adelaide has the country's lowest collection prices and is incredibly competitive, including for bulk bins, hard waste and street bins. Councils have achieved great results in hard waste, for example, tendering annually and alone to allow a flexible, efficient and ratepayer focussed service.
- “Ongoing contract management are critical, expensive and time consuming responsibilities for the councils,” with the implication it will be cheaper under Council Solutions with no waste experience, another tier of decision making and more parties to agree on each decision, plus the additional cost of Council Solutions services.
- “Should a council wish to exit a contract (*suggesting poor procurement or management*) the potential interruption to service and cost and effort for the Council can be prohibitive.” We are

certain it would be much worse if the Council wrests control of the contract with Council Solutions due to the added bureaucracy, and the vested interest that Council Solutions has in continuing the contract income. In the case that the service provided to one Council breaches the contract, would the other Councils also have to break the contract or would the one Council need to retain poor service provision?

- “Potential suppliers also have access to a significant pipeline of C&I and other council opportunities.” This issue was dealt with in detail in 2016 and with the exception of Tea Tree Gully, nothing has changed and Council Solutions have provided no evidence to support their subjective comment. If the Council Solutions contract was awarded, only 25% (maximum) of the local market would be available for tender over the next 8 to 10 years and an additional 25-30% of the market (being Council Solution’s) would be tied up for 20 years.

To summarise, focusing on the concept of bargaining power, given the proven fact that Adelaide has some of the lowest kerbside collection rates in the country, at the same time as receiving high quality 3 bins systems and achieving high diversion rates, it is clear that the bargaining power is balanced. The Council Solutions proposal would skew that power through lessening competition and establishing a contract that does not benefit the public residing in each individual Council and create forces which have proven elsewhere to generate higher prices, poorer service quality and lower landfill diversion rates. We note also that Council Solutions will need to seek revised pricing from the winning tenderer once the undefined disposal points, and undefined disposal extent of work are finalised. This puts the Councils and Council Solutions in a poor negotiating position and will totally undermine the tender process as only the successful tenderer for each of bulk bins, hard waste and street bins will have the opportunity to revise its collection prices with knowledge prohibited by probity.

Public Benefit

27. Page 23, Clause 11 – WRASA and our members find the public benefit claims summarised in this clause totally misleading. Council Solutions continue to make statements that ignore the investigations 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.

a. How can Council Solutions assert tender process efficiencies will occur when it was determined by the ACCC from 2016 that the extra level of bureaucracy and the added requirement for individual Councils to negotiate and compromise with other participating Councils will create complexity and increased workloads for Councils. Even with the services separated, they have created a tender structure which individual Councils could have performed more efficiently.

b. We recognise that the ACCC determined that there may be some education related environmental benefits realised from the process, but Council Solutions fail to acknowledge the ACCC’s conclusion that there would be “no likely benefit in respect of waste collection” (See Final Determination 229). Furthermore, we reaffirm our position from investigation of other large contracts that their landfill diversion is generally poorer and their price higher, which means more resources and more emissions. Lower productivity per truck hour comes from the broad geographical spread of the participating Council Solutions Councils, more difficult driver management and overall contract supervision.

c. How can Council Solutions assert lower costs via purchasing power, increased competition and improved service efficiencies when all of the evidence provided from 2016 proved the opposite.

Again, although the ACCC has likely identified this, we reaffirm that Council Solutions have made statements that are absolutely untrue and unsupported by any evidence.

Public Benefits That Will Occur

Tender Process Cost Savings and Efficiencies

28. Page 24, Clause 11.1.1 – Council Solutions assert that by separating out the bulk bins work, all of a sudden companies that don't provide a 3 bin collection system can tender for the work. We can provide the following reasons why bulk bin work has been grouped with other household kerbside collections by Councils around the country:

a. kerbside collection companies are interested in achieving the best price for any bulk bin collection rates they tender and so they seek quotes from other companies that service bulk bins to get the best price/value combination

b. councils prefer to have one contractor servicing all kerbside households, regardless of whether they are a house or apartment. This is beneficial for:

- I. having all GPS and RFID data on one system
- II. having one contractor able to do all customer service
- III. having only one contractor servicing a property with bulk bins (2 wheeled bins are often used for recycling and organics streams)
- IV. Council only having to deal with one kerbside contractor

- V. Only requiring one standard education message for both single and multi households. If a different contractor, either separate contact phone numbers and requirements may exist or Council must do customer service call centre (which we believe that none of the Councils do at present)

c. disposal arrangements can be simplified as much as possible and risk reduced to reduce price.

d. contracts to date allow the collection of bulk bins with existing trucks on a non-exclusive basis. This suits Councils perfectly given the lower demand and changing profile of suburban high density development

e. with a single prime contractor for wheelie bins and bulk bins (same company picking up from houses and apartments), if it is determined that a multi unit dwelling is to switch from wheelie bins to bulk bins, there will be dispute from the wheelie bin contractor on every occasion. Councils appointing a single contract have been afforded flexibility to address customer, developer and property issues without having to discuss revenue increases and decreases to contractors for every instance.

29. Page 25, Clause 11.1.1 – Hard waste – Council Solutions suggest 9 potential suppliers – looking at Council Solutions Annexure 2 list of potential suppliers it is difficult to see anyone that would find it difficult to access the current market. Although it is not clear, it seems as though the other potential suppliers for hard waste are well resourced enough to provide a tender either to Councils or contractors, or be known to contractors for subcontract arrangements.

The truth is that hard waste services have all in recent years transitioned from a council wide “clean up” to an on call service available to ratepayers throughout the year. Councils have successfully incorporated on call services with kerbside collection as the contractors know the suburbs, streets and individual properties, have databases to keep track of allowable collections and have established customer service functions to take calls, emails and online bookings and provide prompt and professional service as part of their customer service for waste collection services for that Council as a whole.

Council Solutions say companies seeking material for resource recovery have been restricted from participating to date. This is absolutely untrue. Hard waste is required by law to go to a transfer station/resource recovery centre prior to landfill and so collectors seek out the best geographical location with the best value solution.

30. Page 26, Clause 11.1.1 – Street litter – as with hard waste, Council Solutions make untrue, unsubstantiated claims. The most efficient solution for street and park litter bins is for the standard kerbside collection trucks to collect the public bins also. Sometimes extra runs are required where the street bin frequency is higher. This is compatible with accurate, low risk and best price disposal and processing solutions. As with bulk bins, Council can access all GPS and RFID data (where applicable) on one system, all customer complaints and bin maintenance work can be managed on one system and only one contractor needs to be managed for side loader truck work. As is the case at present major kerbside collection companies sub contract other companies to perform specialist work where they can do the same work at a lower price or better work for the same price. The companies listed by Council Solutions exist now because of the opportunities in the market but we suggest to the ACCC that there is less chance of them existing in the future under Council Solutions proposed conduct.

We agree that companies should be able to tender for any of the ancillary services alone however we disagree with Council Solutions combining non clustered Councils to the disadvantage of small companies. For example, a street litter company servicing Port Adelaide Enfield may have a poor depot location to service Marion, and therefore losing Port Adelaide Enfield as part of the larger 3 council tender is likely. Especially looking at Council Solutions’ Bitumen Supplies tender where only 1 supplier was awarded all work.

29. Page 27, Clause 11.1.1 – In Summary, Council Solutions note:

- “without the stimulation of competition through the proposed conduct...the same scenario...may arise” – are they referring to the scenario where South Australia leads the nation in efficiency, sustainability and quality of waste services?
- “If each Council each undertake their own separate RFT process..... particularly in bulk bin services, it is unlikely each would receive as many submissions”- WRASA submit that if a defined number of bins at a certain frequency is available in a defined clustered area with defined disposal or processing obligations, to a defined disposal location over a low risk contract period, given that the overwhelming norm is for truck resources to be shared, more submissions for prices would be likely and prices would be better than for a contract that is high risk, spread over a larger area, has uncertain links to the kerbside collection contract, has no defined disposal location, disposal responsibilities are uncertain and is impacted by the unknown requirements of 4 other parties over the contract term.
- “fragmented and inconsistent approaches would not provide the same public benefits that will occur due to the proposed conduct” – we find this assessment of the way in which Councils, the state government and contractors have jointly placed South Australia as the top state in waste management in the country incorrect and ignorant. As we’ve mentioned previously the data shows that innovation is introduced more in small to medium contracts, prices are lowest in sweet spot contracts, service quality, including driver performance is best in sweet spot contracts and waste diversion results are best in small to medium contracts.

30. Page 28, Clause 11.1.2 – 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’s streets, topography and disposal locations 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 scouting, costings and pricing.

Council Solutions highlight that individual Councils would ordinarily have their own service specification, conditions of contract, evaluation criteria and customisations. These are lost to the Council Solutions lowest common denominator specification.

To summarise, as the ACCC’s Final Determination concluded from the evidence provided in 2016, the extra time and financial costs are far outweighed by the time and financial costs of coordinating the collaboration. The application process thus far being just one example of that.

31. Page 31, clause 11.1.2 – combined contract management – Council Solutions suggest that Ancillary Services will get more attention and therefore a higher quality service will be delivered under their proposed conduct. We offer this for the ACCC’s consideration:

- I. service quality is generally driven by collaboration between the people (council officers) that answer to the customers (ratepayers at public bins) and the contractor. This is the quickest way to continuous service improvement – not by including another administrative and authorising layer (Council Solutions) that is trying to manage and coordinate all waste services across 4 Councils.

- II. The inference from Council Solutions is that a poor service currently exists. This could not be further from the truth.
- III. Council Solutions are suggesting that they will manage street litter, for example, better, because it's a separate contract. They have forgotten to consider that at the same time they will be trying to manage up to 10 other new waste contracts with yet unknown specifications.

32. Page 33, clause 11.1.2 – On a similar point, Council Solutions have stated that there will be a clear and significant reduction of unnecessary duplication of work for all parties from the Proposed Conduct without providing any evidence or acknowledging the complexity concerns raised in the 2016 Final Determination. We make the following points:

- a. all of the documents and schedules Council Solutions list to make the workload look substantial already exist for waste contracts at each Council (many use the previous contract that has been refined for the next contract) and already exist in the model contract. By Council Solutions making a new lowest common denominator specification, the Councils will have more work to verify that it suits THEIR OWN Council and ratepayer needs. This is another example of the change to Council Solutions creating more work for Councils and increasing the risk of a vague specification which often occurs when previous contract documents are not used as a base for the new contract.
- b. As mentioned previously each of the documents will still need to be reviewed by each individual Council and the responsibility for making decisions for each Council as part of any Council Solutions process WILL NOT be left with one officer. The single Council representative at a Council Solutions lead meeting will still have to brief and discuss with internal staff at each Council. Correspondence and meeting time will increase, not decrease.
- c. Council Solutions lists the Council staff resources used in a tender. These resources will still be used, perhaps with the exception of the probity officer. 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 bureaucracy, which is believed to be around 1%, or approximately \$5 million for the group of services to be tendered. Although this covers ongoing work also, Council Solutions involvement in the contracts is undoubtedly more expensive than Council's doing the work in house. \$5 million would pay for 1-2 people at each Council to manage the contracts over the 10 years. This happens at present with these staff normally also managing Council waste duties, whether that be education, EPA liaison, internal briefing and reporting, strategic planning for the council, etc. The Council Solutions proposal does not state that these internal Council resources will now be removed, hence increasing wage costs overall. In practice they cannot be, as they will still be required to check Council Solutions correspondence, decisions and importantly, performance for their own Council.

WRASA have previously agreed that the relatively small cost of probity and legal advice could be shared amongst the Councils however now our view is that the complexity of these contracts and the poor structure with which they have been separated and grouped will lead to more legal and probity complexity and no decrease in those respective costs.

As more detail has come out with this new 2018 set of Applications, the more we see that it is a poor idea for ratepayers and individual councils to try to tender all waste services in this way for a group of unclustered Councils by an entity with no experience in waste management.

Environmental Benefits

36. Page 33, Clause 11.1.3 – The ACCC’s Final Determination concluded that there would perhaps be some environmental benefits from the Council Solutions proposed conduct for education, but not for collection. We note that:

a. By Council Solutions referring to the state has targets does not mean they will help to achieve them. In fact evidence from around Australia suggests that larger contracts are less effective at diverting waste from landfill due to their inflexibility over a long contract term and driver anonymity above “sweet spot” size which makes kerbside bin checking and tagging more difficult to effect.

b. Council Solutions hopes to gain efficiencies from a joint education program. They say on page 39 that the “*cross Council nature of collections* “ will see “*participating councils working together to develop targeted educational material.*” This sounds acceptable however looking at the practicality of it we note:

I. Council Solutions will have to develop a complex set of rules and calculations, including assumptions and approximations, to account for the work across Council boundaries “on any single collection run.” This is done at present but workarounds are exponentially simpler when only 1 council is involved and agreed procedure and calculations are completed by the council and contractor.

II. To have any sort of chance of working together on education, the 4 councils will need to overcome:

- a. The fact that some are out for street litter and hard waste
- b. The fact that all councils have very different hard waste services at present
- c. The fact that all councils have very different bulk bin services at present
- d. The fact that all councils have very different street and park litter services
- e. The fact that all councils have very different kerbside services
- f. The fact that all Councils have their own education officers that have developed different education programs

Even if the bins 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 and 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, by far.

37. Page 35 – 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. This also ignores the evidence that South Australia has nation leading waste diversion results that are the result of decades of collaboration between contractors and Councils. There has been no evidence provided that they will be able to do that.

Council Solutions summary of environmental benefits on page 36 is a collection of unsubstantiated and likely to be untrue claims. In fact the evidence suggests their proposed conduct will be poor performing and achieve poor results for ratepayers and individual councils.

Public Benefits That Are Likely to Occur

Lower Costs through Improved Purchasing Power

38. Page 25, Clause 6.2.1 - Again, Council Solutions state that standardisation and aggregation drives lower costs and optimises value for money. All evidence from 2016 proved the opposite was true with a sweet spot being 20,000 to 50,000 households and diseconomies of scale confirmed in larger Councils. Council Solutions are proposing 180,000 households, which the ACCC concluded in the 2016 Final Determination is likely to be highly undesirable to suppliers, not attract significant competition and provide worse results for individual Councils and their ratepayers, as well as neighbouring Councils in the Adelaide metropolitan area. With Ancillary Services in particular, because the current standard is for providers of street public litter bins, bulk bins and hard waste to be able to use the contract trucks for other work (kerbside wheelie bin collections usually specify exclusive truck use), improved purchasing power must be balanced against the risk of the contract. High risk elements of the Council Solutions contract include:

- Long term
- Possible inclusion or exclusion of disposal of garbage, processing of recycling and processing of organics
- Unknown as to the extent of work in the future for recycling and organics especially
- Many services could change as Council Solutions seek to align the varying specifications present in each Council now
- Possible disposal points are described by approximate centroid only
- Unknown interaction and negotiations with other contractors
- Unknown management method and ability to be shown by Council Solutions – how demanding will the contract be on management and administrative resources
- Unknown as to ability to pass on gate fee increases above CPI and levy
- Many specification elements such as truck age, reporting, invoicing, minimum service numbers, etc. still unknown.

39. Page 37, Clause 11.2.1 – Council Solutions note the savings quoted by Georges River Council and Rockdale City Council. We can confirm that prices for recycling has decreased to such an extent that massive savings were experienced over the past decade relative to the decade before. Our members report having contract rates that were halved due to changes in the recycling market over the past 2 contract periods. We repeat, larger contracts beyond the sweet spot do not deliver cheaper rates than would be available within the sweet spot for any given contract. In fact, when comparing like for like, they become more expensive. In addition, these comparisons are often not like for like comparisons with the new contract probably quite different from its predecessor. Therefore equivalent savings could have been achieved if Georges River and Rockdale secured services separately. It should also be noted that Georges River and Rockdale are immediate neighbours with a long border in common and the contract involved a single drop off point for each stream, among other differences from Council Solutions proposed conduct.

40. Pge 37, Clause 11.2.1 – Council Solutions talk about a “new benchmark” to “lift the service standards” and not for profits that will provide greater processing before landfill. As was the case in 2016, Council Solutions continue to make unsubstantiated statements that the evidence proves are misleading.

- “New benchmark” – which will potentially result in a compromise between participating Councils to find the lowest common denominator service for residents.

- “lift the service standards” – 2016 proved that innovation rose from smaller contracts where the risk of failure was less likely and less expensive. The participating councils all have an on call hard waste service, for example, which has been sporadically introduced elsewhere in the country but represents the new direction for hard waste.
- “service improvement outcomes” – large contracts struggle to keep pace with more agile smaller sweet spot contracts and are not known for leading service
- “drive real savings” – a bold statement in a state where value for money is nation leading due to appropriately sized contracts and flexible, agile working relationships between Councils and contractors. The opposite will more likely occur if Council Solutions Application is approved.

Improved Service Efficiency

41. Page 38, Clause 11.2.2 – Council Solutions again attempt to argue that their proposed conduct will allow cross Council border activity that doesn’t exist now. Let us look at this factually instead of hypothetically:

1. Bulk Bins

- I. The work for each Council is likely to be less than 1 truck. Using Table 4 of the Application we estimate that the 424 bulk bins is not a precise number of trucks also. Remembering also that different Councils have different bulk bins being picked up by different trucks (front lift and rear lift). Therefore, if Council Solutions are suggesting exclusive use of a front lift and rear lift truck, they are likely to have spare resources.
- II. At present bulk bin collections are performed by providers that are allowed to use the trucks elsewhere. That means that the trucks have the best chance of being fully utilised providing the Councils with the lowest prices. Our members confirm that bulk bin rates to Councils are extremely competitive.
- III. At present the trucks can cross Council boundaries on the same load and also collect private commercial bins on the same load. Disposal costs are included in the collection rate and are worked out on a transparent and agreed basis. Council Solutions incorrectly state that current vehicles are “bound to adhere” to boundaries. In fact they are sharing resources and collecting bins in the most efficient manner.
- IV. If a Council does have enough bins to justify a run, that can also be performed so that disposal costs are easy to identify and allocate.
- V. Because the councils are not geographically close, it will be inefficient to service more than 1 council without a trip to the disposal facility in between.
- VI. Because 2 disposal facilities will be used for garbage and probably 2 for recycling and organics, efficiencies from cross border work will be minimised.
- VII. To summarise, current collections with disposal inclusive collection rates using trucks that can also service other council or commercial bins is the most inexpensive and low risk manner for collecting bulk bins, developed over many years. The Council Solutions proposal would build inefficiencies into the system for no further gain.

2. Hard Waste

- I. New hard waste services are on call, which requires trucks to be available year round for scheduled collections
- II. All 3 councils participating (Adelaide City, Port Adelaide Enfield and Charles Sturt) have very different current services

- III. Significant tonnes are generated so accurate reporting of disposal is important
- IV. Vehicles are currently being used by contractors in more than 1 council (i.e., on a non exclusive basis) but never for the same load so that accurate disposal invoicing is possible
- V. Once a load is finished, the truck will need to go to the disposal facility, not straight to the next Council
- VI. Current vehicles can be procured with organic growth in services and contracts as they are shared to everyone's benefit
- VII. Under the Council Solutions scenario, additional trucks will be a much greater risk and more disruptive given front lift and rear lift required, different service specifications and the inference being use exclusive to the contract.

3. Street Litter Bins

- I. As with the other services, trucks performing street litter services are often used to collect the general kerbside bins, given they are generally side loaders.
- II. Some councils have different public bin and household bin contractor. In these cases the street litter bin contractor can use their trucks for work outside the contract also.
- III. Both of these solutions provide Council with efficient solutions as they are inexpensive (trucks are fully utilised) and low risk (contractors build their businesses and procure trucks (and possibly lose work) in manageable steps rather than large disruptive changes

Public Detriment

47. Page 28, Clause 7 – 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. Deterring or preventing some potential suppliers from tendering or from submitting competitive bids.
- 2. Reducing competition for the supply of waste services to participating Councils in the longer term.
- 3. Reducing competition for the supply of waste services to non-participating Councils. Although separating the collection tender is positive on the face of it, Council Solutions advise it will still tender for all Councils and all ancillary, collection and disposal and processing services simultaneously, which effectively merges the Applications again. The single joint contract, whilst providing partial reduction in the number of combinations of tender pricing it must assess, also creates a single contract which all Councils must agree to up front and on an ongoing basis. No customisation is available without significant negotiation and/or compromise.

Conclusion

As the Application does not provide any evidence to substantiate their net public benefit assertions, appears to produce more detriment than the 2016 Application and fails to address the concerns raised in the ACCC's Final Determination, we respectfully request the ACCC deny this Application.

Waste and Recycling Association of South Australia Inc.

18 June 2018