

14 March 2018

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

Via email: adjudication@accc.gov.au

Dear Mr. Jones,

APPLICATION FOR AUTHORISATION FOR A COLLABORATIVE WASTE COLLECTION SERVICES 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 collection of domestic waste, recyclables and organics through kerbside collection, including the supply and maintenance of mobile garbage bins.

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. The ACCC responded on 15 February 2018 offering a partial fee waiver, a copy of the letter confirming this has been attached to 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
- a copy of the letter from the ACCC granting a partial fee waiver for this application; and
- confirmation of payment of the \$2,500 lodgement fee via the ACCC payment portal.

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 14th day of March 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 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 14th day of March 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 Charles Sturt

Office held

Paul Sutton

Name of authorised person

This 14th day of March 2018

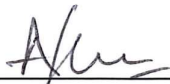
Note: If the Applicant is a corporation, state the position occupied in the corporation by person signing.

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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 14th day of March 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 Port Adelaide Enfield

Office held

Mark Withers

Name of authorised person

This 14th day of March 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 the collection of domestic waste, recyclables and organics through the utilisation of the 3-Bin System, including the supply and maintenance of mobile garbage bins (**MGBs**) (**Waste Collection Services**). 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 Waste Collection Services, 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 individually enter into a contract on a joint and not several basis with the successful supplier; and
- ongoing administration and management of the resultant contracts to be undertaken jointly by Council Solutions and the Participating Councils,

(together, **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;
- increased competition from the stimulation of the market; and
- increased service efficiencies,

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

The Applicants seek interim authorisation from the ACCC at the time of the draft determination in respect of this application. This will enable Council Solutions to commence the market approach by August 2018.

This application for authorisation is for the Proposed Conduct outlined within only, however Council Solutions advises further applications for separate RFTs for the Processing Service Streams and the Ancillary Service Streams will be lodged in the near future. Each of these constitute separate conduct and authorisation from the ACCC will be requested for each.

The terms defined in this application are set out in a glossary at the end of the application.

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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 charter¹. 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 each of the six Constituent Councils and an Independent Chair.

3.2 THE PARTICIPATING COUNCILS

The Participating Councils and Council Solutions are an unincorporated joint venture with the purpose of undertaking the Proposed Conduct². 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, lmecier@charlessturt.sa.gov.au

¹ The governing charter as gazetted 20 December 2012.

² For the purposes of the *Competition and Consumer Act 2010* s45AO and s45AP.

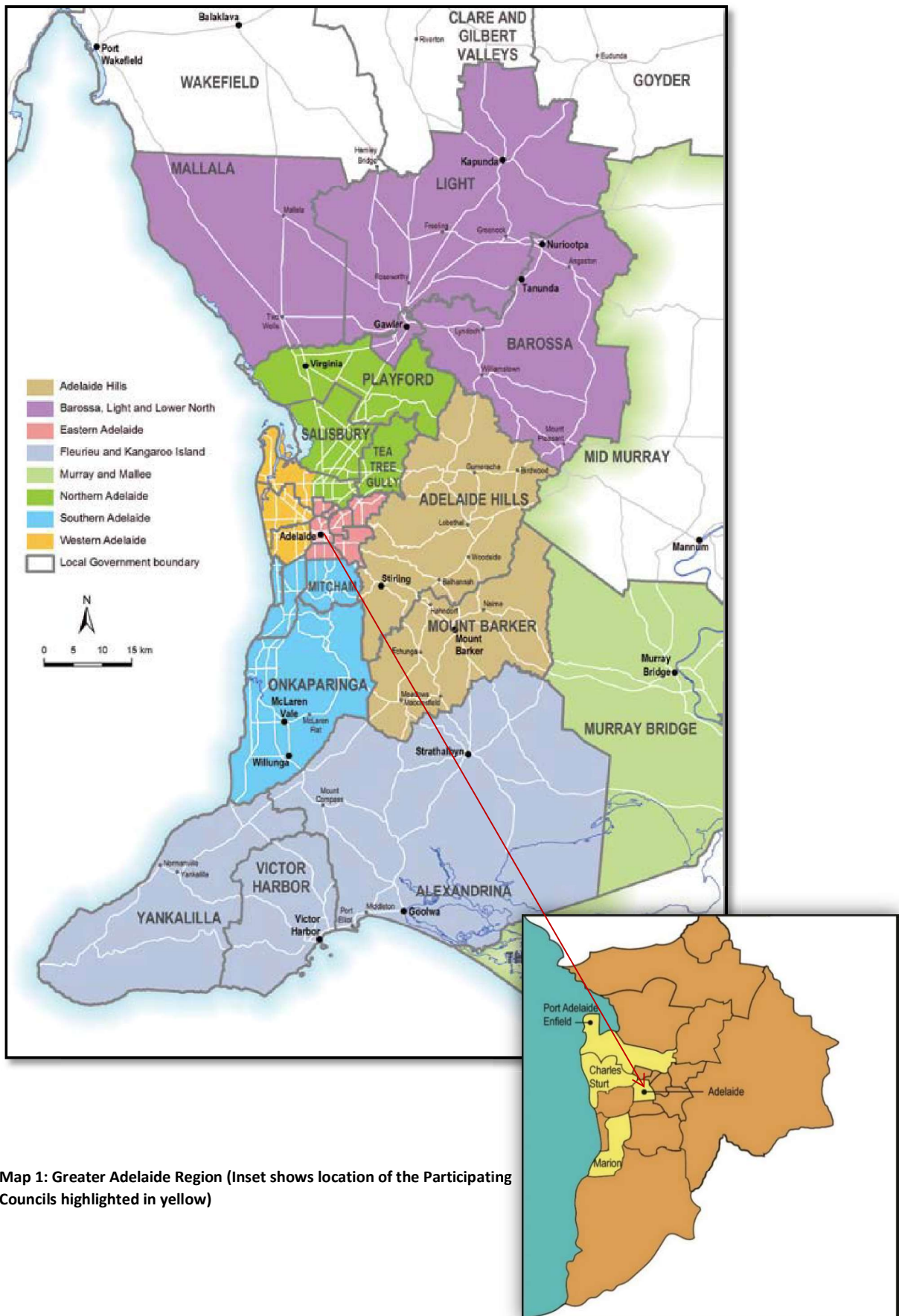
Name: City of Marion
 Address: 245 Sturt Road, Sturt SA 5047
 Telephone: (08) 8375 6600
 ABN: 37 372 162 294
 Contact Person: Colin Heath, Unit Manager Contracts
 Contact details: (08) 8375 6756, colin.heath@marion.sa.gov.au

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 with most sharing one or more geographic boundaries with another Participating Council. The size of the Participating Councils is outlined in Table 1 and their specific location is depicted in Map 1, both below.

Council	Population	Rateable Properties	Land Area
City of Adelaide	23,396	22,435	15.6
City of Charles Sturt	114,688	55,175	54.8
City of Marion	90,602	41,376	55.6
City of Port Adelaide Enfield	123,947	61,026	91.8
TOTAL	352,633	180,012	217.8
All Greater Adelaide Region Councils	1,429,122	686,236	10,882.50

Table 1: Statistical data for the Participating Councils



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 Waste Collection Services, 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 individually enter into a contract on a joint and not several basis with the successful supplier; 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 Waste Collection Services. 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.

This application for authorisation is for the Proposed Conduct outlined within only, however Council Solutions advises further applications for separate RFTs for the Processing Service Streams and the Ancillary Service Streams will be lodged in the near future. Each of these

constitute separate conduct and authorisation from the ACCC will be requested for each.

4.2.2 WASTE COLLECTION SERVICES

Waste Collection Services involves the collection of domestic waste, recyclables and organics in each of the respective Council areas through utilisation of the 3-Bin System, including the supply and maintenance of the MGBs. The 3-Bin System is considered best practice for waste collection of segregated waste in low service density residential areas.

Waste Collection Services utilise custom designed waste collection vehicles to traverse the area to be serviced and empty MGBs that have been placed at the kerbside by residents with their unwanted recyclables, organic and residual wastes. The waste collection vehicles are fitted with sophisticated data gathering systems to record the service delivery and inspect waste as it is unloaded from the MGBs into the vehicle.

Once sufficient waste has been collected into the body of the vehicle, the driver transits from the collection area to a designated drop-off point where the waste is unloaded and subsequently processed or discarded to landfill, as appropriate for the type of waste material.

Waste Collection Services excludes the collection of Bulk Bins, Hard Waste and Street Litter Bins.

The successful supplier will be required to provide weekly and fortnightly services.

Waste Collection Services may include:

- the supply and maintenance of MGBs; and/or
- fitting of RFID tags with the supply of the MGB, or supply and/or retrofitting of RFID tags.

4.2.3 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”.³ In addition, where Councils offer 3-Bin System services to small businesses within their LGA, the waste collected from those small businesses is included within the definition of MSW. The wastes to be collected 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 the C&I and C&D source sectors, which are predominately managed by the private sector via separate contracts with generators of those waste types.

According to Green Industries SA’s *South Australia’s Recycling Activity Survey: 2015-16 Financial Year Report*, 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

³ *South Australia’s Recycling Activity Survey: 2015-16 Financial Year Report*, June 2017, Green Industries SA, page 84.

waste across the state. Across all three source sectors, 76%⁴ of the waste came from the Adelaide Metropolitan Area, which accounts for 67.7% of the State's Rateable Properties.

4.3 PROPOSED TENDER STRUCTURE

4.3.1 JOINT REQUEST FOR TENDER

Council Solutions will undertake a competitive RFT process for the provision of Waste Collection Services to all four Participating Councils collectively. The competitive RFT process will be open to all suitably qualified suppliers. Council Solutions will make the tender 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.

As the RFT is restricted to the four Participating Councils only and Waste Collection Services only it will provide certainty and reduce complexity of the tendering process.

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.

4.3.2 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 the 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 any contractual matters).

At the time of releasing the Waste Collection Services RFT to the market the final locations for delivery of the collected materials will not have been confirmed. Accordingly, to support an effective and equitable tender and evaluation process, prices will be sought from potential suppliers to deliver the materials collected to one of two 'centroids' for receipt, transfer (where applicable) and processing by the relevant processor. These centroids have been selected based on the general locations of current receipt, transfer and processing facilities in South Australia in relation to the Participating Councils. The centroids will be respectively located 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.

The potential suppliers will be asked to provide a price for each Participating Council for delivery to each of the centroid locations to ensure that topographical and service density

⁴ Ibid, page 24.

differences between each local government area are accounted for in tendered prices. However it will not be open for Participating Councils to select different suppliers. A price for transportation of collected materials beyond the centroids will also be sought in the RFT process to allow for potential suppliers located outside the centroids to compete. At the time of finalising the evaluation process and awarding of the contract for Waste Collection Services, the locations for receipt, transfer and processing of collected materials will be known.

As a result of the RFT and evaluation, a sole supplier will be awarded a contract to service all Participating Councils on an exclusive basis. This contract will be a joint and not several contract between the Participating Councils and the successful supplier. The contract will likely be based on the LGA Model Contract, which is the industry standard in South Australia for contracts between Councils and waste service providers.

4.3.3 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;
- reporting waste audits; 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:

- maintenance of bin and Service Entitled Premises register;
- internal reporting;
- approval of new and removal of expired services; and
- providing the customer interface to their communities.

4.3.4 ROLES AND RESPONSIBILITIES

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

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 6.1.1 “combined

Party	Role
	contract management” below).
Participating Councils	<p>Contributes 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 panel; • Evaluating tenders received against designated criteria; • Endorsement of recommendation report; and • Designated contract management tasks (refer paragraph 6.1.1 “combined contract management” below).

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

4.4 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.

4.5 RATIONALE FOR THE PROPOSED CONDUCT

4.5.1 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 70% by 2020.*⁶

In establishing the South Australian Waste Strategy for 2015-2020 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

⁵ SA Strategic Plan, 2011.

⁶ South Australia’s Waste Strategy 2015-2020, 2015, Green Industries SA.

*technology, could bring substantial savings.*⁷

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

It is within this strategy and policy context the Participating Councils have sought to collaborate, to play their part in contributing to the achievement of these targets.

4.5.2 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.

4.6 TERM OF AUTHORISATION

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

- Publication of the RFT for Waste Collection Services in August 2018;
- Tender open period of six to eight weeks;
- Tender evaluation period that allows for contracts to be awarded by May 2019;
- Nine to 12 months to allow for the purchase and commissioning of new trucks;
- Contract commencement from May 2020, with a rolling start across the Participating Councils to allow for current contractual arrangements to conclude, with all contracts commenced by May 2021; and
- A proposed maximum 10-year contract operating term.

The proposed 10-year contract operating term for Waste Collection Services consists of a seven-year initial term and an option for a three-year extension period. This is in line with the generally accepted term for collection contracts, which broadly aligns to the optimum economic life of a collection vehicle. 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.

⁷ *Waste Strategy 2015-2020*, Green Industries SA, 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.

4.7 DOCUMENTS SUBMITTED TO 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.

4.8 PERSONS, OR CLASSES OF PERSONS, WHO MAY BE IMPACTED

The suppliers of Waste Collection Services and industry associations have been identified in Annexure 2.

5. MARKET INFORMATION AND CONCENTRATION

5.1 MARKET DEFINITION

As outlined above, 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".⁹ Each Participating Council is responsible to its own ratepayers and elected members and do not overlap in the provision of services.

5.2 RELEVANT INDUSTRY

The relevant industry for the Proposed Conduct is the provision of Waste Collection Services by the Greater Adelaide Region Councils (refer Map 1).

The supply chain for this industry comprises:

- the manufacturers of the collection vehicles plus the included data gathering equipment;
- the manufacturers of the MGBs;
- the suppliers of Waste Collection Services;
- Councils who acquire Waste Collection Services from suppliers in the Greater Adelaide Region;
- residents of the Greater Adelaide Region who benefit from the services; and
- the processors responsible for receiving the waste once discharged from the collection vehicles.

The majority of the Councils in the Greater Adelaide Region outsource Waste Collection Services, either to private sector waste collection suppliers or to a Regional Subsidiary. In total, 17 out of the 27 Greater Adelaide Region Councils use private sector suppliers to deliver this service for ratepayers.

Under the Proposed Conduct, the Applicants will determine the successful supplier and will appoint the processors responsible for receiving the waste. The appointment of the manufacturer of the collection vehicles, and procurement of the data gathering equipment and the MGBs will be at the discretion of the successful supplier.

The market segments for the potential suppliers who might typically tender for Waste Collection Services includes industry participants providing Waste Management Services in the following areas:

- kerbside collection services for local councils – residual waste, recyclables and organic wastes;

⁹ LGA Act, s7(6).

- commercial collection services for business waste – residual waste, recyclables, organic wastes, building and demolition wastes, liquid wastes, hazardous wastes;
- bulk bin supply and removal;
- grease trap waste collection and removal;
- used oil collection and disposal;
- document collection and destruction; and
- industrial services – suction cleaning, drain cleaning, etc.

In addition, a significant number of the potential suppliers for Waste Collection Services may also be engaged in dealing with wastes after collection with activities such as:

- recycling of materials;
- beneficial sorting and processing of materials; and
- landfill disposal.

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

5.3 MARKET SHARE

Council Solutions notes in previous determinations regarding local governments conducting joint tenders for waste collection 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 5.1 above, each Participating Council provides services to its own area only and does not compete with others in the supply of services. Under the Proposed Conduct, the Participating Councils are seeking to source near identical services, being the provision of Waste Collection Services. Utilisation of the 3-Bin System for the collection of domestic waste is widespread across the Greater Adelaide Region, with all 19 Adelaide Metropolitan Councils offering this service to their ratepayers,¹⁰ seven of the other eight Councils providing the 3-Bin System in townships and a 2-bin system (that is, without the organics service) to most other areas, and one Council providing the 2-bin system throughout its area.

In assessing the market share for Waste Collection Services Council Solutions has used Rateable Properties as a publicly available index. This is in line with the LGA Model Contract documentation which uses this as well as Population and Service Entitled Premises as background information for tenderers.¹¹

¹⁰ The Town of Gawler and the Cities of Playford and Salisbury provide green organics collection as an 'opt in' service, however actively promote the take-up of this service within their communities.

¹¹ Service Entitled Premises data is not readily available for all Greater Adelaide Region Councils, however Council Solutions has completed a desktop review where Service Entitled Premises data has been available and found they are generally within 10% for the Adelaide Metropolitan Councils (and always **lower** in quantum for the Participating Councils) and for the balance of the Greater Adelaide Region averages 65% of Rateable Properties. Council Solutions therefore contends Rateable Properties data is a fair metric for the purpose of this analysis.

Council	Rateable Properties	
	Properties	% of all GAR Councils
City of Adelaide	22,435	3.27%
City of Charles Sturt	55,175	8.04%
City of Marion	41,376	6.03%
City of Port Adelaide Enfield	61,026	8.89%
TOTAL	180,012	26.23%
All Greater Adelaide Region Councils	686,236	

Table 2: Market share of the Participating Councils by Rateable Properties

The Participating Councils represent 26% of the Rateable Properties across the Greater Adelaide Region. Of the remaining 74% of the Rateable Properties across the Greater Adelaide Region:

- 51% is available to the market via competitive public tender – 31% by direct tender from the Council to the market,¹² 16% through NAWMA and 4% through AHRWMA; and
- the remaining 23% have Waste Collection Services delivered in-house by East Waste¹³ or FRWA.

Therefore, taking into consideration the Proposed Conduct, 77% of the market in the Greater Adelaide Region is available via competitive public tender processes.

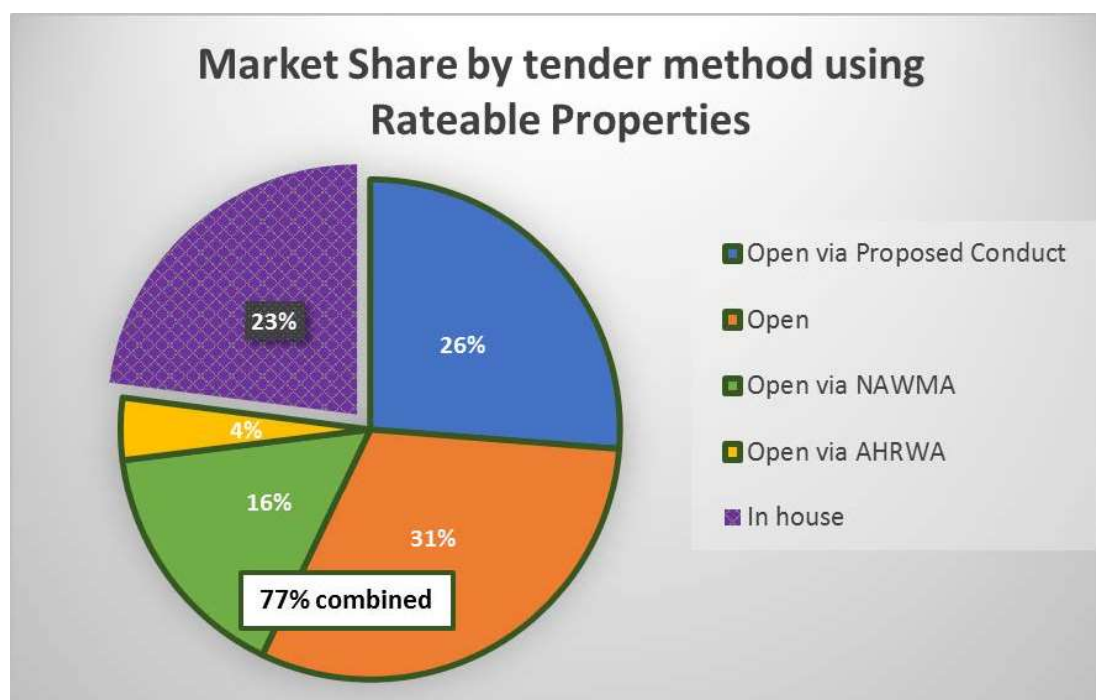


Chart 1: Market share of the Participating Councils by Rateable Properties, including tender methods for remaining

¹² This 31% includes the City of Onkaparinga which currently delivers collection of residual waste in house but outsources the collection of recyclables and organics to the market.

¹³ This 23% includes the City of Mitcham which delivers collection services in house but utilises East Waste for their other waste requirements.

Greater Adelaide Region Councils

It is unlikely this market share will change significantly other than through natural population increase or decrease across all Greater Adelaide Region Councils.

5.4 COMPETITIVE CONSTRAINTS

5.4.1 EXISTING OR POTENTIAL COMPETITORS

To the extent that the Participating Councils are competitors in the acquisition of Waste Collection Services, the existing competitors are the 16 other Greater Adelaide Region Councils who provide the market with opportunities to tender for their Waste Collection Services.

5.4.2 LIKELIHOOD OF ENTRY BY NEW COMPETITORS

There is unlikely to be any entry of new competitors to the Participating Councils in the procurement of Waste Collection Services unless any member of East Waste or FRWA decided to procure Waste Collection Services outside of its applicable Regional Subsidiary.

5.4.3 COUNTERVAILING POWER OF CUSTOMERS AND/OR SUPPLIERS

When an individual Greater Adelaide Region Council tenders for Waste Collection Services 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 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.

The potential suppliers of Waste Collection Services also have access to a significant pipeline of Council opportunities. Aside from the four Participating Councils, there are up to an additional 16 Greater Adelaide Region Councils requiring Waste Collection Services that periodically procure the services from the market via public, open tender processes.

In addition, for the majority of potential suppliers in the market for Waste Collection Services, the provision of 3-Bin System Waste Collection Services is only one element of the potential supplier's business, with many providing multiple other services (such as C&I collection, or processing services).

The four Participating Councils range in size from 1.6% up to 8.6% of the Rateable Properties for the Greater Adelaide Region. However, collectively the Participating Councils represent 26% of the Rateable Properties across the Greater Adelaide Region.

By undertaking a single RFT process and consolidating service requirements the bargaining power of the Participating Councils is increased under the Proposed Conduct and this creates 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 collaborative relationship during contract delivery and management.

6. 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) increased competition from the stimulation of the market; and
- (e) increased service efficiencies.

A number of these benefits are certain to arise from the Proposed Conduct and will have positive efficiency, cost of service and environmental impacts. Council Solutions submits these benefits will have an impact beyond just the Participating Councils' communities and the combined impact will be significant. 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;
 - Increased competition; and
 - Improved service efficiencies.

6.1 PUBLIC BENEFITS THAT WILL OCCUR

6.1.1 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 to this is the resourcing required for effective contract management to ensure the best service for the community.

For potential suppliers also, the time and resources involved in responding to multiple tender processes conducted by individual Councils is similarly intensive. Each Council would ordinarily have their own service specifications, contract conditions, evaluation criteria, and information to be submitted by suppliers as part of each tender process. This requires greater time and effort from the supply market to review and analyse these differences and customise and complete a separate tender submission to each Council. Where multiple Councils approach the market separately over a short period of time, the time and effort of this resource intensive process is compounded.

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.

In the event that the Proposed Conduct did not occur each Participating Council would undertake their own RFT process for Waste Collection Services. That is, four tender processes would occur in a short period of time.

In collaborating via a single RFT process, many elements of the tender and contract management process will be standardised, reduced, and/or eliminated, leading to efficiencies for all involved.

There are a number of ways in which the Proposed Conduct will lead to tender process and contract management efficiencies, as discussed below.

- *Alignment of specification, service standards, reporting and bin types*

The fundamental tasks of Waste Collection Services are consistent across Councils, i.e. each 3-Bin System Service Entitled Premise requires their residual waste collected weekly and their recyclable waste and organic waste collected on alternate fortnights.¹⁵ However each Council will still have their own differences. These may be obvious, such as the use of different coloured bin lids for the same service stream or how a customer call centre is to be run, or subtler, such as timing, content and format of reporting or content and frequency of community education.

Where a potential supplier services a number of Councils individually within the same geographical area, these differences can be material for the services provider and need to be factored into the separate price charged for each Council.

In undertaking the Proposed Conduct, the Participating Councils will be issuing one tender document to the market for the provision of Waste Collection Services, with, to the greatest extent possible, aligned specifications, service standards, data capture and reporting, and bin types. By collaborating there is a focus on consistency and standardisation across Councils that does not occur where Councils undertake their own separate and distinct RFT processes.

- *Reduction of replication of resources and work*

A procurement for Waste Management Services is a large undertaking for an individual Council, requiring the resources of a number of personnel within the 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 4.3.2, 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.

Likewise, the negotiation during a tender process would generally be undertaken by at least two members of a Council in an individual procurement for Waste Management Services whereas, under the Proposed Conduct, Council Solutions will lead a single coordinated negotiation.

¹⁵ Acknowledging some Adelaide Metropolitan Councils outside of the Participating Councils vary slightly from this, for example requiring monthly organic waste collection.

In addition to the personnel requirement, there are a number of 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 of documents. The Participating Councils will contribute to and endorse these documents, however the centralisation of the development and drafting will reduce the time and resources required 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 of similar form. 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

Each of these schedules needs to be checked, updated or tailored to the specific RFT requirements, and attached to the tender submission by potential suppliers. Under the Proposed Conduct, there will be a reduction in the amount of time, cost and resources for potential suppliers in preparing only one tender submission rather than four. Due to the alignment of service standards and specification, the pricing schedule will only need to be individualised for each Participating Council to take into account topographical and density differences.

Council Solutions submits this demonstrates there will be a clear and significant reduction of unnecessary duplication of work for all parties because of 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 committee
 - 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.

Under the Proposed Conduct, these tasks will be undertaken centrally by Council Solutions. 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 responding to four tenders, potential suppliers will only need to respond to one request for tender.

There is a clear benefit to both the Participating Councils and potential suppliers in the combining of administrative tasks that occur 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 specification, 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.

- *Combined contract management*

Contract Management is critical to a successful collaborative relationship between the contracting parties. The contract management tasks for a Waste Collection Services contract can generally be split into four categories:

Council Solutions Led

Participating Council Led

INNOVATION, VALUE ADDS AND MAXIMISING PERFORMANCE	COMPLIANCE	CONFORMANCE	OPERATIONAL
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.	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).	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	This focuses on ensuring, in the simplest form, that the service is delivered, i.e. bins are emptied and the waste is deposited at the agreed facility, is undertaken as per the timings agreed, etc. This will also include the customer interface and tracking the addition and removal of Service Entitled Premises. These tasks will continue to be undertaken by each Participating Council with support from Council Solutions.

Collaborative Tasks

Individual Tasks

Without the Proposed Conduct all these 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 the strategic aspects of Contract Management being neglected (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 evaporate¹⁶. With designated contract management provided by Council Solutions across the four 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.

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 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

¹⁶ Jeff Tate, *Report: Transitioning the roles of Local Government in Waste Management, for the Local Government Association of South Australia*, August 2014, page 27.

measuring the effectiveness of the education programs and community attitudes and behaviours.¹⁷

- **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;
- A single negotiation process will similarly reduce the costs for the Participating Councils in procuring Waste Collection Services;
- 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 where activities such as price reviews, extension negotiations and monitoring of Key Performance Indicators are processed centrally rather than four times individually.

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 Waste Collection Services procurements¹⁸ and Council Solutions submits they will occur as a direct result of the Proposed Conduct.

6.1.2 ENVIRONMENTAL BENEFITS

There are a number of ways in which the Proposed Conduct will lead to environmental benefits, including the increased diversion of waste from 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 just 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 potentially recoverable wastes being abandoned to landfill. One household can significantly degrade the recyclable or organic wastes collected for a whole street.

A consistent message can help reduce contamination and increase diversion of waste. With the focus on collaboration as a result of the Waste Management Services Project, the Participating

¹⁷ Ibid, page 28.

¹⁸ See, e.g., A91019 The St George Region of Councils, Determination 21 March 2007, 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, A91500 Redland City Council & Brisbane City Council, Determination 8 October 2015, A91530 The St George Region of Councils, Determination 14 September 2016, A91544 Cairns Regional Council & Ors, Determination 9 December 2016.

Councils will also work together to develop targeted educational material relevant to key issues, for example combined messaging across the Participating Councils where diversion is lowest, or translated consistent messaging for those from non-English speaking backgrounds.

Education is not just about using the correct bin, however. There is a legislated hierarchy to the priority for the management of waste,¹⁹ which can be illustrated as follows:



Figure 1: Waste management hierarchy, EPA SA

As shown above, the key to waste management is to avoid and minimise the production of waste altogether in the first instance.

As stated in the Green Industries SA report *South Australia's Recycling Activity Survey: 2015-16 Financial Year Report*, South Australia has the second highest overall per capita waste generation rate in Australia at 2,810kg per person per year.²⁰ This is an **increase** of 4.8% from the 2014-15 financial year²¹ which was set as the baseline for South Australia's Waste Strategy target of >5% reduction in waste generation per capita by 2020.²² Notwithstanding this high per capita waste generation rate, South Australia can rightly be proud of the highest diversion rate across Australia at 81.5%²³.

However more is needed, both to increase diversion in the MSW Metropolitan sector from 58.2%²⁴ 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*²⁵ a number of reports were reviewed and it was found "public education and behavior change have a role in a holistic approach to waste management"²⁶. Public education and behavior were found to be "part of the answer in... educating the community (residents,

¹⁹ *Environment Protection Act 1993* (SA), s 4B.

²⁰ *South Australia's Recycling Activity Survey: 2015-16 Financial Year Report*, June 2017, Green Industries SA, page 35.

²¹ *Ibid*, page 33.

²² *South Australia's Waste Strategy 2015-2020*, Green Industries SA, page 27.

²³ *South Australia's Recycling Activity Survey: 2015-16 Financial Year Report*, June 2017, Green Industries SA, page 35.

²⁴ *Ibid*, page 34.

²⁵ Jeff Tate for Local Government Association of South Australia, August 2014.

²⁶ *Ibid*, page 27.

businesses, schools) about Council services and facilities and to recycle and reuse, reducing contamination of the recycling and green organics streams²⁷. The need for leadership, central programs and additional or more targeted programs were also noted²⁸. 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 South Australia's Waste Strategy 2015-20, 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."²⁹

As both this and the Recycling Activity³⁰ report shows, the road to both these goals has begun to slip, potentially through complacency. The following is an excerpt from the Foreword to the Waste Strategy by the 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.*³¹

The Proposed Conduct is based on the Participating Councils sharing responsibility to contribute to the successful implementation of the State government's waste strategy and achievement of the 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 ON ENVIRONMENTAL BENEFITS**

Where contamination is managed, diversion will be increased and there will be less waste going to landfill. Combining educational materials will not only make this messaging more consistent but it will also be more strategic and more 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

²⁷ Ibid.

²⁸ Ibid.

²⁹ Page 26.

³⁰ South Australia's Recycling Activity Survey: 2015-16 Financial Year Report, June 2017, Green Industries SA.

³¹ South Australia's Waste Strategy 2015-2020, Green Industries SA, page 4.

for Waste Collection Services.³²

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.³³

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.

6.2 PUBLIC BENEFITS THAT ARE LIKELY OCCUR

6.2.1 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. Standardising requirements, 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 Waste Collection Services. In applying for the revocation of authorisation A91019 and substitution of authorisation A91530, the Georges River Council & Rockdale City Council (**SGROC**) stated the authorised conduct under A91019, being the collection and bin supply and maintenance across the 3-Bin System (and other ancillary collection services) had delivered “a saving of \$46 million over the initial term of the contracts based on the difference between the current collection prices and the prices in the previous contracts.”³⁴ Whilst not claiming the situation prior to authorisation for SGROC 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 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 across all Councils.

The potential suppliers, in turn, will have the opportunity to tender for a greater volume of assured work that makes the provision of service improvements more sustainable based on both number of services and efficiencies. The improved purchasing power of the Participating Councils when combined can drive real savings and service outcomes for their communities.

Previous authorisations granted by the ACCC for collaborative procurements of Waste

³² See, e.g., A91544 Cairns Regional Councils & Ors, Determination 9 December 2016, A91483 Maitland City Council & Ors, Determination 9 July 2015, A91019 The St George Region of Councils, Determination 21 March 2007, A91087 Central Queensland Local Government Association, Determination 13 August 2008, A91289 Hunter Resource Recovery, Determination 12 April 2012.

³³ See, e.g., A91019 The St George Region of Councils, Determination 21 March 2007, A91087 Central Queensland Local Government Association, Determination 13 August 2008.

³⁴ A91530, application submitted 2 March 2016, page 4.

Collection Services have also acknowledged the public benefit of increased purchasing power.³⁵

6.2.2 INCREASED 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 Waste Collection Services to compete and submit tenders when the RFT is called.

There are currently at least six potential suppliers in the market who have the capacity to provide Waste Collection Services to the Participating Councils, but not all of these tender regularly for waste collection opportunities presented by South Australian Councils. Notwithstanding the diversity of potential suppliers in the market, as a result of procurement processes undertaken by Regional Subsidiaries and individual Councils, only three suppliers are currently contracted to provide services to the Greater Adelaide Region Councils who procure Waste Collection Services via tender; and of these, one supplier holds a 68% market share.

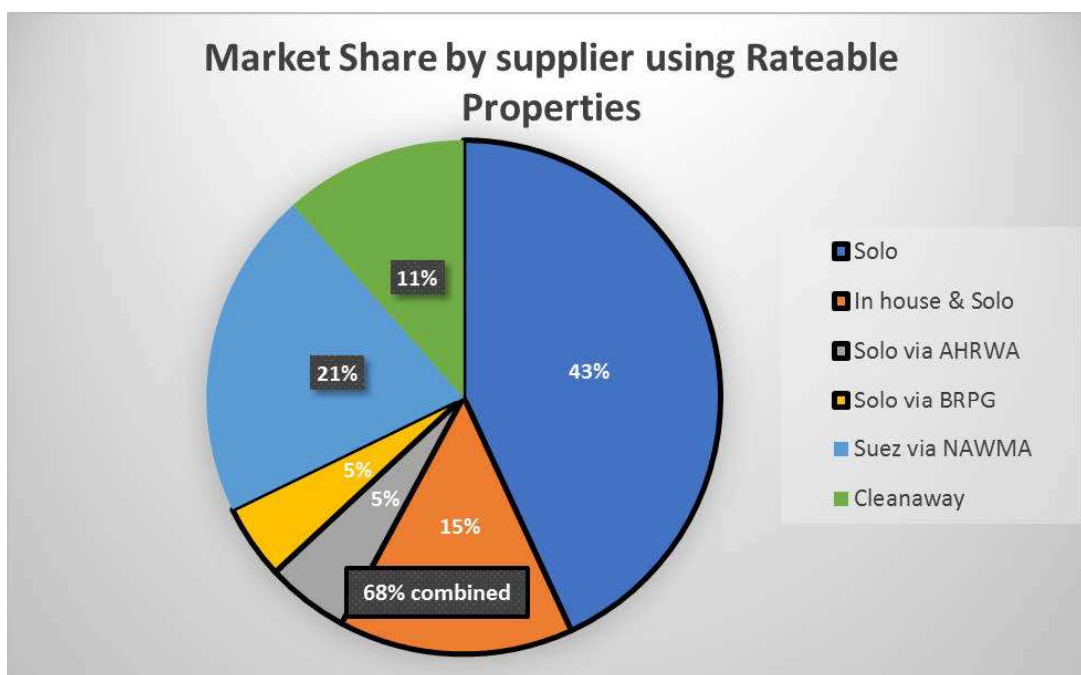


Chart 2: Current division of the Greater Adelaide Region Councils who procure Waste Collection Services via open tender to the market; share by supplier using Rateable Properties.

The feedback provided by potential suppliers to Council Solutions during consultation with the market indicated that the contract opportunity presented via the Proposed Conduct is attractive. The collaborative approach of four Councils utilising a single RFT with standardised specifications, reducing the tendering workload for the potential suppliers, further encourages competition. Receiving the maximum number of tenders will allow the Participating Councils to compare all the service options available and unlock the best possible Value for Money.

Accordingly, tendering the Waste Collection Services via a public RFT process will maximise

³⁵ See, e.g., A91387 Bathurst Regional Council & Ors, Determination 12 February 2014, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013.

competition, providing all potential suppliers in the market with fair and equal opportunity to secure the contract.

Without the stimulation of competition through the Proposed Conduct, the same scenario regarding the division of the Greater Adelaide Region Councils may arise depending on the supplier/s appointed if the four Participating Councils each undertake their own separate RFT processes. However the same public benefits that will occur due to the Proposed Conduct will not be realised.

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.³⁶

6.2.3 IMPROVED SERVICE EFFICIENCY

A key feature of the consolidated specification and service standards under the Proposed Conduct will be allowing collection vehicles to service more than one Participating Council in any run and requiring consistent livery on the trucks.

This will have the following impact:

- The successful supplier will be able to optimise collection routes as vehicles will no longer be required to maintain 'Participating Council lines' and may cross into the adjoining Participating Council area if that is the most efficient route;
- In responding to a missed service, a vehicle currently collecting in a different Participating Council will be able to be re-tasked rather than sending out another vehicle;
- All spare vehicles will similarly have freedom of movement, reducing the overall number of trucks required; and
- The successful supplier will be able to maximise utilisation of the vehicles through the optimisation of the collection route and freedom of usage of one vehicle over another.

Without the Proposed Conduct, a potential supplier would be bound to adhere to the Participating Council boundaries, even where they held contracts for more than one Participating Council. These boundaries potentially cause a disconnection to efficient services by "placing artificial restrictions on the design of waste provision models"³⁷. Each fleet would have separate livery and should one break down only a vehicle with the same livery would be permitted to replace it. Where a collection contractor holds multiple contracts in one area, which is the existing situation in the current Greater Adelaide Region, this hinders the achievement of maximum efficiency.

The benefits from this flexibility are outlined below:

- With a reduction in the number of vehicles required overall, there will be fewer waste vehicles sharing the road;
- Less trucks and more efficient runs should also lead to reduced traffic congestion and air and noise pollution; and

³⁶ See, e.g. A91408 Clarence City Council, Glenorchy City Council & Hobart City Council, Determination 4 June 2014, A91387 Bathurst Regional Council & Ors, Determination 12 February 2014.

³⁷ Jeff Tate, *Report: Transitioning the roles of Local Government in Waste Management, for the Local Government Association of South Australia*, August 2014, page 17.

- Both a reduced number of vehicles and a higher level of services through new, safer technology on vehicles should deliver improved public safety.

The guaranteed volume with the overall reduction in the number of trucks required can also allow for 'smarter' trucks, with better monitoring equipment or lower emissions. The Participating Councils plan to explore the viability of fitting RFID tags to the MGBs to allow for better monitoring of the MGB assets, the material collected and the collection services. This is in line with Green Industries SA's Priorities for Action as outlined in South Australia's Waste Strategy 2015-2020.³⁸ The cost to do so can be prohibitive, however the larger volume together with more standardised bin types can help offset this cost and provide greater efficiencies in the rollout of the technology. This technology can also allow for greater monitoring and review of kerbside collection systems to ensure maximum performance, another Priority for Action.³⁹

The ACCC has previously recognised these public benefits in authorisations granted for the collaborative procurement of Waste Management Services.⁴⁰

7. 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:

- 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 Collection Services. While the Waste Collection Services will not be contestable for the duration of the contract period, the RFT process will ensure competition for the award of the contracts.
- c) The Participating Councils remain separate legal identities and are members of the Waste Management Services Project by choice. If there was any loss in competition, the resultant detriments, such as increased prices or lower quality of service, would impact on the Participating Council's ratepayers and communities. The Participating Councils, however, in assessing the Proposed Conduct, see the benefits in collaboration and do not believe there will be any detriments to service or competition.
- d) The RFT is restricted to the four Participating Councils only, and the scope of the RFT is limited to one service stream, being Waste Collection Services. This provides both certainty and simplicity to the tendering process.
- e) Council Solutions has engaged in 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.
- f) Potential suppliers will be free to compete for contracts for other Councils and Regional Subsidiaries in the Greater Adelaide Region.

³⁸ Page 32.

³⁹ Ibid.

⁴⁰ See, e.g., A91019 The St George Region of Councils, Determination 21 March 2007, A91408 Clarence City Council, Glenorchy City Council & Hobart City Council, Determination 4 June 2014, A91387 Bathurst Regional Council & Ors, Determination 12 February 2014, A91361 Wollongong City Council & Shellharbour City Council, Determination 31 July 2013.

- g) Through the use of a standard RFT process there will be no disincentive or barrier to potential suppliers tendering.

8. INTERIM AUTHORISATION

The Applicants seek interim authorisation from the ACCC in respect of this application to allow for an approach to market by August 2018. 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 Waste Collection Services before the ACCC issues a final determination in relation to this application. 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 ensure the potential suppliers have the greatest opportunity to respond to and participate in the tender 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.

9. 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.

10. CONFIDENTIALITY

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

11. GLOSSARY

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' or 'blue' 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

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

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.

Ancillary Service Streams

Bulk Bin Collection, Hard Waste Collection and Street Litter Collection

BRPG

Barossa Regional Procurement Group, an alliance witnessed by a Memorandum of Understanding between the Mid Murray Councils, Adelaide Plains Council, Light Regional Council and the Town of Gawler established to benefit from economies of scale, increase the range and quality of services and, where possible, reduce the cost of services to ratepayers through a consultative and collaborative approach.

Bulk Bins

Typically lidded mobile bins that are larger than 240L 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.

Bulk Bin Collection

The collection of Bulk Bins for the Participating Councils. This service is **excluded** from the Proposed Conduct

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

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.
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 and 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
Hard Waste Collection	The collection of Hard Waste for the Participating Councils. This service is excluded from the Proposed Conduct
LGA Model Contract	Local Government Association of South Australia's Model Waste Management Contract
MGB	Mobile garbage bin
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 Processing	The processing of organic material collected through the Waste Collection Services. This service is excluded from the Proposed Conduct
Population	Number of residents in a Council, taken from Australian Bureau of Statistics report 3218.0 Regional Population Growth, Australia, Released 28 July 2017, Table 4. Estimated Resident Population, Local

Government Areas, South Australia.

Processing Service Streams	Recyclables Processing, Organics Processing, Residual Processing
Proposed Conduct	As outlined in paragraph 4.1
Rateable Properties	Properties (including vacant land) within a Council where the Council is entitled to collect rates. This includes residential, commercial and industrial premises, but excludes Council owned properties, State government or Crown owned properties and other exempt properties.
Recyclables Processing	The processing of recyclable material collected through the Waste Collection Services. This service is excluded from the Proposed Conduct
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.
Residual Processing	The processing and disposal of residual material collected through the Waste Collection Services. This service is excluded from the Proposed Conduct
RFID Tags	Radio frequency identification devices fitted to MGB to identify asset location and frequency of use.
RFT	Request for Tender
Service Entitled Premises	Premises entitled to waste services. Generally residential properties (including medium to high density living) but also some small businesses and Council owned properties.
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
Street Litter Collection	The collection of Street Litter Bins for the Participating Councils. This service is excluded from the Proposed Conduct
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. All the components of Value for Money form the evaluation criteria. 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 service 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.

ANNEXURE 1

CONFIDENTIAL, EXCLUDED
FROM PUBLIC REGISTER

ANNEXURE 2

Existing Suppliers		
Service Provider	Website	NB: This outlines the services the supplier provides that correlate to the Proposed Conduct and should not be interpreted as their sole business.
Cleanaway	www.cleanaway.com.au	Cleanaway provides 3-Bin System collection services to local government
Solo	www.solo.com.au	Solo provides 3-Bin System collection services to local government
Suez	www.sita.com.au	Suez provides 3-Bin System collection services to local government
Potential Suppliers		
Service Provider	Website	NB: This outlines the services the supplier provides that correlate to the Proposed Conduct and should not be interpreted as their sole business.
Bettatrans SA	www.bettatrans.com.au	Bettatrans SA provide collection services to businesses and privately to residential properties
Eastern Waste Management Authority (East Waste)	www.eastwaste.com.au	East Waste is a regional subsidiary that provides waste management services to its member Councils, including in-house 3-Bin System collection services
JJ Richards	www.jjrichards.com.au	JJ Richards provides 3-Bin System collection services to local government
Remondis	www.remondis.com.au	Remondis provides 3-Bin System collection services to local government
Signal Waste & Recycling	www.signalwaste.com.au	Signal Waste & Recycling provide collection services to businesses and privately to residential properties
Veolia	www.veolia.com	Veolia provides 3-Bin System collection services to local government
Potential Subcontractors		
Service Provider	Website	NB: This outlines the services the potential subcontractor provides that correlate to the Proposed Conduct and should not be interpreted as their sole business.
Mastec	www.mastec.com.au	Mastec provides MGBs that are collected through the 3-Bin System collection
Trident Plastics	www.tridentaustralia.com.au	Trident Plastics provides MGBs that are collected through the 3-Bin System collection
Industry Associations		
Representative Body	Website	Members represented
Office of the Small Business Commissioner South Australia (OSBC)	www.sasbc.sa.gov.au	The OSBC investigates market practices that may adversely affect a small business
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. <i>Council Solutions has engaged with WMAA</i>
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



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

15/02/2018

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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 'D Jones', is positioned above the printed name.

David Jones
General Manager
Adjudication