

# Application for Authorisation (Non-Merger) Responses

## Parties to the proposed conduct

### 1. Provide details of the applicants for authorisation, including:

#### 1.1. Name, address (registered office), telephone number and ACN

SSROC is an Incorporated Association.

Southern Sydney Region of Councils (SSROC) acting on behalf of the Member Councils listed in Section 2.

Address: Level 7, 1 Lawson Square, Redfern, NSW, 2016

Telephone: 02 8396 3808

ABN: 54 485 603 535

#### 1.2. Contact person's name, position, telephone number and email address

The main contact for this Application:

Name: Cathy Dizon

Position: Procurement and Contracts Manager

Telephone: [REDACTED]

Email: [ssroc@ssroc.nsw.gov.au](mailto:ssroc@ssroc.nsw.gov.au)

and

Name: Monica Kelly

Position: Principal

Organisation: Prevention Partners NSW

Telephone: [REDACTED]

Email: [REDACTED]

#### 1.3. Description of business activities

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of 12 councils spanning Sydney's southern suburbs, eastern suburbs, CBD, and inner west and covering a third of the Greater Sydney's population, comprising 1.8m people. This application is made by 12 Participating Councils within SSROC, as detailed under Paragraph 2.1.

The business activities of SSROC include but are not limited to:

- Providing a forum through which member councils can interact, exchange ideas and work collaboratively to solve regional issues and contribute to the future sustainability of the region.
- Advocating on behalf of the abovementioned region to ensure that the major strategic issues facing the region are addressed by all levels of government. Their

current focus includes environment, transport, procurement, waste, and planning.

- Procurement of services under the NSW Local Government Act that benefit member Councils and contribute to economic, social and environmental sustainability in the region.

#### **1.4. Email address for service of documents in Australia.**

The email address for service of documents is [ssroc@ssroc.nsw.gov.au](mailto:ssroc@ssroc.nsw.gov.au). For the attention of Cathy Dizon, Procurement Manager, and

 for the attention of Monica Kelly.

## **2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:**

### **2.1. Name, address (registered office), telephone number and ABN**

The proposed conduct by SSROC is on behalf of the following:

Bayside Council

Address: 444-446 Princes Highway, Rockdale, NSW 2216 Telephone:

1300 581 299

ABN: 80 690 785 443

Burwood Council

Address: Suite 1, Level 2, Elsie Street, Burwood NSW 2134

Telephone: 02 9911 9911

ABN: 84 362 114 428

Canterbury-Bankstown Council

66 - 72 Rickard Road, Bankstown NSW 2200

Telephone: (02) 9707 9000

ABN 80 690 785 443

City of Canada Bay Council

1A Marlborough Street, Drummoyne NSW 2047

ABN 79 130 029 350

Telephone: (02) 9911 6555

Georges River Council

Macmahon and Dora Street, Hurstville, NSW

ABN: 57 789 014 855

Telephone: 02 9330 6400

Inner West Council

Address: 2- 14 Fisher Street, Petersham, NSW 2049

ABN: 19 488 017 987

Telephone: 02 9392 5000

Randwick City Council

30 Frances Street, Randwick NSW 2031

ABN 77 362 844 121

Telephone: (02) 9093 6000

Strathfield Council

Address: 65 Homebush Road, Strathfield, NSW 2135

ABN: 52 719 940 263

Telephone: 02 9748 9999

City of Sydney Council

Town Hall House, Level 2, 456 Kent Street, Sydney 2000

ABN 22 636 550 790

Telephone: (02) 9265 9333

Sutherland Shire Council

4-20 Eton Street, Sutherland NSW 2232

ABN 52 018 204 808

Telephone: (02) 9710 0333

Waverley Council

55 Spring St, Bondi Junction, NSW 2022

ABN 12 502 583 608

Telephone: (02) 9083 8000

Woollahra Municipal Council

536 New South Head Road, Double Bay NSW 2028

ABN 32 218 483 245

Telephone: 02 9391 7000

## **2.2. A description of business activities**

The Participating Councils are all local government authorities as defined under the Local Government Act (1993) (the 'LG Act'). The LG Act requires Councils, amongst other matters, to maintain the environment which, in the case of this application, relates to the provision, management and operation of waste removal, treatment and disposal services and facilities. Specifically, section 23A of the Act provides examples of a Councils' service functions that includes 'waste removal and disposal'.

## **2.3. Definitions**

SSROC is applying for urgent interim authorisation on behalf of its Member Councils listed in 2.1. The term 'Participating Councils' refers to the councils who intend to enter their contracts with their selected supplier in CRESS 1 or CRESS 2 when their current contract expires. It is too hard to explain and cover complexities of who will be engaged in the tendering process or not at this stage. 'Participating Councils' also refers to those councils which have signed a non-binding Memorandum of Understanding (MOU) with SSROC to scope and build the strategic approach. A second MOU is currently circulated as an 'Intention to Procure.'

## **The proposed conduct**

### **3. Provide details of the proposed conduct, including:**

#### **3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct**

SSROC is seeking to collectively invite tenders, evaluate responses, negotiate contracts and carry a master supply agreement with preferred suppliers on behalf of Participating Councils for the project known as CRESS (Comingled Recycling Sustainability Solutions).

The services for which tenders are invited are for processing of comingled recycling in the yellow-lidded kerbside bin, and disposal of residuals, but not collection of these materials. Tenderers may tender their services to one or more Participating Councils; they will not be required to tender services for all Participating Councils. A panel of contractors/providers will be established, and each Participating Council will decide on who will be their provider for the required recycling processing services based on merit following a thorough evaluation process ensuring transparency, fairness and competition.

CRESS is considered to be 'one tender, with two contracting processes'. The term of authorisation sought for CRESS 1 is 5 years and for CRESS 2 is a maximum of 10 years. This term is sought in order to allow Councils to enter into contract with their chosen Tenderer/s so that there are no service disruptions, and to harmonise Councils' contract expiry dates. CRESS is designed to signal a market demand for more recycling processing capacity needed in Sydney for CRESS 2. Therefore, whilst CRESS 1 is considered to attract the service of the only service provider with capacity, CRESS 2 is considered to attract multiple service providers.

All successful tenderers would be contracted to SSROC through a Master Supply Agreement, and the Councils will contract with one or more of the successful service providers through a Commissioning Agreement that is subject to the SSROC Master Supply Agreement. While the number of suppliers of these types of services is very limited, SSROC intends to engage at least three contractors/providers on the panel so as to both offer choice to the Participating Councils, and healthy competition to the market. The Tender will likely comprise of similar terms and conditions for the processing of comingled kerbside recycling materials collected by each Council's operational staff or collection contractor (whichever is applicable).

The tender specifications have been prepared by the Councils to meet their common and specific needs and objectives with regards to increasing recovery of resources from

comingled kerbside recycling materials. The Councils' aim is to reduce the volume of recyclable materials to landfill. The tender evaluation process will be prepared based on the assessment criteria laid out in the tender documents.

The tender evaluation committee will comprise of representatives of participating Councils and Probitry services. External technical expertise (non-voting) will be used to assist Councils by summarising technical aspects of each tenderer's response. The tender evaluation committee will make recommendations to the participating Councils as to which of the tenderer(s) are the most suitable and qualified to provide the services contained in the tender. A legal firm will prepare the various master and service agreements (contracts) for SSROC and each Participating Councils.

While each Participating Council will contract separately with their selected contractor, each engagement will be governed by the same contractual documents, albeit with potentially slight changes to suit each specific arrangement.

The draft MoU, which forms part of this application, has been entered into by each of the Participating Councils. This step is necessary because SSROC has no statutory power to undertake tendering and contracting on behalf of its members, therefore it needs the members' agreement in order to undertake the tender process on the Participating Councils' behalf. SSROC is not seeking authorisation in relation to the MoU.

In preparation for the tender process, SSROC has developed documents with the input and agreement of its Participating Councils. Those documents include:

- the MoU;
- the Request for Tender;
- the Specification of Services and Term Sheet;
- the Preferred Supplier Master Agreement (PSMA) between SSROC and supplier/s;
- Preferred Supplier Agreement (PSA) contract between councils and supplier; and
- The Procurement Implementation Plan, developed and agreed through workshops.

The above documents were shared between SSROC and the interested Councils on a confidential basis for the purpose of ensuring that no tenderer was able to gain any competitive advantage by accessing them before the other tenderers.

SSROC is not seeking authorisation in relation to the sharing of these documents between it and the Participating Councils.

While each Participating Council will contract separately with their selected contractor, each engagement will be governed by the same contractual documents, albeit with potentially slight changes to suit each arrangement.

In addition to the above, the Participating Councils would share any, and all costs associated with the preparation and management of the tender process.

**3.2. the relevant provisions of the *Competition and Consumer Act 2010 (Cth) (the Act)* to which the proposed conduct would or might apply, ie:**

- Cartel conduct (s. 45AF, 45AG, 45 AJ and 45AK); and
- Misuse of market power (s. 46)

The conduct of a waste service provider that may be invited to enter contracts with SSROC and the Councils, may potentially, in the future breach the above provisions of the Act.

**3.3. the rationale for the proposed conduct**

The rationale for the proposed conduct is that:

- a) Councils are seeking to improve the way the comingled kerbside recycling stream is processed, to find ways to reduce contamination, and to adapt to possible technological, policy and marketplace changes (such as an expanded scope of the NSW Container Deposit Scheme).
- b) By providing an attractive quantum of material (~92,000 TPA) that is collected, the Councils are anticipating that the market can positively respond to the tender objectives. This assumption was borne out at a market sounding exercise conducted through Expression of Interest (EOI) prior to preparing the tender specifications. The EOI received five credible tenderers, with four of them proposing new processing capacity through planned or newly built materials recycling facilities (MRFs) to the Sydney market. Those credible tenderers informed SSROC that being assured that a large volume of recyclable waste will be coming into the market encouraged them to commit to planning approvals and construction of the MRFs. Having more MRFs available means that competition is stimulated.
- c) If tenderers are able to assist with recovery of comingled recyclables (Councils have audit data indicating the quantum of comingled recyclable materials in the stream), then Councils will be able to respond by, over time, amending their collection fleet and practices so that those recoverable materials are collected in a way that optimises their recoverability.
- d) The joint tender as described above has been prepared in accordance with the NSW Local Government Tendering Guidelines and, in line with the NSW Government Waste

and Sustainable Materials Strategy (WaSM) 2041 (NSW EPA, 2021) which includes emphasis on using regional solutions to achieve waste objectives and resource recovery targets. The Request for Tender for the Services will also be issued in accordance with the requirements of the LG Act.

- e) Councils are seeking alignment of their contracts in order to reduce the administrative burden and cost of tendering, and to enhance the appeal of the proposal for proposed tenderers.

**3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.**

The Councils are requesting that tenderers offer a solution that allows continual improvement and innovation in the processing of recyclable materials and any residual materials. This duration is intended to allow the market to amend their working systems. This will also signal and encourage the industry to invest and build infrastructure to increase competition in the current Sydney market.

Furthermore, by securing this term of authorisation, the Councils will be able to dedicate more time to improving their services to better meet the material recovery objectives and trust of residents, the Regional Waste Policy, and NSW Government WaSM strategy.

Therefore, the authorisation being sought is eleven years to 2034/35. By 2035, council contract expiries will be aligned and SSROC and Participating Councils can choose to plan for another recycling processing tender and seek relevant authorisations.

**4. Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.**

- i. Final Draft of Tender;
- ii. Signed MOUs from each Participating Council, template provided;
- iii. Probity Plan developed by SSROC staff and Participating Councils, and signed and approved by probity services; and
- iv. Expression of Interest (EOI) market sounding report.

**5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement;**



**suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.**

Given that the tender evaluation process proposed by the Councils would allow the participating Councils the widest possible selection of tenderers who meet their evaluation criteria, potential tenderers may be directly impacted by the proposed conduct, by having less bargaining power in negotiating tenders with the Councils.

Other Councils who are not members of SSROC may also be positively impacted by this proposed conduct, given that consolidation of waste will make the industry more viable, thereby enabling other Councils to access better pricing and available processing options.

However, it is not anticipated that any other classes of persons would be impacted by the proposed conduct because the tender process will be open to all tenderers who are able to meet the requirements of the Request for Tender (RFT). SSROC held a market sounding exercise at the commencement of this process to ascertain the various capacities of facilities in the Sydney Metro area, and their various strategic intentions with regards to increasing resource recovery from the stream. It is important to note that Councils are not in competition with each other. Rather, councils generally work collegiately for the betterment of their communities.

Furthermore, probity measures will be in place to ensure the tender process is transparent and conducted with the highest level of integrity.

### **Market information and concentration**

**6. Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).**

The services that will be procured are those of processing for kerbside comingled recycling, depositing at transfer stations, compaction, and transport to a processing facility. It will also involve disposal of contamination and non-recyclable materials.

The geographic areas extend from Western Sydney to Eastern Suburbs, and south to Sutherland Shire Local Government Areas. As a region, SSROC's twelve Member Councils contribute an estimated 119,000 tonnes of kerbside comingled recyclable material annually to the recycling industry.

**7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Comingled recycling is expensive to transport as it is not typically compacted in order to avoid glass breakage and contamination. Therefore, SSROC is unlikely to look beyond the metropolitan area for processing capacity.

Downstream or secondary processing of recyclables after materials leave the receival facility represents key pressures for the industry. Constrained domestic demand for recyclables and the rolling introduction of national bans on their export can influence prices and business models. This is why large commercial recyclers have become vertically-integrated over the years by providing in-house secondary processing capacity and using advanced sorting technologies to produce outputs that have more stable markets. Therefore, SSROC has worked with its Participating Councils to consider longer-term contracts that share this risk.

The tender process will be conducted in accordance with the *Local Government Act 1993* and its associated Regulation. This means that all submissions must be received by a set time and date; a list of tenderers will be displayed in SSROC website; the submissions will be assessed against predetermined criteria by a panel of industry experts from across the Participating Councils; following a thorough evaluation, a report will be drafted to explain both the process and the outcome. This report will be issued to the general managers of all Participating Councils for approval and adoption by resolution.

The Evaluation strategy will be conducted in 2 stages. First stage is to shortlist submissions to a maximum of 3 based on the agreed weighted score threshold. The second stage is conduct best and final offers (**BAFO**) wherein price and non-price criteria will be considered, upon which the ultimate decisions will be made.

Councils will share the costs of preparing and running the tender process. While the Councils anticipate that a common supplier may be chosen for multiple Councils following consideration of the tender submissions, this is not a necessary outcome as each Council will retain the power to select a different supplier from that selected by the other Councils.

There may therefore be multiple tenderers who contract with SSROC under the Master Supply Agreement.

Each Council will enter into a separate contract or Commissioning Agreement with the chosen supplier(s). The Commissioning Agreement will contain any special conditions specific to the individual Council (e.g. times to access a facility).

The proposed tender process is intended to enable different Councils to select different tenderers, provided those tenderers meet the evaluation criteria. All Councils are bound by the rules of procurement under the LG Act.

**8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

SSROC estimates that the aggregated low-end tonnages for the whole contract (excluding Non-Participating Councils) between SSROC and recycling processing suppliers would range between 9,893 tonnes per annum (tpa) in 2024/25 (Year 1), to 91,015 tpa in 2030/31 (Year 6). An estimate of value for these service tonnages is approximately \$60/tonne, not including disposal (which is charged at the NSW waste levy, currently \$163/tonne). Therefore, the aggregated estimated low-end value for recycling in Year 1 is \$593,580 per annum, and increases to \$5.4 million per annum in Year 6. SSROC cannot estimate the value of disposal as landfill tonnages from the recycling stream are not public information.

**9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:**

**9.1. existing or potential competitors**

None of the Participating Councils are in competition with each other. The tenderers are in competition with each other, and the public tender offers a regulated and healthy competition forum.

**9.2. the likelihood of entry by new competitors**

Whilst the number of new suppliers may not increase during the duration of contract, the processing capacity may increase due to the expansion or operation of new facilities. This is seen to be a positive result. Non-participating Councils may enter CRESS, though they are not in competition with Participating Councils.

**9.3. any countervailing power of customers and/or suppliers**

None.

**9.4. any other relevant factors.**

Not Applicable.

**Public benefit**

**10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

SSROC and the Participating Councils submit that the following public benefit will be realised:

For the first time in 20 years, the marketplace for kerbside comingled recycling capacity in the Sydney metropolitan area will expand by approximately 200,000 tonnes per annum from three different MRFs. This volume of waste requires councils to be efficient and cost effective in waste management. It also provides the tenderers very appealing and valuable contracts, which should stimulate competition.

Anecdotal evidence from SSROC's Member Councils estimates that the cost of procuring waste processing and/or collection services – typically among the largest and most complex services in the local government plan of works – costs from \$40,000 to \$75,000 per council. These costs include legal, probity, technical, marketing, incidentals, and contingency. On this basis, SSROC estimates it can save public money, anywhere between \$15,000 to \$40,000 per council.

The public benefit of the chosen tender process is great. The factors leading to the risk of breaching the market dominance provisions of the Act are the same factors that lead to delivering the greatest public benefit. What this means is, by grouping together to call for tenders for waste and recycling services, the Member Councils can:

- Pool their resources to make savings during the tender process, rather than each Council Member conduct their own tender;
- Offer the market very attractive contracts, which in turn should result in competitive pricing through economies of scale;
- Provide that tenderers incur less cost due to only preparing a single submission, as opposed to making submissions for each separate council;
- Achieve market interest regardless of the Council Member's size. This is particularly

beneficial to the smaller Council Members; and

- Collectively oversee and steer the governance and probity of the process, thereby avoiding risks of collusive tendering, corruption, and cartel conduct.

Further, having the involvement of multiple Councils means that scrutiny of the contractor's performance in properly recycling the materials is greater. This will result in less landfill, more processed waste, and a more healthy environment for all.

SSROC does not intend to exclude non-Member Councils from the CRESS Process, if they also wish to join. The planned competitive Process may be extended to any Council that wishes to join, which will increase the public benefit.

## **Public detriment (including likely competitive effects)**

**11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

No public detriment is reasonably foreseeable because of the CRESS project, as:

- there is significant population in the Sydney region not covered by the CRESS project, which remains open to seek similar tenders;
- each Council Member is free to choose its own service provider on an individual basis to suit its own community, needs, and functions; and
- if there is a public detriment, it is insignificant and outweighed by the public benefit. The intention of the authorisation is economical and not to limit competition. The collective tendering process will increase competition as the tender is open and suitably qualified service providers of all sizes will be invited to participate.

The cost of doing nothing is significant. Only one new MRF is being built currently (Cleanaway), and two others are bidding for council tonnages one tender at a time. Aggregated demand gives some certainty to the MRF planning, building and operating teams of this local throughput. Without aggregation, the non-Cleanaway recyclers may delay their build, or postpone operationalisation until secure, optimum tonnages are contracted. This would result in a duopoly at best, and a more powerful monopoly at worst. This would be an anti-competitive result, and greatly diminish the long-term security of Member Councils' kerbside bin services and community expectations.

## **Contact details of relevant market participants**

**12. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.**

The proposed conduct involves a public tender whereby various corporations may make submissions. At this stage, it is most likely that the following corporations will make submissions (in no particular order):

- Cleanaway Pty Ltd, Level 4, 441 St Kilda Road, Melbourne VIC 3004.
- ReGroup Pty Ltd, Level 2, 27/20 Bond Street, Sydney NSW 2000.
- Veolia Environmental Services (Australia) Pty Ltd, Level 4, 65 Pirrama Road, Pyrmont NSW 2009.
- Visy Recycling Pty Ltd, Level 11, 2 Southbank Boulevards, Southbank, VIC 3006.

## **Additional information**

**13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.**

Supporting Documents, detailed in the attached Excluding information from the public register for authorisation including;

- CRESS probity plan
- CRESS Request for Tender draft
- CRESS Contract Strategy
- CRESS MOU template

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



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Chief Executive Officer, SSROC

Helen Sloan

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(Print) Name of authorised person

This 24<sup>th</sup> day of October 2023

*Note: If the Applicant is a corporation, state the position occupied by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*