

2 May 2018

David Jones
General Manager, Adjudication
Merger and Authorisation Review Division
Australian Competition & Consumer Commission

Via email: adjudication@acc.gov.au

Dear Mr. Jones,

APPLICATION FOR AUTHORISATION FOR A COLLABORATIVE WASTE PROCESSING SERVICE STREAM TENDER PROCESS

Council Solutions, on behalf of the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (**Participating Councils**), proposes to jointly procure the processing of waste services, comprising the:

- Receiving and processing of Recyclables;
- Receiving and processing of Organics; and
- Receiving and processing or disposal of Residual Waste.

Council Solutions, on behalf of itself and the Participating Councils, seeks authorisation from the Australian Competition & Consumer Commission (**ACCC**) to the extent the conduct proposed in this application may constitute a breach of the provision relating to cartel conduct (s 45AD) and/or anti-competitive agreements (s 45) provisions of the *Competition and Consumer Act 2010* on the grounds there will be a net public benefit and/or there will be no substantial lessening of competition.

Council Solutions wrote to the ACCC on 2 February 2018 to request a fee waiver or reduction for three related applications, the first being AA1000414, the second the application attached and the third being for the Ancillary Service Streams, which is being lodged separately but concurrently with this application.

The ACCC responded on 15 February 2018 offering a partial fee waiver, stating the application fee for Council Solutions' Application will be \$2,500, a copy of the letter confirming this has been attached to this application. As the fee was paid with the lodgement of AA1000414, no further fee has been paid with this application.

Attached is the entire application for authorisation, which includes:

- the declaration by Applicant(s) required by the application form;
- a public version of the application;
- a confidential version of the application, which the Applicants request is not placed on the public register; and
- a copy of the letter from the ACCC granting a partial fee waiver for this application.

Please do not hesitate to contact me if there are any queries regarding this.

Kind Regards,




Taryn Alderdice
Contract Management Officer
Council Solutions

Declaration by Applicant(s)

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).



Signature of authorised person

Chief Executive Officer – Council Solutions

Office held

Oliver Barry

Name of authorised person

This 26th day of April 2018


Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

Declaration by Applicant(s)

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.

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



Signature of authorised person

Chief Executive Officer – City of Adelaide

Office held

Mark Goldstone

Name of authorised person

This 24th day of April 2018

Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

Declaration by Applicant(s)

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.

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



Signature of authorised person

Chief Executive Officer – City of Charles Sturt

Office held

Paul Sutton

Name of authorised person

This 2nd day of May 2018

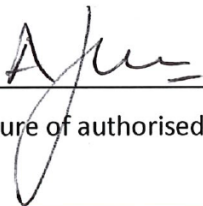
Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

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



Signature of authorised person

Chief Executive Officer – City of Marion

Office held

Adrian Skull

Name of authorised person

This 24th day of April 2018

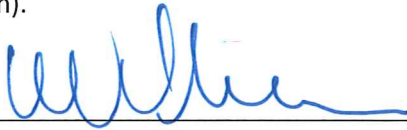
Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

Declaration by Applicant(s)

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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).



Signature of authorised person

Chief Executive Officer – City of Port Adelaide Enfield

Office held

Mark Withers

Name of authorised person

This 27th day of April 2018

Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

1. Executive Summary

The Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (**Participating Councils**) propose to jointly procure:

- Processing of waste services, comprising:
 - Receiving and processing of Recyclables;
 - Receiving and processing of Organics; and
 - Receiving and processing or disposal of Residual Waste.

(together, the **Processing Service Streams**).

Council Solutions Regional Authority (**Council Solutions**) has been directed to act on the Participating Councils' behalf and facilitate the procurement, negotiation and contracting process in relation to the acquisition of the above services.

Council Solutions and the Participating Councils (together, the **Applicants**) seek authorisation from the ACCC in respect of the following proposed conduct:

- Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for the Processing Service Streams, to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework;
- the Participating Councils to enter into separate contracts for each Processing Service Stream, each on a joint and not several basis, with the successful supplier/s; and
- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils.

(together, the **Proposed Conduct**)

Council Solutions submits the Proposed Conduct will result in significant public benefits, including:

- tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;
- environmental benefits from the increased diversion of waste from landfill;
- lower costs for Participating Councils through improved purchasing power;
- maximised competition from the stimulation of the market; and
- infrastructure investment and increased service efficiencies, leading to further environmental benefits

which will contribute to the achievement of State government waste strategies and targets. The Applicants submit there will be no or negligible public detriment in relation to the Proposed Conduct.

The Applicants seek interim authorisation from the ACCC at the time of the draft determination in respect of this application.

The terms defined in these applications are set out in a glossary at the end of the document.

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3. Parties to the Proposed Conduct

This application is lodged by Council Solutions Regional Authority (**Council Solutions**) on behalf of itself and the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (**Participating Councils**), together, the **Applicants**.

3.1. Council Solutions

The necessary details for Council Solutions are as follows:

Name: Council Solutions
Address: GPO Box 2252, Adelaide SA 5001
Telephone: (08) 8203 7351
ABN: 92 168 067 160
Contact Person: Taryn Alderdice, Contract Management Officer
Contact details: (08) 8203 7173, taryn.alderdice@councilsolutions.sa.gov.au

Council Solutions is a Regional Subsidiary established under s43 of the *Local Government Act 1999* (SA) (**LG Act**) by the Constituent Councils in December 2012. Council Solutions' primary purpose is to improve the financial sustainability of the Constituent Councils through collaborative strategic procurement, contract negotiation and management. This service can also be provided to other Councils within South Australia under the Council Solutions charter.¹ During 2016/17 more than \$63.5 million of Council expenditure was undertaken utilising Council Solutions' collaborative contract arrangements.

Council Solutions is owned by the Constituent Councils and governed by the Board of Management (**Board**), formed by the Chief Executive Officers of the six Constituent Councils and an Independent Chair.

3.2. The Participating Councils

The Participating Councils will form an unincorporated joint venture together with Council Solutions for the purpose of undertaking the Proposed Conduct. The necessary details for the Participating Councils are as follows:

Name: City of Adelaide
Address: 25 Pirie Street, Adelaide SA 5000
Telephone: (08) 8203 7203
ABN: 20 903 762 572
Contact Person: Justina Vuksan, Procurement & Contract Management Advisor
Contact details: (08) 8203 7274, j.vuksan@cityofadelaide.com.au

Name: City of Charles Sturt
Address: 72 Woodville Road, Woodville SA 5011
Telephone: (08) 8408 1111
ABN: 42 124 960 161
Contact Person: Loren Mercier, Environmental Management Officer
Contact details: (08) 8408 1576, lmercier@charlessturt.sa.gov.au

¹ The governing charter as gazetted 20 December 2012

Name: City of Marion
Address: 245 Sturt Road, Sturt SA 5047
Telephone: (08) 8375 6600
ABN: 37 372 162 294
Contact Person: Colin Heath, Unit Manager Contracts
Contact details: (08) 8375 6756, colin.heath@marion.sa.gov.au

Name: City of Port Adelaide Enfield
Address: 163 St Vincent Street, Port Adelaide SA 5015
Telephone: (08) 8405 6600
ABN: 68 399 090 894
Contact Person: Stephen Payne, Waste Management Leader
Contact details: (08) 8405 6873, stephen.payne@portenf.sa.gov.au

The Participating Councils are all local government authorities and bodies corporate incorporated under the provisions of the LG Act and are all situated within the Greater Adelaide Region. The specific location of the Participating Councils is depicted in Map 1 below.



The function of each Participating Council is the same, as outlined in section 7 of the LG Act. These functions include:

- providing services and facilities that benefit its area, ratepayers and residents, as well as visitors to its area, including waste collection, control or disposal services or facilities;
- planning for the current and future requirements of its area;
- establishing and supporting organisations and programs that benefit people in its area;
- providing for the well-being of individuals and groups within its community; and
- promoting its area for tourism and business.

4. The Proposed Conduct

4.1. Description of the Proposed Conduct

Authorisation is sought for:

- Council Solutions, on behalf of the Participating Councils, to conduct a collaborative competitive tender process for the Processing Service Streams, to evaluate the responses in collaboration with the Participating Councils and to negotiate on behalf of the Participating Councils the contractual framework;
- the Participating Councils to enter into separate contracts for each Processing Service Stream, each on a joint and not several basis, with the successful supplier/s; and
- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils,

(the **Proposed Conduct**).

4.2. Context to the Proposed Conduct

4.2.1. Waste Management Services Project

The Board directed Council Solutions to investigate the benefits of collaborating for Waste Management Services, including the following services:

- Receiving and processing of Recyclables (**Recyclables Processing**);
- Receiving and processing of Organics (**Organics Processing**); and
- Receiving and processing or disposal of Residual Waste (**Residual Processing**),

(together, the **Processing Service Streams**).

Council Solutions engaged Wright Corporate Strategy to analyse the Waste Management Services required, how they may be met by the market, and where benefits would be achieved through collaboration.

The report provided by Wright Corporate Strategy advised that significant benefits could be achieved by the Participating Councils collaborating in the procurement of Waste Management Services including:

- environmental benefits from diversion of waste from landfill;
- improved purchasing power leading to lower costs for Participating Councils;
- administrative and procurement process efficiency savings for Participating Councils and suppliers; and
- improved incentive for the market to compete.

The report from Wright Corporate Strategy was considered by the Constituent Councils and the City

of Port Adelaide Enfield and, as a result, the Participating Councils agreed to collaborate and commenced the Waste Management Services Project. The Participating Councils directed Council Solutions to take the lead in, and the responsibility for, the Proposed Conduct.

4.2.2. Waste generation

In respect of waste generation there are three main source sectors being:

- i. Municipal Solid Waste (**MSW**)
- ii. Commercial and Industrial (**C&I**)
- iii. Construction and Demolition (**C&D**).

The first source sector, MSW, is “solid waste generated from domestic (household) premises and council activities such as street sweeping, litter and street tree lopping. May also include waste dropped off at recycling centres, transfer stations and construction waste from owner/occupier renovations.”² The wastes to be processed under the Proposed Conduct are wholly within, but do not cover this entire source sector. However, for the purposes of market definition the size of MSW in its entirety will be used. The Proposed Conduct does not include processing waste generated by the C&I and C&D source sectors. However, this waste is predominately managed by the private sector via separate contracts with generators of those waste types, as the Proposed Conduct also intends to do.

According to Green Industries SA’s Recycling Activity Survey, there was a combined total of 4.8 million tonnes of waste dispatched to either landfill or resource recovery sites in 2015/16. The MSW source sector comprised 17.5% of this waste across the state. Across all three source sectors, 76%³ of the waste came from the Adelaide Metropolitan Area.

4.2.3. Recyclables Processing

Recyclable waste includes paper and cardboard, glass, plastics, aluminium and steel (**Recyclables**). Recyclables Processing involves the receipt, screening and sorting for recovery of Recyclables from waste materials collected either through the 3-Bin System from residential premises or from Bulk Bins delivered to Resource Recovery Infrastructure, typically a Materials Recovery Facility (**MRF**). The MRF operator may have associated business arms that use some or all of the recovered Recyclables, or may on-sell the recovered Recyclables for further processing or immediate use in a production process. Recyclables that cannot be sold, or that have a level of contamination that cannot be resolved, may be disposed to landfill, either under a Residual Processing arrangement or through the operator’s own arrangements. Alternatively, they may be sent for further resource recovery via Reprocessing Infrastructure, such as thermal treatment and energy collection.

4.2.4. Organics Processing

Organic waste comprises of four main types:

- garden organics, such as grass clippings, prunings, weeds and leaves;
- food organics, such as food waste and scraps;
- timber, including timber barks, sawdust and wood/timber packaging; and

² Recycling Activity Survey, page 84.

³ *Ibid*, page 24.

- other organics, mainly derived from industry, such as food processing and manufacture, meat rendering and the processing of primary produce.

The main type of organic waste found in the MSW source sector is garden organics, however with all Greater Adelaide Region Councils (other than the City of Onkaparinga) allowing food organics into the organics (or ‘green’) bin where provided, this is a growing component of MSW organic waste (**Organics**). Small amounts of timber and other organics may also be present.

Organics Processing involves the receipt and beneficial processing of Organics. Basic steps include screening and removal of contaminants, aerobic or anaerobic biological processing and manufacture of end products, such as organic fertilisers, soil conditioners and mulches. These end products are then sold to the public or may be bought back by the Participating Councils. Any contaminants that can be recycled (e.g. glass, aluminium cans) can be sent to Resource Recovery or Reprocessing Infrastructure operators, while wastes and contaminants are disposed to landfill, or may be sent for further resource recovery via Reprocessing Infrastructure, such as thermal treatment and energy collection.

4.2.5. Residual Processing

Residual Waste should, in theory, consist only of that waste which cannot be treated through Resource Recovery or Reprocessing Infrastructure, such as soft plastics, absorbent hygiene material (including nappies), clothing and textiles, crockery, polystyrene, etc. However, it may also include Recyclables and Organics where source separation is not followed or available, or contamination is too high to allow for the established processing method. It may come from the 3-Bin System, Bulk Bins, Hard Waste, Street Litter Bins, contaminated Recyclables, contaminated Organics or direct disposal by residents.

Residual Processing involves the receipt of Residual Waste, sorting for resource recovery where possible and disposal of the remaining material into landfill. There may be an option for alternatives to disposal, such as thermal treatment for fuel generation or energy collection, depending on the offers received from the market during the tender process.

4.3. Proposed tender structure

4.3.1. Participating Councils’ requirements

Each Participating Council’s requirements are as outlined in Table 1 below.

Processing Service Streams			
Council	Recyclables Processing	Organics Processing	Residual Processing
City of Adelaide	YES	YES	YES
City of Charles Sturt	YES	YES	YES
City of Marion	YES	YES	NO [#]
City of Port Adelaide Enfield	YES	YES*	YES*

[#] The City of Marion does not require Residual Processing as this is provided by SRWRA.

* These services will not be required by the City of Port Adelaide Enfield until existing arrangements have ended in 2024 at which time the City of Port Adelaide Enfield will confirm its requirements.

Table 1: Processing Service Stream requirements of the Participating Councils

4.3.2. Joint Request for Tender

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

The RFT will be open to all suitably qualified and experienced suppliers. Council Solutions will make the RFT available on the SA Tenders & Contracts website, which provides easy-to-use access to all publicly available bidding opportunities. A competitive RFT advertised on SA Tenders & Contracts is the primary method by which South Australian Councils procure Waste Management Services.

Council Solutions has engaged an independent probity advisor for the Waste Management Services Project to oversee the procurement process to support fair and equitable treatment of tenderers.

4.3.3. Evaluation of RFT

Prior to the release of the RFT to the market, an evaluation plan will be established detailing the evaluation process and criteria against which all tenders will be assessed. The evaluation criteria will be outlined in the RFT documentation so potential suppliers can ensure their responses account for these criteria. Evaluation of the responses will be undertaken by an evaluation team comprising:

- Council Solutions (who will manage the evaluation process and assess criteria such as insurances, licenses, accreditations and referees);
- Waste Management Services Project team members, being a representative from each Participating Council (who will assess criteria such as service proposal, quality, environmental goals, organisation capability, efficiency and innovation); and
- Expert advisors (who will provide specialist advice as required by the evaluation team, for example legal advice may be sought regarding contractual matters).

Prices will be sought from potential suppliers for each Processing Service Stream to receive the materials from one of two 'centroids', transfer to the successful suppliers' nominated facility (where applicable) and process accordingly. By nominating two centroid locations greater equity is provided by reducing the advantage or disadvantage to any potential supplier by virtue of the location of their processing facility relative to the collection contractor's depots and the Participating Councils.

The centroids have been selected based on the general locations of current Resource Recovery Infrastructure in South Australia in relation to the Participating Councils. The centroids will be respectively located at within a 5km radius from (a) the intersection of Cormack Road and Hanson Road Wingfield and (b) the intersection of Anzac Highway and Morphett Road Camden Park.

For Residual Processing, a sole supplier will be awarded a contract to service all Participating Councils requiring the service (refer Table 1 above). It will not be open for Participating Councils to select different suppliers.

For Recyclables Processing and Organics Processing, the Participating Councils reserve the right to appoint up to two suppliers for each Service Stream. Accordingly, the potential suppliers will provide

a price in their tender based on set brackets of tonnes.⁴ In the event that two suppliers are appointed for Recyclables Processing and/or Organics Processing, each supplier will be awarded receipt from one centroid only and the services for discrete Participating Council/s for the entire contract operating term. It will not be open for Participating Councils to select different suppliers outside of the framework established.

As a result of the RFT and evaluation, contracts will be awarded that will be joint and not several contracts between the Participating Councils and the successful supplier/s. The contracts will be based on the LGA Model Contract, which is the industry standard in South Australia for contracts between Councils and waste service providers.

Council Solutions is aware many existing waste contracts, particularly for Recyclables Processing, are being re-negotiated due to the current volatility in the recyclables commodity markets. Council Solutions will ensure that appropriate commercial and risk sharing mechanisms (e.g. rise and fall provisions) are utilised in the contracts so that fair, sustainable and transparent contract arrangements are established with suppliers.

4.3.4. Ongoing administration of contracts

As part of the ongoing contract management and administration Council Solutions and representatives from each Participating Council will participate in joint decisions, activities (including the sharing of information) and discussions which may include, but are not limited to:

- contamination management;
- community education; and
- assessment of supplier performance.

A central contract management role will also be established which will take the lead and be primarily responsible for:

- pricing reviews;
- exercising contract options;
- reviewing and verifying data; and
- measurement and monitoring of Key Performance Indicators.

Each Participating Council will retain some contract management responsibility, such as:

- internal reporting; and
- providing the initial customer interface to their communities.

4.3.5. Roles and responsibilities

For clarity, the roles and responsibilities of the Applicants in the Waste Management Services Project are summarised as follows:

⁴ The final tonne brackets will be confirmed in the tender documentation, but are likely to be 0-25,000 tonnes per annum, 25,000-40,000 tonnes per annum and 40,000+ tonnes per annum for both the Recyclables Processing and Organics Processing Service Streams.

Party	Role
Council Solutions	<p>Primary responsibility for:</p> <ul style="list-style-type: none"> • Design and implementation of the procurement process, including all administrative tasks and ensuring good governance and probity; • Coordination and consolidation of specifications, characteristics, objectives and preferences of each Participating Council; • Leading the tender evaluation, including undertaking negotiations and administrative tasks associated with contract award; and • Contract management tasks (refer paragraph 11.1.1 “combined contract management” below).
Participating Councils	<p>Contribute through:</p> <ul style="list-style-type: none"> • Endorsement of procurement process; • Supply of characteristics, objectives and preferences for consolidation by Council Solutions; • Providing a team member for the evaluation team; • Evaluating tenders received against designated criteria; • Endorsement of recommendation report; and • Designated contract management tasks (refer paragraph 11.1.1 “combined contract management” below).

Table 2: Roles and responsibilities of the Applicants under the Proposed Conduct

5. Relevant Provisions of the *Competition and Consumer Act 2010*

The Applicants seek authorisation to the extent the Proposed Conduct may constitute a breach of the provisions of the *Competition and Consumer Act 2010* outlined below:

- cartel conduct (s 45AD)
- anti-competitive agreements (s 45)

on the following grounds:

- there will be a net public benefit; and/or
- there will be no substantial lessening of competition as a result of the Proposed Conduct.

6. Rationale for the Proposed Conduct

6.1. Policy context

Waste management within South Australia is the subject of governmental policies and strategic plans which has resulted in two key strategic targets for local governments to contribute towards:

1. Target 67 of South Australia’s Strategic Plan: *Reduce waste to landfill by 35% by 2020 (baseline: 2002-03); Milestone of 30% by 2017/18.*⁵
2. South Australia’s Waste Strategy 2015-2020: *Metropolitan Municipal Solid Waste diversion of*

⁵ SA Strategic Plan, 2011

70% by 2020.⁶

In establishing the [SA Waste Strategy](#) Green Industries SA has noted:

Waste management is a considerable proportion of local council operating budgets, including infrastructure investment and operation, delivery, contract management, education and awareness. ... Increased collaboration and optimisation of resources and effort, made possible through more consistency across municipalities, and improvements in technology, could bring substantial savings.⁷

Furthermore, the Participating Councils have strategic waste management plans, environmental plans and carbon neutral targets that align with and build on these State strategies and targets.⁸

These policies and targets, however, are also playing out against a backdrop of pushes for reduced spending by Councils, the potential for rate capping legislation to be introduced by the new Liberal State government and the increasing requirement to do ‘more with less’.

The need to extract maximum efficiency and best Value for Money, combined with the strategy and policy context outlined above have led the Participating Councils to collaborate and play their part in contributing to the achievement of these targets.

6.2. Aim of the Waste Management Services Project

The Waste Management Services Project seeks to establish strategic partnerships that provide the best possible benefits and service to the Participating Councils’ communities. These strategic partnerships will provide Value for Money, improve waste management, and deliver waste reduction outcomes and environmental sustainability across multiple municipalities to achieve environmental and economic benefits for our communities.

The aims and goals of the Waste Management Services Project and the associated procurement strategy were developed in consultation with Wright Corporate Strategy. These were discussed during consultation undertaken with the market, including with prominent suppliers, small businesses and industry associations, government bodies and advocates, including the South Australian Commissioner for Small Business and Business SA, and government environmental organisations including Green Industries SA and the Environmental Protection Agency.

This consultation confirmed alignment of the aims and goals of the Proposed Conduct with the strategic policy approach to waste management within South Australia and also provided input that allowed for the refinement of the procurement strategy.

7. Term of Authorisation

Council Solutions requests authorisation be granted until **June 30, 2031**. This period comprises:

- Publication of the RFT for the Processing Service Streams in 2018;
- Tender open period of six to eight weeks;
- Tender evaluation period that allows for contracts to be awarded in 2019;

⁶ [SA Waste Strategy](#)

⁷ Ibid, pages 15-16.

⁸ See, e.g., *Carbon Neutral Strategy 2015-2025, Adelaide, South Australia*, City of Adelaide, *Living Green to 2020: Environmental Plan*, City of Charles Sturt, *Waste Management Strategy 2017-2022 (Draft)*, City of Port Adelaide Enfield.

- Nine to 12 months to allow for existing contracts to conclude and, where applicable, new infrastructure to be commissioned;
- Contract commencement from May 2020, with a rolling start across the Participating Councils as current contractual arrangements conclude, with all contracts commenced by May 2021;⁹ and
- A proposed maximum 10-year contract operating term.

The proposed operating term for each of the Processing Service Streams consists of an initial term and an option/s to extend. The initial term and extension period offered for each Processing Service Stream will vary as outlined in Table 3 below.

Service Stream	Initial Term	Extension Option	Reasoning
Recyclables Processing	3 years	2 x 3 years, plus 1 additional year	There is currently instability in the recyclables commodity markets that makes the returns on the sale of recovered material by the processors unpredictable. Accordingly, a shorter initial term is planned, supported by extension options which provides greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall).
Organics Processing	7 years	3 years	The Organics Processing market is very stable in South Australia, with three well established processors providing this service and a stable market for the sale of the processed material.
Residual Processing	4 years	2 x 3 years	Disposal of waste processes are rapidly evolving and moving away from simply 'burying in a hole'. There are emerging and new technology options and a shorter first term provides greater flexibility.

Table 3: Processing Service Streams proposed operating terms

A total contract term of 10 years is in line with the generally accepted term for processing contracts.

Each Participating Council will have the benefit of a potential full 10-year contract; that is, where a Participating Council commences service provision in May 2020, the end of its maximum contract period will be April 2030. Correspondingly, where a Participating Council commences service provision in May 2021, the end of its maximum contract period will be April 2031. The exception to this will be the City of Port Adelaide Enfield which will not require Organics Processing or Residual Processing until the conclusion of their existing contract in June 2024, and would therefore have a maximum contract period up to 2031.

8. Documents Submitted to the Board

Relevant papers have been provided to the ACCC at Annexure 1 of this submission. However as these are not public documents or are commercial in confidence they are *CONFIDENTIAL* and are not published on the public register.

⁹ Other than the City of Port Adelaide Enfield for Organics Processing and Residual Processing who would not commence before June 2024.

9. Persons, or Classes of Persons, who may be Impacted

The suppliers of the Processing Service Streams and industry associations have been identified in Annexure 2.

10. Market Information and Concentration

10.1. Market definition

As outlined above in paragraph 3, the Applicants consist entirely of bodies incorporated by the LG Act, four as Councils and one as a Regional Subsidiary. The Participating Councils' functions and powers specifically include the requirement to provide "waste collection, control or disposal services" that "benefit its area, its ratepayers and residents and visitors to its area".¹⁰ Each Participating Council is responsible to its own ratepayers and elected members and does not overlap in the provision of services.

10.2. Relevant industry

The relevant industry for the Proposed Conduct is the provision of the Processing Service Streams in the Greater Adelaide Region (refer Map 1) for all source sectors.

In consideration of the relevant industry for the Processing Service Streams, the traditional method of processing is discussed, however through the Proposed Conduct the Applicants are encouraging alternative solutions that may increase resource recovery, as outlined further in paragraph 11.2.3.

The supply chain for the waste processing industry comprises:

- The contractor or Regional Subsidiary engaged to collect Recyclables, Organics and Residual Waste from MSW, C&I and C&D sources in the Greater Adelaide Region;
- The manufacturers of Resource Recovery, Reprocessing and/or Disposal Infrastructure designed to accept and, where applicable, beneficially process the waste received;
- Where applicable, the transporter engaged to collect the waste from a centroid and transfer to a processing facility;
- The supplier or Regional Subsidiary engaged to process and/or dispose of the waste received;
- Businesses who accept sorted material for further treatment; and
- Where applicable, purchasers of processed materials which may be:
 - Businesses who will treat the materials further;
 - Manufacturers generating new products from processed material; and/or
 - Retailers of processed materials, including energy.

All the Councils in the Greater Adelaide Region outsource the Processing Service Streams, either to private sector processors or to Regional Subsidiaries that operate Resource Recovery and/or Disposal Infrastructure. In total, out of the 27 Greater Adelaide Region Councils:

- 24 use private sector suppliers or a Regional Subsidiary under a commercial arrangement to deliver Recyclables Processing;
- 24 use private sector suppliers to deliver Organics Processing; and
- 15 use private sector suppliers to deliver Residual Processing

¹⁰ LGA Act, s7(6).

for ratepayers.

Under the Proposed Conduct, the Applicants will determine the successful supplier/s for each Processing Service Stream and will appoint the contractor responsible for collecting and delivering the waste. The appointment of the manufacturers of Resource Recovery, Reprocessing and/or Disposal Infrastructure, transporter for transfer from a centroid to the processing facility (where required), and any applicable purchasers of processed material will be at the discretion of the successful supplier/s.

For both Recyclables and Organics Processing, where these services are outsourced, the business model that informs pricing may take several forms depending on the risk appetite of the parties to the contract. The current, traditional business model for these Service Streams is based on the risk transfer and/or sharing options as set out at Table 4 below.

Risk	Risk Allocation		
	Council 100%	Contractor 100%	Shared
Expected tonnes			✓
Expected composition		✓	
Acceptable contamination			✓
Excess contamination	✓		
Cost of processing			✓
Resource recovery outcomes		✓	
Sale of, including price for, recovered material		✓	
Disposal of contaminated and non-recoverable residuals		✓	

Table 4: Traditional risk allocation for Recyclables and Organics Processing

Notwithstanding this traditional allocation of risk, Council Solutions will be inviting the market to propose alternative risk allocation arrangements that can be demonstrated to deliver mutual benefit and sustainability over the contract term. This was discussed with the market as part of the consultation undertaken outlined in paragraph 6.2.

Payment for both these Processing Service Streams can vary between payment from the Participating Councils to the successful supplier/s, reflecting the cost of processing, payment from the successful supplier/s to the Participating Councils, reflecting the value of the recovered material, or a cost neutral scenario that balances both elements. Where there are particularly unstable market conditions, it may be that over the term of a contract the direction of payment may switch between these positions and back. The procurement process will encourage proposals that allow for flexibility in uncertain markets.

In regards to Residual Processing, the Participating Councils pay the supplier for the services provided, including the application of the solid waste levy (**SWL**). In the event of a transition to beneficial processing prior to disposal as a result of the Proposed Conduct, the Participating Councils may see the cost reduced in line with the sale of recovered product, such as energy or other recoverable commodities, and the reduction or elimination of the SWL.

Both Recyclables and Organics Processing are recognised to be specialist areas of business involving capital investment in Resource Recovery or Reprocessing Infrastructure that is rarely custom-built to suit one contract only. Both types of business are coupled with integrated businesses and/or market connections that can facilitate the on-sale of treated Recyclables or Organics. Therefore, the market segment for the potential suppliers who might typically tender for Recyclables or Organics Processing

will draw primarily from industry participants which are currently providing Waste Management Services involving Recyclables Processing from MSW, C&I and C&D source sectors or Organics Processing from MSW and C&I source sectors.

Traditionally, disposal of Residual Waste has been to landfill and tenderers with direct access to landfill disposal capacity have dominated supply of this service, who may also be engaged in other waste management services, such as:

- kerbside collection services for local councils – residual waste, recyclables and organic wastes;
- commercial collection services for business waste – residual waste, recyclables, organic wastes, building and demolition wastes, liquid wastes, hazardous wastes;
- recycling of material; and
- beneficial sorting and processing of materials.

However with changing regulations, changes in markets (particularly the energy market) and changes in the availability of landfill disposal capacity, there is increasing appetite from Councils and consideration from the market for beneficial processing of Residual Waste with only un-recoverable wastes being disposed to landfill.

Whilst the new technology and/or Reprocessing Infrastructure required for these systems may not be ready for implementation from commencement of service provision to the Participating Councils, suppliers may propose landfill disposal initially and a transition to beneficial processing once the Reprocessing Infrastructure is established. The procurement process will encourage and support this.

The scope of service delivery under the Proposed Conduct is similar to what is delivered across all the Greater Adelaide Region Councils.

10.3. Market share

Council Solutions notes in previous determinations regarding local governments conducting joint tenders for processing services the ACCC has not considered it necessary to specifically define the relevant market and has identified broad areas of competition that may be affected by the proposed conduct rather than precisely identifying particular markets.

As noted in paragraph 10.1 above, a Participating Council provides services to its own area only and does not compete with other Councils in the supply of services. Under the Proposed Conduct, the Participating Councils are seeking to source three separate services, where each service is near identical between the Participating Councils, being the provision of Recyclables Processing, the provision of Organics Processing and the provision of Residual Processing.

In assessing the market share for the Processing Service Streams Council Solutions has used tonnes of waste as reported in the [Recycling Activity Survey](#), as made publicly available in the annual reports of various Regional Subsidiaries and Greater Adelaide Region Councils, and as provided by the Participating Councils and other Greater Adelaide Region Councils to Council Solutions. A breakdown of the Participating Councils' tonnes for each Processing Service Stream can be found in Annexure 3.

10.3.1. Recyclables Processing

Provision of Recyclables Processing is widespread across the Greater Adelaide Region, with over 1.7 million tonnes of Recyclables processed for resource recovery in 2015-16. With a combined volume of just over 30,000 tonnes per annum, the Participating Councils represent approximately 1.8% of the Recyclable tonnes available.

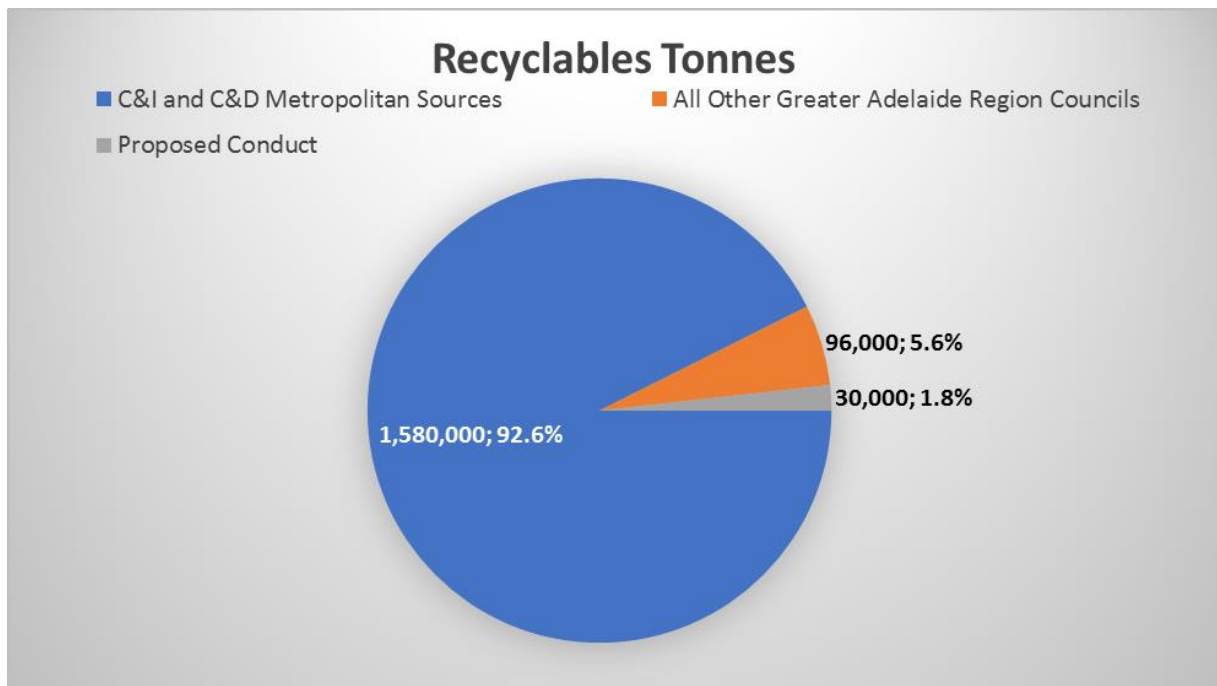


Chart 1: Market share of the Participating Councils by Recyclables tonnes

Indeed, the Greater Adelaide Region Councils, including the Participating Councils, represent only 7.4% of the entire Recyclables tonnes processed for resource recovery. Over time, the market share of all the Greater Adelaide Region Councils' may increase as diversion is increased, however Council Solutions submits this is likely to be negligible in the market.

10.3.2. Organics Processing

Provision of Organics Processing is significant across the Greater Adelaide Region, with nearly 600,000 tonnes of Organics processed for resource recovery in 2015-16. With a combined volume of approximately 47,700 tonnes per annum, the Participating Councils represent 8% of the Organics tonnes available.

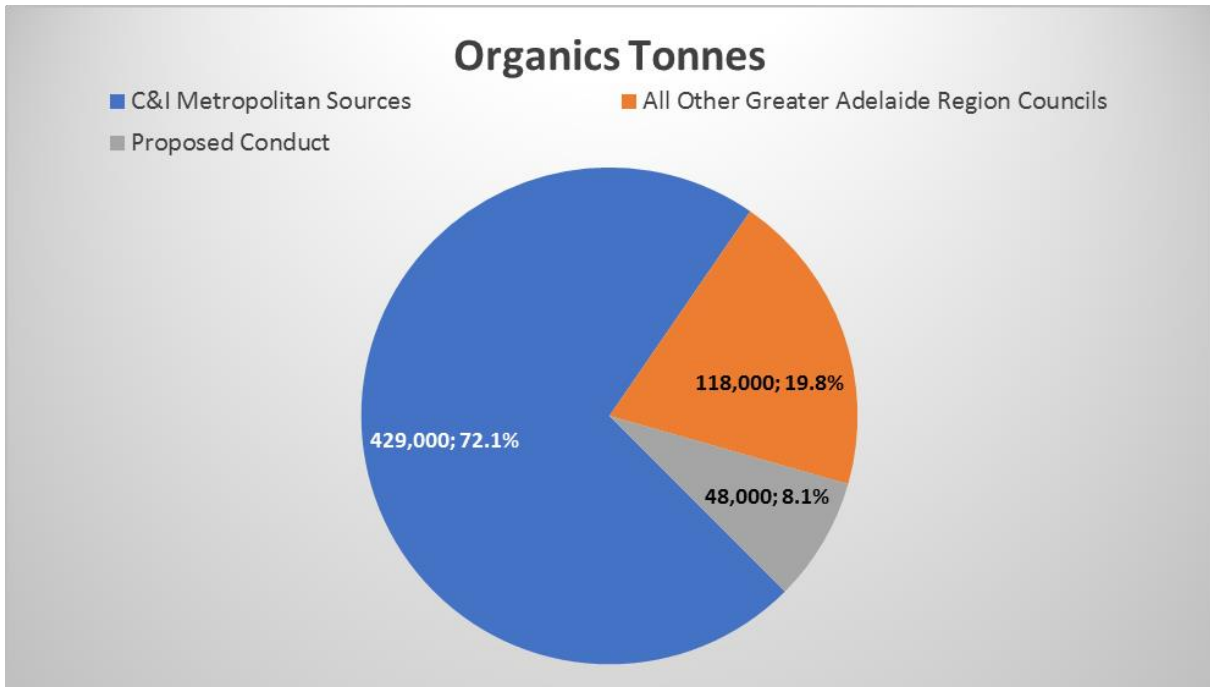


Chart 2: Market share of the Participating Councils by Organics tonnes

The Greater Adelaide Region Councils represent 28% of the Organics tonnes processed for resource recovery.

The market for Organics can fluctuate year on year – wet winters lead to greater garden organic matter which may increase the market share of all Greater Adelaide Region Councils just as, conversely, the market share may decrease as a result of significant dry weather. Council Solutions submits this fluctuation would not significantly alter the market composition.

10.3.3. Residual Processing

Residual Processing is still an essential requirement with over 700,000 tonnes of Residual Waste sent to landfill in 2015-16. The Participating Councils have a combined volume of just over 53,400 tonnes per annum, representing approximately 7.5% of the Residual Waste tonnes available.

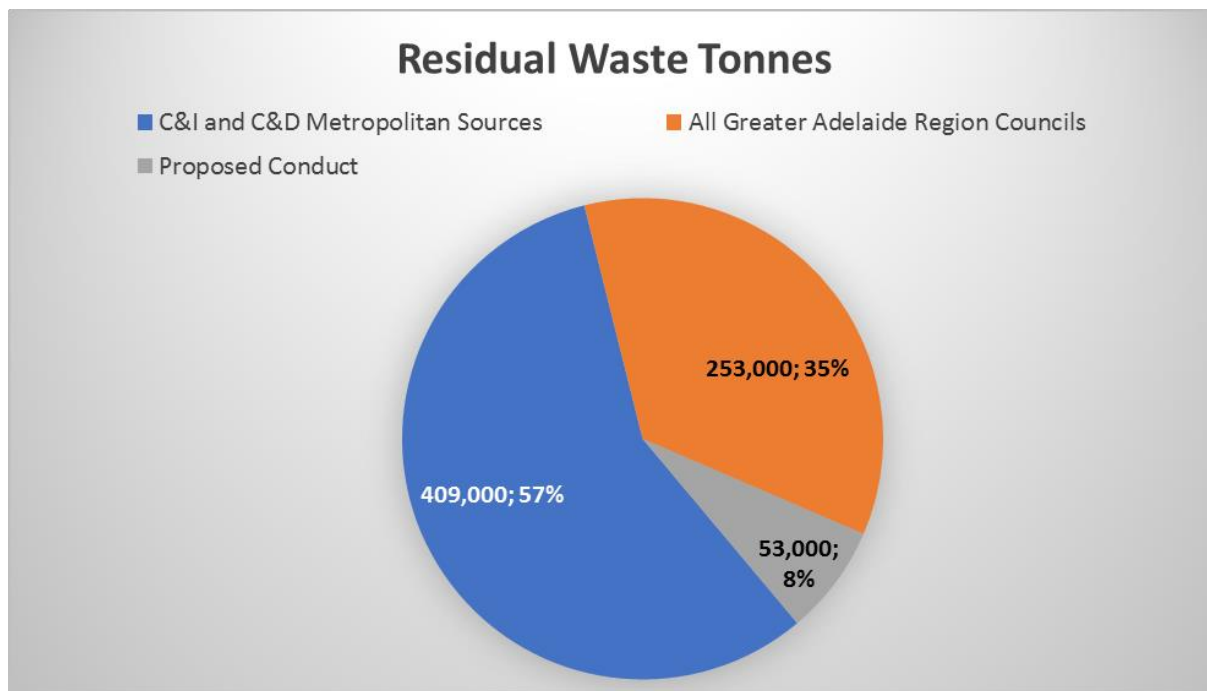


Chart 3: Market share of the Participating Councils by Residual Waste tonnes

The Greater Adelaide Region Councils represent 43% of the market for Residual Waste, however the whole market is likely to decrease over time through greater diversion and resource recovery. The supply of landfill space will also decrease gradually over time – the SA Waste Strategy includes a constraint on the development of new landfills to service metropolitan Adelaide as a driver to change and reducing disposal tonnages.¹¹ In addition, beneficial processing of Residual Waste is likely to increase over time, bringing new suppliers and new technology from existing suppliers into this new market segment. Accordingly, Council Solutions submits the market composition will likely change due to these factors, irrespective of the Proposed Conduct.

10.4. Competitive constraints

10.4.1. Existing or potential competitors

To the extent that the Participating Councils are competitors in the acquisition of the Processing Service Streams, the existing competitors are the 23 other Greater Adelaide Region Councils who provide the market with opportunities to tender for one or more of their Processing Service Stream requirements.

¹¹ Page 34.

10.4.2. Likelihood of entry by new competitors

There is unlikely to be any entry of new competitors to the Participating Councils in the procurement of the Processing Service Streams unless any member of a Regional Subsidiary that currently directly provides a Processing Service Stream decided to procure that Service Stream outside of the Regional Subsidiary.

10.4.3. Countervailing power of customers and/or suppliers

When an individual Greater Adelaide Region Council tenders for the Processing Service Streams the potential suppliers have significant bargaining power and are able to exert strong influence over the service delivery offering and pricing to the Council.

Waste Management Services is a fundamental part of a Council's service to its community; an oft-quoted maxim is that local government is for "rubbish, roads and rates". It is a high profile service and a critical service offering as there is an increasing community expectation and legislated responsibility for Councils to understand what happens to the waste materials, particularly the Recyclables and Organics, after collection. As such, tender processes and ongoing contract management are critical, expensive and time consuming responsibilities for the Councils.

Once in contract with a supplier, should a Council wish to exit a contract (for example in the event of poor service delivery), the potential interruption to service provision and the cost and effort for the Council to re-tender and appoint a new contractor can be prohibitive. This provides significant leverage for the contractor. In contrast, suppliers have reportedly invoked contract clauses to stop collecting or accepting Recyclables from a number of Victorian Councils in response to the recent ban on 24 types of solid waste being imported by China.¹² This has left these Councils in limbo, with the State government needing to contribute \$13 million to assist in the short term.¹³

The potential suppliers of the Processing Service Streams also have access to a significant pipeline of C&I, C&D and other Council opportunities. Aside from the four Participating Councils, there are up to an additional 23 Greater Adelaide Region Councils requiring the Processing Service Streams that periodically procure one or more of the services from the market via public, open tender processes.

In addition, for the majority of potential suppliers in the market for the Processing Service Streams, the provision of these services is only one element of the potential supplier's business, with many providing multiple other services (such as C&I or 3-Bin System collection, manufacturing and selling products from recovered material, or generating and selling fuel).

By undertaking a single RFT process and consolidating service requirements the bargaining power of the Participating Councils is increased under the Proposed Conduct, creating a more even balance of power between the Participating Councils and potential suppliers in the market. Accordingly, the Proposed Conduct will deliver benefits and outcomes to the Participating Councils that they would not achieve by themselves. In addition, a more even balance of power will also be conducive to a

¹² Hair, Jonathan, "Local councils in Victoria to get \$13m for recycling collection to help deal with China waste ban", *ABC News Online*, Friday 23 February 2018; Lenaghan, Peter and Oaten, James, "Waste collection suspended in two Victorian shires as recycling crisis deepens", *ABC News Online*, Wednesday 7 March 2018; Ritchie, Mike, "China's National Sword is cutting deep in the recycling sector", *Inside Waste*, February/March 2018, page 17.

¹³ Hair, Jonathan, "Local councils in Victoria to get \$13m for recycling collection to help deal with China waste ban", *ABC News Online*, Friday 23 February 2018.

collaborative relationship during contract delivery and management.

11. Public Benefit

Council Solutions submits the Proposed Conduct will result in significant public benefits, including:

- (a) tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;
- (b) environmental benefits from the increased diversion of waste from landfill;
- (c) lower costs for Participating Councils through improved purchasing power;
- (d) maximised competition from the stimulation of the market; and
- (e) infrastructure investment and increased service efficiencies, leading to further environmental benefits.

A number of these benefits are certain to arise from the Proposed Conduct and will have positive efficiency, cost of service and environmental impacts. This section allocates the public benefits of the Proposed Conduct into two categories:

- Public benefits that will occur. These benefits will result from elements that are under the direct control of the Participating Councils, leading to:
 - Tender process efficiencies;
 - Environmental benefits; and
- Public benefits that are likely to occur. These benefits are likely to occur as they are dependent on the offers received in the tender process, and should lead to:
 - Lower costs via improved purchasing power and processing efficiency;
 - Maximised competition; and
 - Further environmental benefits.

Council Solutions submits these benefits will have an impact beyond just the Participating Councils' communities and the combined impact will be significant.

11.1. Public benefits that will occur

11.1.1. Tender process cost savings and efficiencies

The tendering process for Councils in South Australia is a detailed process that involves considerable time and effort from resources across the Council organisation. For high profile and value procurements, such as for Waste Management Services, this cost in time and effort is significant. It has been found that almost 70% of Councils' costs in waste management are incurred through contracted services.¹⁴ In addition, significant Council resourcing is required to support effective contract management to ensure the best service for the community.

For potential suppliers also, the time and resources involved in responding to waste management services tender processes is similarly intensive. Each Council tender process would ordinarily have its

¹⁴ Jeff Tate, *Report: Transitioning the roles of Local Government in Waste Management, for the Local Government Association of South Australia*, August 2014, page 26.

own service specification, contract conditions, evaluation criteria, and information to be submitted by suppliers. Where multiple Councils approach the market separately over a short period of time, the time and effort from the supply market to review and analyse the differences and customise and complete separate tender submissions is compounded.

If the Proposed Conduct did not occur each Participating Council would undertake their own RFT processes for the Processing Service Streams and, potentially, each Service Stream individually. That is, between four and 11 separate tender processes could occur.

There are a number of ways in which the Proposed Conduct will lead to tender process and contract management efficiencies, including reducing the replication of resources and work, tender process administration cost reduction, combined expert advice and combined contract management.

Reduction of replication of resources and work

A procurement for Waste Management Services requires the resources of a number of personnel within an individual Council. This includes:

- A procurement lead, generally from the procurement team;
- At least one subject matter expert, generally from the environmental team;
- A tender evaluation panel of typically at least three people (inclusive of the above); and
- Any other personnel required by the procurement policy to be involved or oversee a procurement of this size (e.g. executive team).

As outlined above in paragraph 4.3.3, under the Proposed Conduct the personnel requirements for each Participating Council for the evaluation of the RFT responses will be reduced to one representative, with Council Solutions being the procurement lead for the RFT process.

Likewise, the negotiation during an individual tender process would generally be undertaken by at least two members of a Council. Under the Proposed Conduct Council Solutions will lead a single coordinated negotiation for each Processing Service Stream. Where a Council runs individual tender processes for each Processing Service Stream, the resource requirement is further reduced under the Proposed Conduct by the streamlined single RFT.

There are many documents that need to be developed for a tender process, including:

- Specification
- Tender return schedules
- Probity plan
- Tender evaluation criteria and scoresheets
- Recommendation report
- RFT conditions of tendering
- Conditions of contract
- Tender evaluation plan
- Negotiation plan

The Proposed Conduct will significantly reduce this replication of work for the Participating Councils. Instead of the four Participating Councils each developing their own sets of these documents, Council Solutions will create one set. Whilst some of the documents, for example the specification, will need to be separate for each Processing Service Stream, a number will be used in the RFT for all three Processing Service Streams, reducing replication further. The Participating Councils will contribute to and endorse these documents, however the centralisation of the development and drafting will reduce the time and resources to be contributed by the Participating Councils.

The tender return schedules, (that is, the information potential suppliers need to submit with their RFT response) are substantial in nature and again similar between tender processes. These will typically include:

- Current Commitments
- Customer Service
- Depot Details
- Financial Capacity
- Insurances
- Licenses and Accreditations
- Management, Staff and Technical Resources
- Review and Compliance to Conditions of Contract
- Previous Experience
- Quality Management
- Referees
- Subcontractors
- Vehicles, Plants & Equipment
- Workplace Health & Safety
- Service Cost / Price information

In every procurement process, each of these schedules needs to be checked, updated and/or tailored to the specific RFT requirements by potential suppliers, even where a potential supplier is responding to multiple tenders from the same Council. In a collaborative procurement, there is a reduction in time, cost and resources for the potential suppliers in responding to one tender with consistent return schedules. Under the Proposed Conduct, a potential supplier will only need to complete the tender return schedules once and only for the Processing Service Streams they elect to tender for, reducing the replication further.

Additionally, as pricing will be requested in preset tonnage brackets, potential suppliers will not need to prepare individual pricing for each Participating Council, further streamlining the effort required.

Council Solutions submits this demonstrates a clear and significant reduction of unnecessary duplication of work for all parties due to the Proposed Conduct.

Reduced tender process administration costs

The time and cost involved in managing and undertaking the administrative tasks for a Waste Management Services procurement for an individual Council is also significant. These include:

- Prior to market approach:
 - drafting all tender documents (as outlined above)
 - seeking and gaining endorsement from relevant stakeholders in Council
 - coordination of, preparing for, leading and documenting project team meetings
 - coordinating all specialist advice
- Releasing the tender and during the open period:
 - ensuring documents are loaded correctly onto the SA Tenders & Contract website
 - coordination and presentation at industry briefing session/s
 - responding to any clarifications and queries
- Once the tender closes:
 - opening the tenders
 - review of compliance
 - distributing documentation to the tender evaluation team
 - coordinating any specialist evaluators
 - requesting and following up any clarifications necessary
 - coordinating, leading and documenting tender evaluation meetings
 - establishing, leading and documenting negotiations
 - preparing recommendation reports
- Contract award:
 - advising successful and non-successful suppliers
 - conducting any post tender supplier debriefs
 - drafting contracts

- coordinating execution of contracts, including distribution when complete
- preparing contract management documentation

These tasks do not take into account the ongoing contract administration which is discussed further below.

These activities are required for every tender process undertaken. Where a Council undertakes a separate tender process for each Processing Service Stream, the time and costs associated with these activities becomes substantial.

Under the Proposed Conduct, these tasks will be undertaken centrally by Council Solutions in one RFT process. Whilst the Participating Councils still have a role in reviewing and endorsing the documentation, their individual contribution to the administration and documentation of the RFT is substantially reduced.

The administrative and documentation work undertaken by potential suppliers will similarly be reduced. Rather than downloading, assessing and potentially responding to up to four tenders for each Processing Service Stream, potential suppliers will only need to respond to one request for tender. Where a potential supplier is capable and elects to tender for more than one Processing Service Stream, this will further reduce the administrative and documentation work undertaken by the potential supplier.

There is a clear benefit to both the Participating Councils and potential suppliers in the combining of administrative tasks that occurs with collaborative procurement and will occur under the Proposed Conduct.

Combined technical, legal and probity advice

The technical, legal and probity advice requirements for the Waste Management Services Project will be sourced and managed through Council Solutions, with the costs shared by the Participating Councils. This will include advice on the specifications, the contract and ensuring the procurement process is consistent with the highest standards of probity.

Without the Proposed Conduct, each Participating Council would be required to engage and pay for their own technical, legal and probity advice, and the advice required would likely be similar for each Participating Council.

In addition, Council Solutions is undertaking a review of the LGA Model Contract, particularly as it applies to Recyclables Processing, to ensure the appropriate commercial and risk sharing mechanisms (e.g. rise and fall provisions) support fair, sustainable and transparent contract arrangements in light of the current volatility in the market. This includes liaising with interstate groups, such as the Melbourne Resource Recovery Group, who are currently renegotiating contract terms with their processor. This work will also benefit other South Australian Councils who may adapt these changes for their own services, thereby increasing the quality overall of the contract documentation used. Without the Proposed Conduct, each Council will need to undertake these reviews and negotiations independently, replicating work and potentially leading to inconsistencies across the sector.

Combined contract management

Contract management is critical to a successful collaborative relationship between the contracting parties. The contract management tasks for a Processing Service Stream contract can generally be split into four categories:

Council Solutions Led

Participating Council Led

INNOVATION, VALUE ADDS AND MAXIMISING PERFORMANCE	COMPLIANCE	CONFORMANCE	OPERATIONAL
<p>This is an area that is often overlooked by parties to a contract but is where the greatest value and establishment of a collaborative working relationship lies. Tasks include benefits realisation reporting, data analysis and feedback on trends, education, identification of changes that can improve efficiency and regular meetings. Council Solutions will be responsible for these activities.</p>	<p>The tasks here are limited to compliance to contracted requirements such as safety inductions, license and accreditation updates, insurance certificates and any other objective compliance measure. Council Solutions will undertake these tasks, with the Participating Councils contributing as required (e.g. local site inductions).</p>	<p>This ensures both parties are adhering to their responsibilities under the contract. Activities include monitoring of Key Performance Indicators, data review and verification, price reviews, documentation management and communication to stakeholders. Where appropriate, it will also include the negotiation for any extensions. Council Solutions will undertake these tasks on behalf of the Participating Councils</p>	<p>This is limited in a Processing Service Stream contract and may involve communicating and working with the successful supplier on issues such as quarantining garden waste from fruit fly outbreak areas, or working with the successful supplier on special deliveries of material. It will also include the initial customer interface. These tasks will continue to be undertaken by each Participating Council with support from Council Solutions.</p>

Collaborative Tasks

Individual Tasks

Without the Proposed Conduct, all the contract management tasks would need to be undertaken at each Participating Council by either procurement personnel, who will often also be running multiple new procurements across several categories, or by environmental officers who are also working on broader Council policy and engagement. As such, time and resource constraints within Councils can result in less time being available for the strategic aspects of contract management (such as Innovation, Value Adds and Maximising Performance). If contracts are not well managed over their lives, the gains made in the establishment of the contracts can easily evaporate.¹⁵ With designated contract management provided by Council Solutions across the Participating Councils, not only will duplicated effort associated with Compliance and Conformance tasks be removed, but a dedicated focus will also be applied to extracting the maximum value and performance from the contract for each and all Participating Councils. Where a single successful supplier is appointed across two or more Processing Service Streams, the replicated effort will be further reduced.

The importance of data collection and sharing as part of the contract management should not be underestimated. Currently there is not consistently defined, collected and allocated data across the

¹⁵ Jeff Tate, *Report: Transitioning the roles of Local Government in Waste Management, for the Local Government Association of South Australia*, August 2014, page 27.

Participating Councils. Good data will assist in policy and strategy development, monitoring and evaluation of service delivery, and investment decisions. It will also allow for measuring the effectiveness of the education programs and community attitudes and behaviours.¹⁶

Summary of tender process efficiencies

The reduction of unnecessary replication of work and tender process administration effort as outlined above will lead to efficiency savings for both the Participating Councils and potential suppliers.

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

These tender process efficiencies and the resultant cost savings for both Councils and potential suppliers have been acknowledged by the ACCC previously in applications for authorisation for collaborative procurements for the Processing Service Streams¹⁷ and Council Solutions submits they will occur as a direct result of the Proposed Conduct.

11.1.2. Environmental Benefits

There are a number of ways in which the Proposed Conduct will lead to environmental benefits, including increased resource recovery, reduction of waste to landfill and contributing to the achievement of State government waste strategies and targets.

Combined educational materials to manage contamination

Currently each Participating Council has its own independently generated educational material available for their community. There is some consistency across this material, however there are also differences in presentation, content and detail. Where there is confusion amongst residents, they will typically either take the easiest option, which is to dispose to landfill, or try to 'do the right thing' and inadvertently contaminate the recyclable waste or organic waste streams. This contamination can reduce the value of the recovered resources or, where contamination is too high, result in loads of

¹⁶ Ibid, page 28.

¹⁷ See, e.g., A91087 Central Queensland Local Government Association, Determination 13 August 2008, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013, A91387 Bathurst Regional Council & Ors, Determination 12 February 2014, A91352 Burwood Council & Ors, Determination 19 June 2013, A91401 The Northern Sydney Regional Organisation of Councils, Determination 9 April 2014, A91489 & A91490 Metropolitan Waste and Resource Recovery Group & Ors, Determination 9 July 2015, A91408 Clarence City Council & Hobart City Council, Determination 4 June 2014, A91518 Southern Metropolitan Regional Councils & Ors, Determination 23 March 2016, A91289 Hunter Resource Recovery, Determination 12 April 2012, A91431 Cities of Wanneroo, Joondalup and Swan, Determination 6 August 2014, A90886 The Council of Camden and others (MACROC), Determination 16 December 2004.

potentially recoverable wastes being abandoned to landfill. One household can significantly degrade the Recyclables or Organics collected for a whole street.

Contamination in Recyclables has a significant impact on how the recovered material can subsequently be on-sold and treated which has compounded the instability in this market. Education to reduce contamination at kerbside is one of a few strategic options that the Participating Councils and the successful supplier/s can implement to improve this situation. A consistent message that is widely reinforced across a group of Councils can help reduce contamination, increase diversion of waste and improve the quality of recovered resources. With the focus on collaboration as a result of the Waste Management Services Project, the Participating Councils will work together to develop targeted educational material relevant to key issues, for example combined messaging across the Participating Councils where diversion is lowest, translated consistent messaging for those from non-English speaking backgrounds or targeted contamination reduction drives.

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

Education is about more than just using the correct bin or avoiding contamination of the resource recovery process, however. The key to waste management is to avoid and minimise the production of waste altogether in the first instance and there is a legislated hierarchy to the priority for the management of waste,¹⁸ which can be illustrated as follows:

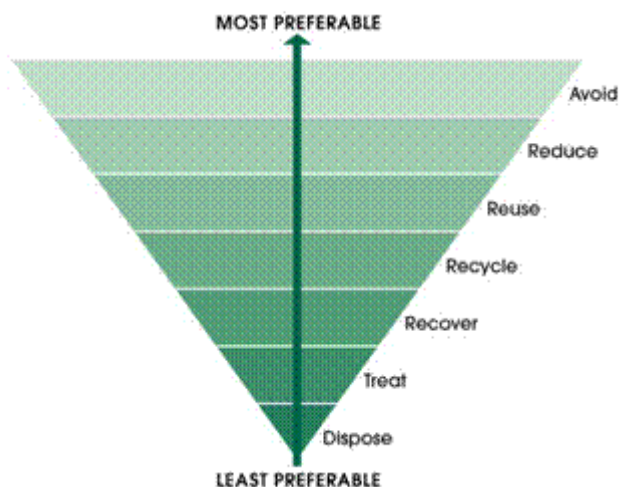


Illustration 1: Waste management hierarchy, EPA SA

As stated in the Recycling Activity Survey, South Australia has the second highest overall per capita waste generation rate in Australia at 2,810kg per person per year.¹⁹ This is an **increase** of 4.8% from the 2014-15 financial year²⁰ which was set as the baseline target in the SA Waste Strategy of >5% reduction in waste generation per capita by 2020.²¹ Notwithstanding this high per capita waste generation rate, South Australia can rightly be proud of the highest diversion rate across Australia at

¹⁸ *Environment Protection Act 1993* (SA), s 4B.

¹⁹ Page 35.

²⁰ *Ibid*, page 33.

²¹ Page 27.

81.5%.²²

However more is needed, both to increase diversion in the Metropolitan MSW source sector from 58.2%²³ to the target of 70% (which was the milestone for 2015 and target for 2020) and to reduce the generation of waste overall.

Education is one of the key tools available to governments at all levels to increase diversion and reduce generation. In the report *Transitioning the roles of Local Government in Waste Management*²⁴ a number of reports were reviewed and it was found “public education and behaviour change have a role in a holistic approach to waste management.”²⁵ Public education and behavior were found to be “part of the answer in ... educating the community (residents, businesses, schools) about Council services and facilities and to recycle and reuse, reducing contamination of the recycling and green organics streams.”²⁶ The need for leadership, central programs and additional or more targeted programs were also noted.²⁷ Consistency in messaging is critical to reinforcing the outcomes desired and the Proposed Conduct will include a consistent educative approach.

Contributing to the achievement of State government waste strategies and targets

In the [SA Waste Strategy](#), Green Industries SA states “based on council ... audit data it would appear that if most recyclables remaining in the waste stream and food organics were collected, 70% [diversion] is achievable but will need continued consistent effort on education and food waste systems roll out.”²⁸

As stated in the [SA Waste Strategy](#) and detailed in the [Recycling Activity Survey](#), the road to achieving both diversion goals outlined in paragraph 6.1 has begun to slip, potentially through complacency. The following is an excerpt from the Foreword to the [SA Waste Strategy](#) by the then Minister for Sustainability, Environment and Conservation and Minister for Climate Change, Ian Hunter.

South Australians have demonstrated a strong commitment to waste reduction and recycling. As a result, our recycling rates are among the world’s best. However, if we are truly serious about creating a sustainable environment for future generations we must now turn to more complex problems.

These include waste reduction because, while we have become better at disposing of and reusing our waste, we continue to generate too much of it. We must also continue to identify innovative solutions and new responses to waste management.

...

*More so than ever before, the success and implementation of our Waste Strategy will require a shared responsibility across government, business, industry and the community.*²⁹

As part of the Proposed Conduct the Participating Councils will work together to share responsibility to contribute to the successful implementation of the State government’s waste strategy and

²² [Recycling Activity Survey](#), page 35.

²³ *Ibid*, page 34.

²⁴ Jeff Tate for Local Government Association of South Australia, August 2014.

²⁵ *Ibid*, page 27.

²⁶ *Ibid*.

²⁷ *Ibid*.

²⁸ Page 26.

²⁹ Page 4.

achievement of its goals, particularly the reduction of landfill by 35% and a 70% diversion of Metropolitan MSW, both by 2020. Councils must work collaboratively with suppliers to meet these targets, which the Proposed Conduct will also facilitate.

Summary of environmental benefits

Where contamination is managed, diversion will be increased and there will be less waste going to landfill. Additionally, it will aid in the stabilisation of an uncertain market. Combining educational materials will not only make messaging more consistent, it will also be more strategic and affordable through sharing the preparation, delivery and costs. Reduced waste to landfill through less contamination is a public benefit that has been recognised by the ACCC previously as arising as a result of local governments collaborating for the Processing Service Streams.³⁰

Continuing ‘as is’ will not achieve the diversion required under the State government goals and targets. It requires consistent education, reinforcement and working with all stakeholders. Where the public awareness of strategic policy goals is increased and combined with the message to avoid the generation of waste where possible in the first instance, there will be less waste created and less waste going to landfill. The ACCC has previously acknowledged the impetus on Councils to meet State government targets and strategy and the public benefits that will arise from doing so.³¹

Council Solutions submits these public benefits will occur as a result of the Proposed Conduct and, in improving environmental outcomes, will be of a benefit to the whole of South Australia.

11.2. Public benefits that are likely to occur

11.2.1. Lower costs through improved purchasing power and processing efficiency

Lower costs through improved purchasing power

There are some fundamental tenets of collaborative procurement or ‘bulk buying’ that guide buyers to join together where possible. Aggregating service volumes and providing assurance of business over time via multi-year contracts drives lower costs and optimal Value for Money. Such opportunities are highly desirable to suppliers and attract significant competition.

This has been evidenced where local government has collaborated for the procurement of Processing Service Streams. In applying for authorisation in applications A91143 & A91167, the Southern Sydney Regional Organisation of Councils (**SSROC**) outlined public benefits they had realised through previous collaborative procurements for Waste Management Services. These included:

- An attractive contract price, a more cost effective and efficient service, and significant funding for education in A90861 for the processing of Recyclables; and

³⁰ See, e.g., A91087 Central Queensland Local Government Association, Determination 13 August 2008, A91289 Hunter Resource Recovery, Determination 12 April 2012, A91246 Central Queensland Local Government Association & Ors, Determination 13 January 2011.

³¹ See, e.g., A91087 Central Queensland Local Government Association, Determination 13 August 2008, A91246 Central Queensland Local Government Association & Ors, Determination 13 January 2011, A30231 Northern Sydney Regional Organisation of Councils, Determination 16 December 2004, A91143 & A91167 Southern Sydney Regional Organisation of Councils, Determination 22 October 2009, A90926 Southern Sydney Organisation of Councils (SSROC), Determination 13 April 2005, A91180 Hurstville City Council & Ors, Determination 6 November 2009.

- Equitable contract arrangements, security of supply of the service, and certainty of price that has provided an estimated saving of 15%, which is in the region of many millions of dollars, in A90926 for the disposal of Residual Waste.³²

Whilst not claiming the situation prior to authorisation for SSROC for those procurements is identical to the current circumstances for the Participating Councils, it is clear evidence that collaboration can drive savings through improved purchasing power.

Under the Proposed Conduct, the combined volume of the Participating Councils in each Processing Service Stream will provide a platform for the Participating Councils to seek to unlock additional service improvements and cost savings from potential suppliers. These service improvements can establish a new 'benchmark' and lift the service standards and outcomes across all Councils.

For Recyclables Processing, security and sustainability of supply of the service while the market is in flux will be a key focus (noting in Victoria Councils are reported to have been affected by collectors refusing to collect, and processors refusing to process, Recyclables from their community).³³ When the market has settled, the improved purchasing power may provide a lever to transition payment for processing for the Participating Councils from a cost of processing to a cost neutral or cost positive outcome, reflective of an increase in value of the recovered material, as discussed at paragraph 10.2 above. Additionally or alternatively, the improved purchasing power may result in improved services through the acceptance of further material.

Organics Processing could see a cooperative solution to encourage food collection or better pricing as the value of the Organics collected increases through greater diversion.

Lower costs through processing efficiency

Maximising the efficient utilisation of processing facilities and infrastructure enables the provision of the most cost effective service to the Participating Councils.

The Resource Recovery Infrastructure required to process Recyclables is expensive, with a capital cost of approximately \$10 million for an average processing capacity of 50,000 tonnes per annum.³⁴ Depending on the technology used, composting Reprocessing Infrastructure to process the same tonnes per annum of Organics comes at a capital cost of \$3 million to \$10 million.³⁵ Where a facility is operating below maximum efficiency the cost of operating increases, which is generally passed on to customers.

The volumes represented by the Participating Councils are substantial, with both the Recyclables Processing tonnes, at 30,200, and Organics Processing tonnes, starting at 31,500 and potentially increasing to 47,700, represent a significant percentage of the nominated average processing capacity for the infrastructure currently in use.³⁶ The Proposed Conduct will provide potential suppliers with access to a significant pipeline of aggregated volumes underpinned by a contract commitment of up

³² A91143 & A91167 Southern Sydney Regional Organisation of Councils, application submitted 18 June 2009, page 7.

³³ See, e.g., Hair, Jonathan, "Local councils in Victoria to get \$13m for recycling collection to help deal with China waste ban", *ABC News Online*, Friday 23 February 2018; Lenaghan, Peter and Oaten, James, "Waste collection suspended in two Victorian shires as recycling crisis deepens", *ABC News Online*, Wednesday 7 March 2018; Ritchie, Mike, "China's National Sword is cutting deep in the recycling sector", *Inside Waste*, February/March 2018, page 17.

³⁴ *Infrastructure Plan*, pages 132-3.

³⁵ *Ibid.* Open windrow is \$3 million, covered tunnel is \$10 million

³⁶ *Ibid.*, page 132. Open windrow is currently utilised in the market for Organics Processing.

to 10 years. This represents an opportunity to maximise as far as possible the efficient use of expensive infrastructure.

In respect of Residual Processing, the Reprocessing Infrastructure required to provide a beneficial processing solution, prior to the disposal of the un-recoverable waste to landfill, is similarly a high capital cost, between \$30 million and \$100 million, and requires a greater level of feedstock to realise its average processing capacity of 100,000 tonnes per annum.³⁷ As such, it is unlikely a purpose-built facility will be proposed as a response to this procurement process. However, a potential supplier may consider the Participating Councils' Residual Waste of 28,300 tonnes per annum, and potentially increasing to 53,400 tonnes per annum, to be an opportunity to build their in-feed supply and improve the economics of their operation. This would provide a public benefit to the existing customers as efficiencies increase and operating costs reduce, and a gate price for the Participating Councils that supports the use of alternative technology.

Without the Proposed Conduct, the potential suppliers would be unlikely to pass on any efficiency savings gained through individual accumulation of tonnes due to both the additional costs associated with sourcing the tonnes through multiple tender processes as well as the fragmentation of the time those tonnes would be contracted for.

Summary of lower costs through improved purchasing power and processing efficiency

Improved purchasing power for the Participating Councils when purchasing collaboratively can drive real savings and enhanced service outcomes for their communities. Previous authorisations granted by the ACCC for collaborative procurements of the Processing Service Streams have acknowledged the public benefit of increased purchasing power.³⁸

Where infrastructure is used efficiently, there is reduced operational risk for the supplier which can be reflected in the pricing offered to customers. Previous authorisations granted by the ACCC for the Processing Service Streams to be procured through a collaborative arrangement have acknowledged the lower cost through reduced operational risk that can result as a public benefit.³⁹

11.2.2. Maximised competition

Dynamic competition in any market is a good thing. The opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Processing Service Streams to compete and submit tenders when the RFT is called.

³⁷ Ibid, pages 132-3. Mechanical biological treatment is \$30 million, Energy-from-waste thermal treatment is \$100 million.

³⁸ See, e.g., A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013, A91352 Burwood Council & Ors, Determination 19 June 2013.

³⁹ See, e.g., A91352 Burwood Council & Ors, Determination 19 June 2013, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013, A91401 The Northern Sydney Regional Organisation of Councils, Determination 9 April 2014, A91352 Burwood Council & Ors, Determination 19 June 2013, A91489 & A91490 Metropolitan Waste and Resource Recovery Group & Ors, Determination 9 July 2015, A91408 Clarence City Council & Hobart City Council, Determination 4 June 2014, A91431 Cities of Wanneroo, Joondalup and Swan, Determination 6 August 2014, A91414 & A91415 Metropolitan Waste Management Group, Determination 18 June 2014, A91445 & A91446 Metropolitan Waste Management Group & Ors, Determination 24 September 2014, A91483 Maitland City Council & Ors, Determination 9 July 2015.

Recyclables Processing

There are currently at least three potential suppliers in the market who have the capacity to provide Recyclables Processing to the Participating Councils. These suppliers are currently providing services to at least 7% of the total market for Recyclables across the MSW, C&I and C&D source sectors in the Metropolitan Adelaide Area and the MSW source sector for the Regional Adelaide Councils.

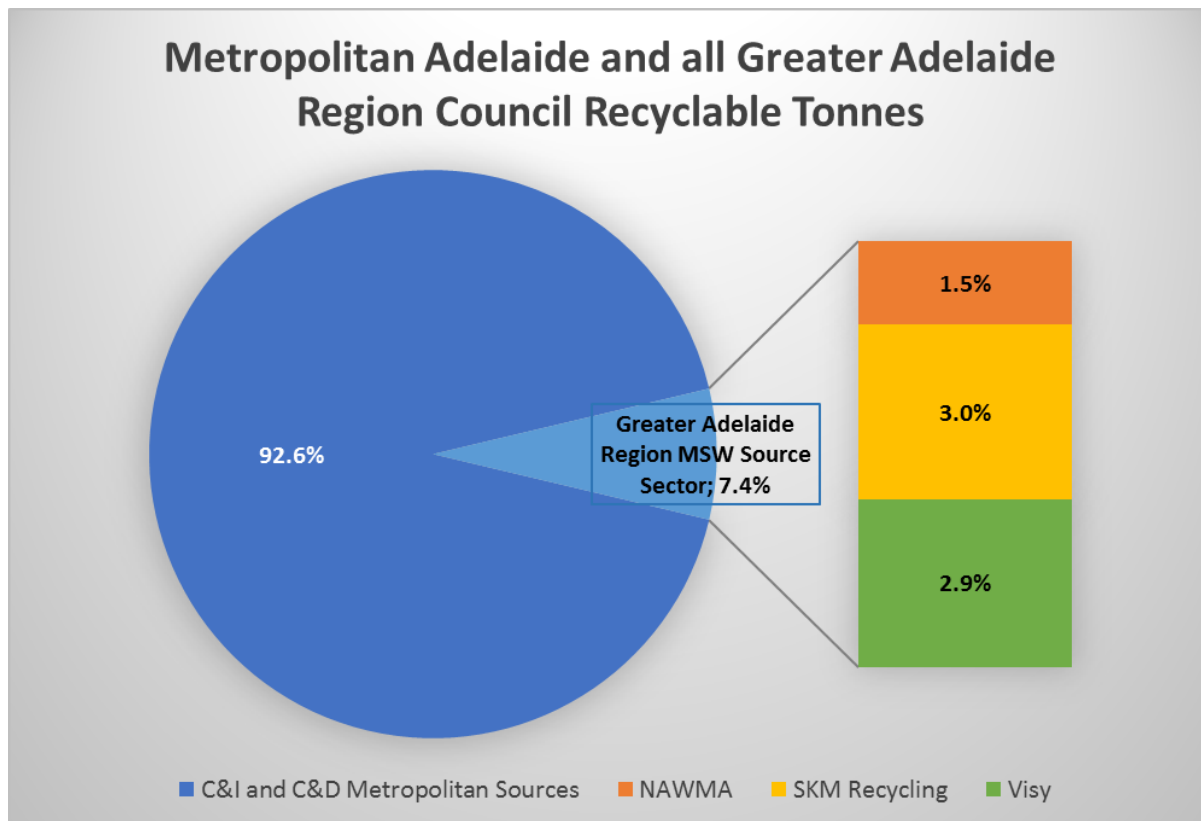


Chart 4: Current division of the Recyclables Processing market: Greater Adelaide Region MSW source sector by supplier using tonnes.

Organics Processing

There are currently at least three potential suppliers in the market who have the capacity to provide Organics Processing to the Participating Councils, all using open windrow composting facilities. These suppliers are currently providing services, combined, to at least 27% of the total market for Organics across the MSW and C&I source sectors in the Metropolitan Adelaide Area and the MSW source sector for the Regional Adelaide Councils.

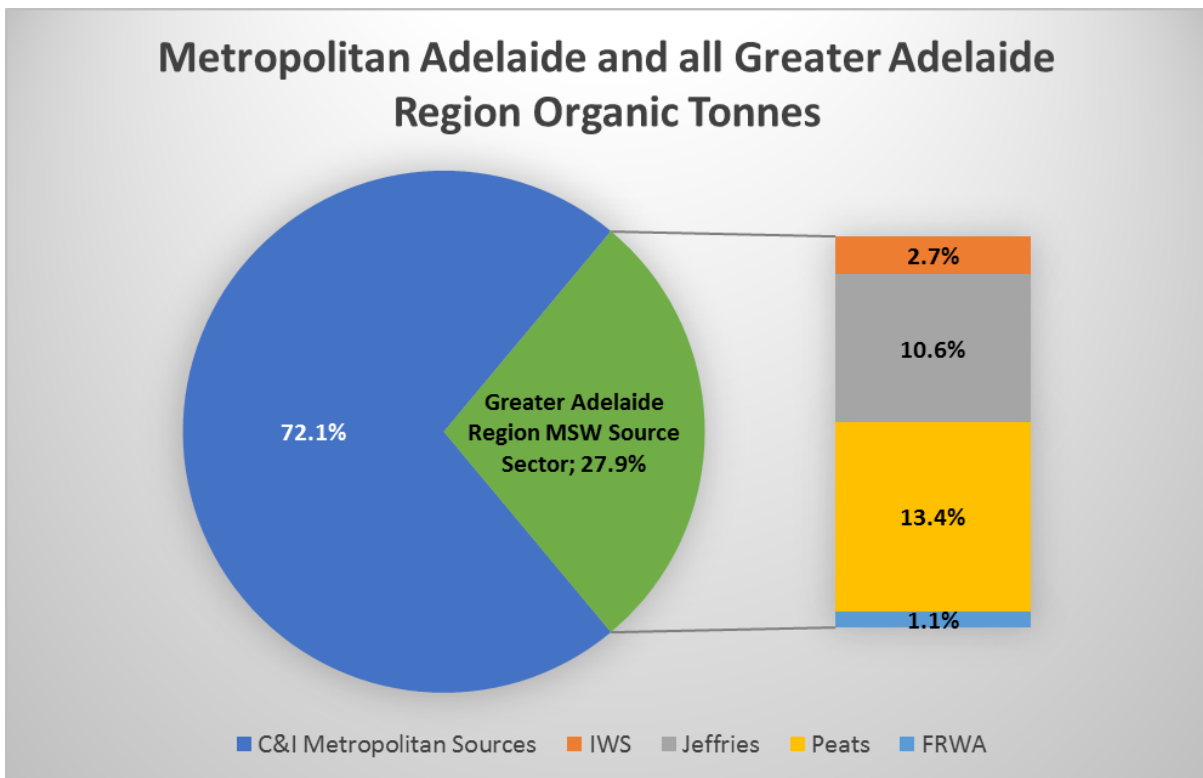


Chart 5: Current division of the Organics Processing market: Greater Adelaide Region MSW source sector by supplier using tonnes.

In addition, DeLorean Energy has announced a new bioenergy plant will be established in northern Adelaide and will accept Organics for processing, offering an alternative processing solution and a new market entrant.

Residual Processing

There are currently at least seven potential suppliers in the market who have the capacity to provide Residual Processing to the Participating Councils, including several landfills owned and operated by Regional Subsidiaries. These are all traditional landfill sites with various pre-burial resource recovery systems. These suppliers and Regional Subsidiaries are currently providing services, combined, to at least 43% of the total market for Residual Waste across the MSW, C&I and C&D source sectors in the Metropolitan Adelaide Area and the MSW source sector for the Regional Adelaide Councils.

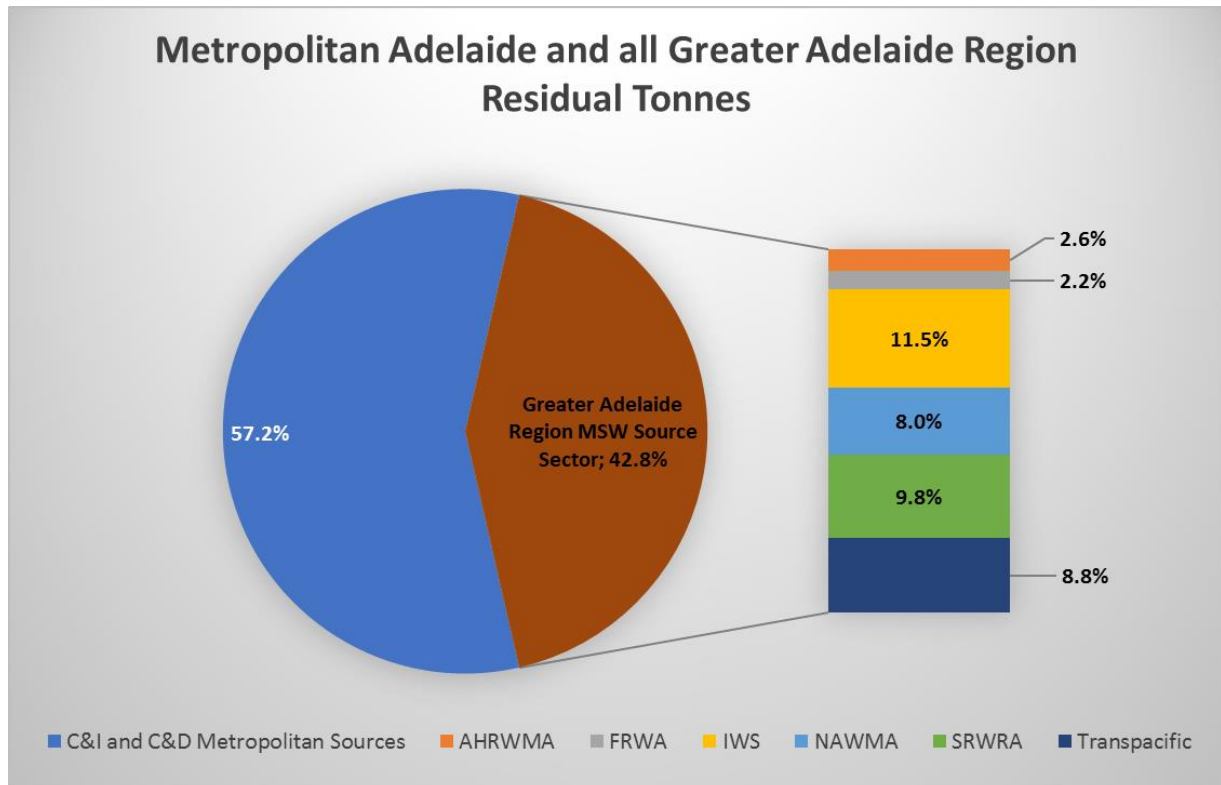


Chart 6: Current division of the Residual Processing market: Greater Adelaide Region MSW source sector by supplier using tonnes.

In addition, through consultation with the market Council Solutions is aware of another potential supplier, Adelaide Resource Recovery, intending to establish Reprocessing Infrastructure in the form of an energy-from-waste anaerobic digestion facility in northern Adelaide. This is subject to receiving enough tonnes to feed the facility, which will accept both Organics and Residual Waste.

The introduction of new technology requires availability and security of feedstock volumes to ensure viability. Whilst the Participating Councils aggregated tonnes may not be sufficient to entirely underpin the establishment of new Reprocessing Infrastructure, the feedback provided by potential suppliers to Council Solutions during the consultation with the market indicated that the contract opportunity presented by the Proposed Conduct is attractive as it provides a pipeline of significant volumes over an extended period.

Summary of maximised competition

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

due to the Proposed Conduct.

The feedback provided by potential suppliers across the Processing Service Streams to Council Solutions during consultation with market indicated that the contract opportunities presented by the Proposed Conduct is attractive. The collaborative approach of the Participating Councils utilising a single RFT across all three Processing Service Streams with standardised specifications, reduces the tendering workload for the potential suppliers and further encourages competition.

Receiving the maximum number of tenders will allow the Participating Councils to compare all service options available and unlock the best Value for Money. Additionally, where the successful supplier/s establishes new Reprocessing Infrastructure, such as energy-from-waste, there will also be increased competition for feedstock in the market for all Greater Adelaide Region Councils and this will support new levels of service.

Accordingly, tendering the Processing Service Streams via a public RFT process will maximise competition, providing all potential suppliers in the market with fair and equal opportunity to compete for a contract.

The benefit of increased competition has been recognised by the ACCC previously in applications for authorisation by Councils for the collaborative procurement of Waste Management Services.⁴⁰

11.2.3. Further environmental benefits

Increased resource recovery rates

There is potential for increased resource recovery in all three Processing Service Streams.

Recyclables Processing

The Applicants acknowledge China's ban on importing contaminated recyclable waste has created uncertainty in the market with 600,000 tonnes of waste currently exported to China each year.⁴¹ The current global standard for contamination is 1.5%, whereas from 1 March 2018 China will only accept materials with a contamination rate of 0.5% or less.⁴² Accordingly there is increased impetus to decrease contamination levels at the kerbside through Waste Collection Services and to improve the quality of recovered materials by removing higher levels of contaminants at the processing facility.

In addition to combined and improved educational materials, new or upgraded Reprocessing Infrastructure will also support a reduction in contamination. The Proposed Conduct is likely to support new technology and investment in contamination reduction by underpinning the provision of significant volumes of material to potential suppliers for a known period of time that will assist in offsetting the investment cost of an upgrade.

⁴⁰ See, e.g. A91489 & A91490 Metropolitan Waste and Resource Recovery Group & Ors, Determination 9 July 2015, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013, A90886 The Council of Camden and others (MACROC), Determination 16 December 2004, A30231 Northern Sydney Regional Organisation of Councils, Determination 16 December 2004, A90926 Southern Sydney Organisation of Councils (SSROC), Determination 13 April 2005.

⁴¹ Hair, Jonathan, "Local councils in Victoria to get \$13m for recycling collection to help deal with China waste ban", *ABC News Online*, Friday 23 February 2018.

⁴² Ritchie, Mike, "China's National Sword is cutting deep in the recycling sector", *Inside Waste*, February/March 2018, page 17, Green Industries SA, "China's New Waste and Recycling Policy", www.greenindustries.sa.gov.au/chinas-new-policy-on-waste-and-recycling, accessed 23 February 2018.

Without the Proposed Conduct, the potential suppliers affected by the China ban will still need to find alternatives and upgrade technology. However, without the pipeline of aggregated feedstock volumes provided by, and the coordinated and targeted intervention and education initiatives at the kerbside across all, Participating Councils, this will be more difficult, possibly costlier and may take longer to achieve.

Organics Processing

Current levels of food organics collected in the Organics Processing Service Stream are so low they do not register as being present; the Recycling Activity Survey noted 100% of the food organics reported came from the C&I source sector.⁴³ Where ratepayers are not currently recovering food organics onsite (for example, through composting, worm farms, etc.), this waste is likely being added to the Residual Waste. When food organics are discarded to landfill they release harmful greenhouse gasses and leachates, as well as denying a valuable ingredient to the end product derived from treating Organics.

Currently each Participating Council accepts food waste into the Organics MGB and has Kitchen Caddies available for their ratepayers to use, however there is no consistent monitoring of the take-up, use and efficacy of these. Under the Proposed Conduct there will be consistent messaging across the Participating Councils, including focusing on the availability of the Kitchen Caddies and the benefit of utilising them. Additionally, the Participating Councils will be able to look holistically at the usage of the Kitchen Caddies and target education toward the areas needing additional support. Increasing the awareness of Kitchen Caddies, food waste being accepted in the Organics MGB and targeting areas where uptake is low or incorrectly utilised will result in increased resource recovery rates for the Organics Processing Service Stream and an improvement in the quality of products derived from treating the Organics. Correspondingly, as this waste is diverted from the Residual Processing Service Stream there will also be a reduction in waste going to landfill.

Residual Processing

In undertaking the Proposed Conduct, the Participating Councils are seeking to ensure resource recovery and diversion from landfill is undertaken to the maximum extent possible.⁴⁴ As such, the Participating Councils are seeking outcomes focused tender submissions rather than stipulating how the Residual Waste is to be handled. The Participating Councils have expressed a commitment to move away from 'burying in a hole' as far as possible and will be looking for potential suppliers to respond accordingly.

With the Participating Councils for Residual Processing currently providing approximately 28,000 tonnes per annum, there is likely to be a focus on processing and sorting the Residual Waste received as far as practicable to remove valuable resources.

However, when combined with another Processing Service Stream, for example Organics Processing, these tonnes increase to nearly 60,000 and may encourage tenders for alternative waste technologies. By including all Processing Service Streams in one RFT and allowing responses for more than one Service Stream, there is likely to be tender submissions that seek to drive synergies from processing multiple Service Streams, thereby leading to greater diversion from the Residual Processing Service

⁴³ Page 48.

⁴⁴ In harmony with the legislated hierarchy of priority for the management of waste outlined at s 4B of the *Environment Protection Act 1993* (SA).

Stream and a corresponding reduction in waste going to landfill.

Without the Proposed Conduct, the individual tonnes of the Participating Councils are unlikely to be able to drive the same level of processing and are even less likely to contribute to the implementation of alternative waste technologies.

Investment in infrastructure and new technologies

In February 2018, Green Industries SA released *South Australia's Waste and Resource Recovery Infrastructure Plan (Infrastructure Plan)*. Amongst other things, the Infrastructure Plan identifies potential infrastructure needs and investment opportunities, and provides intelligence for the industry to assist in informing investment decisions.⁴⁵ It has identified that should a 70% diversion of MSW be achieved by 2025-26 in accordance with the targets set by the State government, additional or expanded infrastructure will be required; including:

- 3.8 composting facilities (open windrow)
- 0.5 composting facilities (covered tunnel)
- 0.7 energy-from-waste – anaerobic digestion facilities
- 0.1 material recovery facility
- 1.2 transfer stations
- 2.9 other reprocessing facilities (medium technology).⁴⁶

It should be noted that fractions of units (above) may indicate expansion of an existing facility or a smaller capacity facility than those currently in operation.

Where the high diversion target of 100% diversion over the next 30 years is achieved, the investment in all infrastructure required to meet this diversion in the MSW source sector will increase from \$49 million to \$385 million.⁴⁷

The Participating Councils' current diversion rates range from 35% to 52%, all well short of both the 70% target and the current average diversion rate for Metropolitan Adelaide MSW of 58.2%. As the combined education under the Proposed Conduct as outlined in paragraph 11.1.2 above increases diversion, the total tonnes available in the Recyclables Processing and Organics Processing Service Streams will increase, with potentially an additional 31,500 tonnes available across both Service Streams.

For an existing or new potential supplier to invest in infrastructure, in the form of either upgraded or new facilities, availability and security of feedstock volumes are required to underpin and finance the investment. The infrastructure investment required outlined above is expensive, with \$166 million of additional infrastructure required over the next 10 years across all source sectors, not including the cost of maintaining existing infrastructure or "construction of new landfill cells at existing disposal facilities, replacement or upgrade of existing waste and resource recovery infrastructure."⁴⁸

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

⁴⁵ Page 6.

⁴⁶ Ibid, page 47.

⁴⁷ Ibid, pages 37-8.

⁴⁸ Ibid, page 36.

be provided if the Participating Councils went to market separately.

In addition to the aggregated tonnes provided under the procurement process, the Participating Councils' joint commitment to education and increasing diversion will generate more, and a better quality, feedstock. The possibility of new infrastructure, such as anaerobic waste to energy and bioenergy, has been discussed with potential suppliers through the consultation undertaken and it has been acknowledged the Proposed Conduct would be attractive as an opportunity to secure feedstock.

Summary of further environmental benefits

Increasing resource recovery rates and the quality of recovered resources:

- ensures materials that can be recovered, reused and recycled do not end up in landfill;
- reduces the environmental impact of the harvest and manufacture of virgin materials; and
- improves access to markets for the processors.

The ACCC has previously recognised the environmental benefit of increased resource recovery and associated reduction of landfill in collaborative procurements for processing services by Councils.⁴⁹

The Proposed Conduct will provide a single point of access for potential suppliers to a significant pipeline of aggregated volumes in each Processing Service Stream underpinned by a contract commitment of up to 10 years. This reduces operational risk to a potential supplier and provides support for an earlier return on investment on newly established infrastructure, the upgrade of existing infrastructure to new technology, or the commissioning of brand new facilities. The ACCC has previously recognised these public benefits in authorisations granted for the collaborative procurement of Waste Management Services.⁵⁰

12. Public Detriment

Council Solutions submits there will be negligible to no detriment to the public as a result of the Proposed Conduct.

To the extent any negligible detriment may arise, it will be mitigated by the factors listed below:

⁴⁹ See, e.g., A90926 Southern Sydney Organisation of Councils (SSROC), Determination 13 April 2005, A91489 & A91490 Metropolitan Waste and Resource Recovery Group & Ors, Determination 9 July 2015, A30205 Resource New South Wales, Determination 6 June 2002, A90886 The Council of Camden and others (MACROC), Determination 16 December 2004, A91087 Central Queensland Local Government Association, Determination 13 August 2008, A91289 Hunter Resource Recovery, Determination 12 April 2012, A91096 Council of the Municipality of Ashfield & Ors, Determination 9 July 2015, A91414 & A91415 Metropolitan Waste Management Group, Determination 18 June 2014, A91445 & A91446 Metropolitan Waste Management Group & Ors, Determination 24 September 2014, A30231 Northern Sydney Regional Organisation of Councils, Determination 16 December 2004, A91401 The Northern Sydney Regional Organisation of Councils, Determination 9 April 2014, A91246 Central Queensland Local Government Association & Ors, Determination 13 January 2011, A91143 & A91167 Southern Sydney Regional Organisation of Councils, Determination 22 October 2009, A91180 Hurstville City Council & Ors, Determination 6 November 2009.

⁵⁰ See, e.g., A91408 Clarence City Council, Glenorchy City Council & Hobart City Council, Determination 4 June 2014, A91431 Cities of Wanneroo, Joondalup and Swan, Determination 6 August 2014, A91387 Bathurst Regional Council & Ors, Determination 12 February 2014, A91401 The Northern Sydney Regional Organisation of Councils, Determination 9 April 2014, A30231 Northern Sydney Regional Organisation of Councils, Determination 16 December 2004, A91414 & A91415 Metropolitan Waste Management Group, Determination 18 June 2014, A91445 & A91446 Metropolitan Waste Management Group & Ors, Determination 24 September 2014, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013, A91352 Burwood Council & Ors, Determination 19 June 2013.

- a) The RFT will be public and conducted according to Council procurement standards, including the engagement of an independent probity advisor.
- b) The proposed contract term is a maximum of 10 years, in line with the industry standard for Waste Management Services of this type. Whilst each Processing Service Stream will not be contestable for the duration of the contract period, the RFT process will ensure competition for the award of the contracts.
- c) Each Processing Service Stream will have an initial term and options for extension set that reflect the current status of the respective markets.
- d) The Participating Councils remain separate legal identities and are members of the Waste Management Services Project by choice. In deciding to join the Waste Management Services Project and undertake the Proposed Conduct, the Participating Councils see the benefits in collaboration and do not believe there will be any detriments to service or competition.
- e) The RFT is restricted to the four Participating Councils only, and the scope of the RFT is limited to the Processing Service Streams. This provides both certainty and simplicity to the tendering process.
- f) Council Solutions has undertaken stakeholder engagement prior to the finalisation of the waste strategy and will conduct tender briefing sessions to ensure full understanding of the aims and goals and maximum participation.
- g) Potential suppliers will be free to compete for contracts for other Councils and Regional Subsidiaries in the Greater Adelaide Region as well as the substantial volumes available from the C&I and C&D source sectors.
- h) Through the use of a standard RFT process there will be no disincentive or barrier to potential suppliers tendering.
- i) As each Service Stream is separable, potential suppliers are able to tender for any one or more of the Processing Service Streams for which they believe they can make the most compelling value proposition to the Participating Councils.

13. Interim Authorisation

The Applicants seek interim authorisation from the ACCC in respect of this application to allow for an approach to market as soon as possible thereafter. A delay in publishing the RFT will impact on the Waste Management Services Project timelines and will have a negative impact on the time allowed for the market to respond, the tenders to be evaluated and contracts to be negotiated, potentially reducing the value of the collaboration.

The Participating Councils will not enter into contracts for any of the Processing Service Streams before the ACCC issues a final determination in relation to these applications. Consequently, granting interim authorisation will not affect current arrangements in place with each Participating Council and interim authorisation will not affect competition in any relevant market.

Allowing the Applicants to proceed in a timely manner and ensuring the potential suppliers have the greatest opportunity to respond to and participate in the tenders could have the effect of increasing competition. Accordingly, interim authorisation is sought at the time of the draft determination to ensure full public benefits are achieved.

14. Conclusion

For all the reasons set out above, Council Solutions submits that the extensive public benefits of the

Proposed Conduct will significantly outweigh any public detriment and there will be no substantial lessening of competition arising in connection with the Proposed Conduct.

15. Confidentiality

The Applicants have provided Board papers and details on the consultation conducted to the ACCC on a confidential basis. All other information is available for publication on the public register.

16. Glossary⁵¹

3-Bin System	Kerbside collection of waste that has been separated into 3 bins by the householder being the recyclable waste ('yellow' bin), the garden and food organic waste ('green' bin) and the residual waste ('red' bin). Residual waste is collected weekly and recyclable and organic waste are collected fortnightly on alternate weeks. MGBs used are generally 240L for recyclable and organics and 120L for residual.
ACCC	Australian Competition and Consumer Commission
AHRWMA	Adelaide Hills Region Waste Management Authority, a Regional Subsidiary that provides Waste Management Services to its constituent Councils, being Adelaide Hills Council, Mount Barker District Council, the Rural City of Murray Bridge and Alexandrina Council.
Adelaide Metropolitan Area	The areas bounded by the Adelaide Metropolitan Councils.
Adelaide Metropolitan Councils	City of Adelaide, Adelaide Hills Council, City Burnside, Campbelltown City Council, City of Charles Sturt, Town of Gawler, City of Holdfast Bay, City of Marion, City of Mitcham, City of Norwood, Payneham & St Peters, City of Onkaparinga, City of Playford, City of Port Adelaide Enfield, City of Prospect, City of Salisbury, City of Tea Tree Gully, City of Unley, Town of Walkerville, City of West Torrens
Bulk Bins	Typically lidded mobile bins that are larger than 360L that are emptied into collection vehicles either via the front-load or rear-load methods, excluding skip bins and/or 'roll on roll off' bins.
Constituent Councils	The Constituent Councils of Council Solutions, being the Cities of Adelaide, Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully
Council	A local government established under the LG Act or equivalent in other states and territories of Australia
Disposal Infrastructure[#]	Infrastructure for the final disposal of waste, including landfills.
East Waste	Eastern Waste Management Authority, a Regional Subsidiary that provides Waste Management Services to its constituent Councils, being Adelaide Hills Council, Campbelltown City Council, City of Burnside, City of Mitcham, City of Prospect, City of Norwood, Payneham & St Peters and the Town of Walkerville.

⁵¹ Definitions marked with # are taken from Table 1 of the [Infrastructure Plan](#).

FRWA	Fleurieu Regional Waste Authority, a Regional Subsidiary that provides Waste Management Services to its constituent Councils, being Alexandrina Council, City of Victor Harbor, Kangaroo Island Council and the District Council of Yankalilla.
Greater Adelaide Region	The defined region the subject of the State Government’s 30 Year Plan for Greater Adelaide, first released in 2010. Councils captured under the plan are Adelaide, Adelaide Hills, Adelaide Plains, Alexandrina, Barossa, Burnside, Campbelltown, Charles Sturt, Gawler, Holdfast Bay, Light, Marion, Mitcham, Mount Barker, Murray Bridge, Norwood, Payneham & St Peters, Onkaparinga, Playford, Port Adelaide Enfield, Prospect, Salisbury, Tea Tree Gully, Unley, Victor Harbor, Walkerville, West Torrens and Yankalilla.
Hard Waste	Bulky household waste items that are not typically captured within the 3-Bin System, such as furniture, white goods and scrap metal
Kitchen Caddies	A ventilated lidded bin to be used on a kitchen bench-top for the collection of food organics generated through food storage, preparation and/ or consumption, generally used with a compostable bin liner. The caddies are generally provided free of charge to residents, either through ‘opt in’ (collection by the resident from the Council) or ‘roll out’ (delivered to each household), with bin liners made available also.
LGA Model Contract	Local Government Association of South Australia’s Model Waste Management Contract
MGB	Mobile garbage bin of various capacities typically in the range of 80L – 360L capacity
Materials Recovery Facility / MRF[#]	A facility where mixed recyclable materials are received, stored and sorted to specifications, then baled, shredded, crushed, compacted or otherwise prepared for shipment to market.
MSW	Municipal Solid Waste, being solid waste generated from domestic (household) premises and council activities such as street sweeping, litter and street tree lopping. May also include waste dropped off at recycling centres, transfer stations and construction waste from owner/occupier renovations
NAWMA	Northern Adelaide Waste Management Authority, a Regional Subsidiary that provides Waste Management Services to its constituent Councils, being the Town of Gawler, City of Playford and the City of Salisbury.
Organics	Garden organics, such as grass clippings, prunings, weeds and leaves, food organics, such as food and waste scraps, and small amounts of timber and other organics

Proposed Conduct	As outlined in paragraph 4.1
Recyclables	Paper and cardboard, glass, plastics, aluminium and steel
Regional Adelaide Councils	Adelaide Plains Council, Alexandrina Council, The Barossa Council, Light Regional Council, Mount Barker District Council, Rural City of Murray Bridge, City of Victor Harbor and District Council of Yankalilla.
Regional Subsidiary	Established under s43 of the LG Act, a Regional Subsidiary can be formed by two or more Councils to provide a specified service/s or carry out a specified activity/ies or to perform a function of the Councils.
Reprocessing Infrastructure[#]	Infrastructure designed to treat waste and reprocess into new resources. Infrastructure types include composting facilities, both open windrow and covered/tunnel, energy-from-waste facilities, both thermal treatment and anaerobic digestion, mechanical biological treatment, and construction and demolition, e-waste and other processing facilities
Residual Waste	Waste disposed of in the 'red' bin, both MGB and Bulk Bin equivalent, Hard Waste and most Street Litter Bins. Where source separation is followed, should be limited to waste that cannot be treated through Resource Recovery or Reprocessing Infrastructure, such as soft plastics, absorbent hygiene material, clothing and textiles, polystyrene, etc. May also include contaminated Recyclables and/or contaminated Organics.
Resource Recovery Infrastructure[#]	Infrastructure designed for initial processing and recovery prior to treatment of waste. Infrastructure types include transfer stations, transfer vehicles, MRF, container deposit legislation facilities, drop-off and any other similar facilities.
RFT	Request for Tender
Street Litter Bins	Bins located on streets, footpaths, parks and other public places that are generally housed in or attached to a structure and installed for the convenient disposal of public place waste
Value for Money	In discussing the public benefits that may arise from the Proposed Conduct, the Applicants refer to Value for Money. This is broader than just the cost of service and includes service support, the efficiency and effectiveness of the service, timeliness, quality and environmental considerations. Any reference to Value for Money should be read in this broader context whereas reference to cost or price will be limited to the cost of service payable by the Participating Councils.

Waste Collection Services	The collection of domestic waste, recyclables and organics through the utilisation of the 3-Bin System, including the supply and maintenance of MGBs
Waste Management Services	All services provided by Councils in relation to waste management, including Waste Collection Services, the processing of the waste collected and the collection of Bulk Bins, Hard Waste and Street Litter Bins
Waste Management Services Project	The project established by Council Solutions and the Participating Councils to investigate the collaborative procurement and ongoing management of Waste Management Services.

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18. Annexure 1

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19. Annexure 2

Existing Suppliers

Service Provider	Website	How they may be impacted NB: This outlines the services the supplier provides that correlate to the Proposed Conduct and should not be interpreted as their sole business.
Adelaide Hill Region Waste Management Authority (AHRWMA)	www.ahrwma.com	AHRWMA is a regional subsidiary that provides waste management services to its member Councils.
Cleanaway (Transpacific)	www.cleanaway.com.au	Cleanaway provides processing services in the Residual Processing Service Stream to local government.
Fleurieu Regional Waste Authority (FRWA)	www.fleurieuregionalwasteauthority.com.au	FRWA is a regional subsidiary that provides waste management services to its member Councils.
Integrated Waste Services (IWS)	www.iwsgroup.com.au	IWS provides processing services in the Residual Processing and Organics Processing Service Streams to local government.
Jeffries	www.jeffries.com.au	Jefferies provides processing services in the Organics Processing Service Stream to local government.
Northern Adelaide Waste Management Authority (NAWMA)	www.nawma.sa.gov.au	NAWMA is a regional subsidiary that provides waste processing services to its member Councils. NAWMA has recently commissioned a new Materials Recycling Facility and provides Recyclables Processing to other Councils through commercial arrangements.
Peats Soils	www.peatsoil.com.au	Peats provides processing services in the Organics Processing Services Stream to local government.
SKM Recycling	www.skmrecycling.com	SKM Recycling provides resource recovery services in the Recyclable Processing Service Stream to local government.
Southern Region Waste Resource Authority (SRWRA)	www.srwra.com.au	SRWRA is a regional subsidiary that provides waste management services to its member Councils, including the Residual Processing Service Stream.
Visy	www.visy.com.au	Visy provides resource recovery services in the Recycling Processing Service Stream to local government.

Potential Suppliers

Service Provider	Website	How they may be impacted NB: This outlines the services the provider supplies that correlate to the Proposed Conduct and should not be interpreted as their sole business.
Adelaide Resource Recovery (ARR)	www.arr.net.au	ARR provides comprehensive recycling of construction & demolition materials and currently has Development Approval for an anaerobic digester facility.
ResourceCo	www.resourceco.com.au	ResourceCo provides resource recovery, including through Processed Engineered Fuel.
Veolia	www.veolia.com	Veolia provides waste recovery services to promote the transition toward a circular economy.

Potential Subcontractors

Service Provider	Website	How they may be impacted
Scout Recycling	www.scoutrecycling.com.au	Scout Recycling process depositable containers returned as part of the Container Deposit Legislation.

Industry Associations

Service Provider	Website	How they may be impacted
Office of the Small Business Commissioner South Australia (OSBC)	www.sasbc.sa.gov.au	The OSBC represents small business across all industries.
The South Australian Waste Industry Network (SAWIN)	www.sawin.com.au	SAWIN is a group of like minded companies operating in the waste, recovery, recycling, treatment and disposal industry in South Australia and exists to promote active and fair competition in the industry.
Waste Management Association of Australia (WMAA)	www.wmaa.asn.au	WMAA is the peak body for the waste and resource recovery industry, supporting members in achieving sustainable waste and resource recovery across Australia.
Waste & Recycling Association of South Australia Inc. (WRASA)	N/A	WRASA was established in 2016.
Waste and Recycling Industry Association of South Australia (WRISA)	N/A	WRISA was established to allow the waste management and recycling industry operators in South Australia to promote the industry with a single voice and optimise engagement of government, business and the community.

20. Annexure 3

Breakdown of the Participating Councils' tonnes for each Processing Service Stream.

Source	Tonnes		
	Recyclables	Organics	Residual Waste ⁵²
City of Adelaide	1,729	550	4,232
City of Charles Sturt	10,134	14,773	24,038
City of Marion	7,677	16,198	
City of Port Adelaide Enfield	10,699	16,198	25,145
All other Greater Adelaide Region Councils	96,259	118,099	252,970
C&I and C&D Metropolitan Source Sectors	1,576,998	429,079	409,144
TOTAL	1,703,496	727,887	715,529

⁵² As the City of Marion does not require Residual Processing, its tonnes have been included in "All other Greater Adelaide Region Councils".



Contact officer: Tessa Cramond
Contact phone: (03) 9658 6516

15/02/2018

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Council Solutions

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Dear Ms Alderdice

Fee waiver request

Thank you for your letter of 02 February 2018 to the Australian Competition and Consumer Commission (**ACCC**) asking that we waive or reduce the fee for your anticipated applications for authorisation.

In particular, you advised that Council Solutions intends to seek authorisation on behalf of the cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (**Participating Councils**) to undertake collaborative requests for tenders for:

- waste collection (RFT1)
- receipt and processing of recyclables and organics and receipt and processing or disposal of residual waste (RFT2) and
- associated 'ancillary' services (RFT3).

Further, you advised that Council Solutions intends to lodge two Form B application forms – one covering RFT1 and the other covering RFT2 and RFT3 (**the Applications**).

Council Solutions has requested that the application fee be reduced or waived in full.

In support of your request, among other things, you submitted that:

- (a) Council Solutions is a not-for-profit entity funded by the relevant councils and
- (b) the application fee would ultimately be recovered from ratepayers and is not set in current council budgets. Payment of the application fee in its entirety would require funds to be reallocated from existing public functions, imposing a burden on councils and their communities.

I have considered the information provided and, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I have decided that the application fee to be paid by Council Solutions will be waived in part. In particular, the total fee for Council Solutions' anticipated Applications will be \$2500.

This decision will remain in force for a period of three months. The three month period will expire on 15 May 2018.

A copy of this letter should accompany the Applications for authorisation to be lodged by Council Solutions. The cover letter to the Applications should mention that a letter from the ACCC regarding a fee waiver is enclosed. The Applications, together with this letter, will be placed on the public register at that time.

If the Applications for authorisation are lodged by Council Solutions after 15 May 2018, a full application fee of \$7500 and related application fee of \$1500 will apply, unless a subsequent request for a fee waiver is made and approved by the ACCC.

If you have any queries in relation to this matter, please contact Tessa Cramond on (03) 9658 6516 (or at tessa.cramond@accc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Jones', is positioned above the typed name.

David Jones
General Manager
Adjudication