

Memorandum of Understanding

Southern Sydney Regional Organisation of Councils (SSROC) Inc.



Participating Council: **ENTER COUNCIL NAME HERE**

Date: **ENTER DATE HERE**

MEMORANDUM of UNDERSTANDING
Comingled Recycling Sustainability Solutions (CRESS)

SUBJECT: Commitment to Procure Regional Comingled Recycling Processing Services

1. This Memorandum of Understanding (MOU) records the understanding reached between the Southern Sydney Regional Organisation of Councils (SSROC) and Participating Councils, in relation to the operation of CRESS:
 - a. CRESS 1: immediate services for the processing of comingled recycling, including transfer and compaction if required; or
 - b. CRESS 2: longer term services for the same, with the contracts of all participating councils co-terminating.
2. The background and overview of CRESS is as described in “CRESS overview” dated August 2023 and is appended to this MOU as Appendix 1.
3. The procurement will proceed to a selective Request for Tender from the companies shortlisted following the Expression of Interest (EOI) process, to which tenderers can bid for CRESS 1 and/or CRESS 2 service provision. This approach was agreed in the workshop conducted with respective council staff on 14 August 2023.
4. After tenders are received, the procurement will continue **only** if the evaluation findings, assessed risk, and indicative pricing are in line with council expectations and project objectives.
5. It is possible that prices put forward in best-and-final offers could be time-limited, creating a risk of insufficient time for the preferred offer to be accepted by council. To mitigate that risk council may choose to use the tender evaluation information to secure delegated authority for the Chief Executive Officer or General Manager to accept best-and-final offers under the Local Government Act, Section 377 Item (1).

Responsibilities

6. Council must nominate an Officer authorised to be the council's representative in the CRESS project team. Details must be provided at the end of this MOU.
 7. SSROC will conduct and facilitate the procurement process. If too few councils participate, or if the aggregated tonnages are insufficient to justify CRESS 1 or 2, SSROC reserves the right to review the strategic procurement approach.
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8. The procurement process will comply with Sec 55 of the Local Government Act 1993 and the related regulatory framework. It will respect commercial confidentiality requirements of tenderers.
9. Council must provide and verify details of all current tonnages and any other information required by SSROC to complete the RFT specifications.
10. All CRESS-related communication must be through the nominated email address CRESS@ssroc.nsw.gov.au and must always adhere to project confidentiality requirements (see clause 17).

Financials

11. CRESS is eligible to apply for funding from the NSW Environment Protection Authority's (EPA) joint procurement fund, but this funding is not guaranteed. SSROC will apply for the maximum allowable amount to recover the costs of tendering.
12. If the fund is insufficient or not forthcoming, SSROC will proceed to undertake CRESS on a cost recovery basis. The fees to be invoiced by SSROC represent a contribution towards out-of-pocket expenses, the cost of consulting, probity and legal advice sought in relation to the RFT and tender(s) and any other costs of staging the procurement. SSROC does not anticipate any additional costs beyond this, but any further costs will be subject to Council approval.
13. Should the application for funding under the EPA Joint Procurement Service Fund be unsuccessful, the estimated participation fee will be:
 - a. \$5,000 + GST on commencement of the RFT stage
 - b. \$10,500 + GST on commencement of the BAFO stage
 - c. **Total \$15,500 ex GST**
14. Participation fees are based on 8 councils participating; fees will be adjusted for more or fewer. SSROC will seek council's consent should it be necessary to change these fees, or to seek further cost recovery as a result of unforeseen costs,
15. SSROC anticipates the costs of tendering – including consultants, legal, probity, advertising, incidentals, and contingency – will be in the range from \$250,000-300,000. The table below shows how fees reduce when more councils participate.

No. of councils tendering for CRESS	Estimate of shared costs per council ex GST
3	\$96,000
4	\$72,000
5	\$58,000
6	\$48,000
7	\$41,000
8	\$36,000

16. Note that these fees will not be refundable if the costs that they cover have been incurred.
17. It is expected that non-participating councils will be interested in joining CRESS at a later date. An MOU and participation fee will be established with those councils at that time.

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18. SSROC will also charge the service provider to cover the cost of an on-going contract management service. That charge is expected to be 1% of the amounts invoiced to councils for duration of the contracts.
 19. SSROC will endeavour to accommodate unplanned activity at Council's request (e.g. late changes to data supplied and requests for additional analysis of information). However, additional charges will be applied if these activities incur additional costs.

Confidentiality

20. This procurement is subject to confidentiality requirements. Therefore, all participating councils and the project team must ensure that confidentiality is preserved and sign any confidentiality statements required.

References

21. The CRESS Tender Evaluation and Probiity Plan is a working document, updated regularly and shared with the steering committee. It is available upon request.
22. A legal explanation and rationale for using best-and-final offers, and any other supporting legal advice will be held by SSROC and available upon request.
23. The RFT documents include the statement “a Memorandum of Understanding has been signed by each council that commits councils to collaborate with SSROC to undertake this process”.
24. All CRESS planning and strategy documents are held by SSROC and available upon request.

Acceptance

25. Council has the intention to proceed to procure comingled recycling processing as required by Section 55 of the Local Government Act 1993.
26. Council(s) agrees to:
 - a. Identify Council as a participant in CRESS.
 - b. Participate and commit in CRESS.
 - c. Cooperate fully with SSROC project team and consultants.
 - d. Nominate a technical representative to be part of working party INSERT NAME HERE
 - a. INSERT POSITION TITLE HERE
 - b. INSERT EMAIL HERE
 - c. INSERT TELEPHONE HERE
 - e. Optional – Council may nominate a procurement or contract management representative INSERT NAME HERE
 - f. Liaise with the project team through relevant units, such as Procurement, Contracts, Sustainability, Finance or others as relevant.
 - g. The selective tendering procurement methodology.

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- h. Provide Council’s current contract expiry on **INSERT DATE HERE**
- i. Notify SSROC and/or technical advisors whether Council will participate in CRESS 1 or CRESS 2 procurement.
 - a. Council will participate in **CRESS 1** or **CRESS 2**. Participating in CRESS 1 now will not preclude Council from participating in CRESS 2 at a later date.
- j. Notify SSROC of Council’s estimated commingled recycling tonnages at the date of tendering, to be published confidentially in the RFT.
- k. If nominating for CRESS 1, Council’s municipal comingled recycling tonnages are estimated at **INSERT XXXXX TONNES PER ANNUM HERE.**
- l. Respond and provide acceptance on this MOU with signature no later than Friday 29 September 2023**

The parties do not intend this MOU to be legally binding. The MOU does, however, represent participating councils’ intent to procure the services under the terms of Section 55, LG Act 1993.

Executed as a Memorandum of Understanding

Signed on behalf of ENTER COUNCIL NAME HERE	Signed on behalf of SSROC
..... Name: Insert Name Position: Chief Executive Officer, General Manager or Delegated Officer Name: Helen Sloan Position: Chief Executive Officer
(Date): Insert Date	(Date):

APPENDIX 1 – CRESS Overview

SSROC aims to approach the market jointly to aggregate demand and to drive growth and investment in the sector, establish end markets, stabilise supply costs, and secure long-term security of services.

The following services will be procured:

- ⇒ comingled recycling processing services for materials in the kerbside recycling services, generally the yellow bin;
- ⇒ including receipt, consolidation and transportation through a transfer facility, if required.

Participating Councils: Burwood Council, City of Sydney, Georges River Council, Inner West Council, Strathfield Council, Sutherland Shire Council, Waverley Council.

Councils may use this information to inform whether they will be eligible in CRESS 1 or CRESS 2 per **Acceptance clause 28i, (a)**.

Scope

One procurement process resulting in two contract outcomes:

- CRESS 1 to provide immediate services using a Preferred Supplier Master Agreement.
 - Commence as soon as possible to councils that need services.
 - Prerequisite that the tenderer must have operational capacity.
 - SSROC assumes Visy Pty Ltd will be the only possible tenderer, therefore a sole contract is likely to be established.
 - Informed by the EOI, we presume the tenderer will accept a five-year contract to terminate approximately 2029/30.
 - Ability to attract more tonnages into the contract during its five-year term, with councils transition to CRESS 2 upon agreement.
- CRESS 2 – longer term services, multiple contractors selected through a pre-qualified grouping, using a Preferred Supplier Master Agreement with SSROC.
 - Contracts commence in 2025 (or as otherwise agreed).
 - SSROC recommends a 10-year term with a set termination date for all participating councils to have the same contract expiry date, regardless of when their services commence.
 - Ability for SSROC to introduce new tonnages and councils during the term.
 - Councils select preferred service provider.
 - Councils will manage their own contract with the service provider.