

Response to submissions from interested parties

Opening Statement

In preparing this submission, Council Solutions notes the submissions provided from the following interested parties:

- Waste & Recycling Association of South Australia (**WRASA**), consisting of four parts:
 - WRASA submission (Part A) in response to Council Solutions application AA1000414 to the ACCC dated March 14, 2018 (**WRASA PART A**), dated 26 April 2018;
 - WRASA submission (Part B) in response to Council Solutions application to the ACCC dated March 14, 2018 (**WRASA PART B**), dated 26 April 2018;
 - Commentary on the Application for authorisation for a collaborative waste collection services tender process, prepared by Economic Research Consultants for the Waste and Recycling Association of South Australia (**WRASA PART C**), dated 24 April 2018; and
 - Evaluation Report, Application for authorisation for a collaborative waste collection services tender process, Brian Dollery (**WRASA PART D**) (undated).
- Business SA, dated April 2018; and
- Cleanaway, dated 25 April 2018.

Council Solutions provides the following responses to addresses the main points raised in the submissions outlined above. Where Council Solutions has not responded directly to a specific concern raised in a submission made by an interested party, that should not be construed as Council Solutions' agreement to the relevant submission.

As an overarching comment, Council Solutions notes that where a submission expresses concern, it generally has two key themes, namely they:

1. Suggest the public benefits claimed by the Applicants will not be achieved, in most cases without providing any acceptable evidence or explanation to substantiate this position. Council Solutions submits as per AA1000414, that this is not consistent with:
 - the advice provided by our expert waste industry advisor (Wright Corporate Strategy), who have participated in numerous successful collaborative waste services procurements and, with an understanding of the South Australian market, advised the Participating Councils will achieve significant benefits that would not occur without the Proposed Conduct;
 - the views of the Participating Councils who currently procure Waste Collection Services from the market and have chosen to participate in the Proposed Conduct because of the benefits they will achieve (as outlined in the submissions made by the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield); and
 - the public benefits previously acknowledged by the ACCC for similar procurement activities as identified in the numerous references provided in AA1000414. The Applicants see no reason why comparable benefits will not be achieved under the Proposed Conduct.
2. Rely on an assumption that competition will be reduced as a result of the Proposed Conduct without providing any evidence or explanation to substantiate this position and without considering the "future with and without" test. Council Solutions submits as per AA1000414:
 - The Proposed Conduct is straightforward, that is, to undertake a public Request for Tender (**RFT**) on behalf of four Greater Adelaide Region Councils to award a contract to a sole supplier for Waste Collection Services (collection of the 3-Bin System only) and will result in a highly competitive tender process.
 - There is no evidence to suggest that any detriments in the future with the Proposed Conduct

will be substantially different to any detriments in the future without the Proposed Conduct in AA1000414, noting:

- **with** the Proposed Conduct the only outcome where one provider would have a greater market share than the current market leader currently enjoys is if that market leader won the Waste Collection Services contract under the Proposed Contract, in which case their market share would grow by one Council (refer Attachment 1). As the current market share analysis shows, this outcome could occur without the Proposed Conduct;
- **without** the Proposed Conduct each Participating Council will be required to undertake their own procurement processes for Waste Collection Services and currently the same supplier is contracted by three out of the four Participating Councils for provision of Waste Collection Services; and
- **without** the Proposed Conduct the extent of the public benefits detailed in AA1000414 will not be realised by the Participating Councils and their communities.

Council Solutions also notes the conduct proposed in AA1000414 will be assessed on its merits by the ACCC and not simply in relation to its 'differences' to any previously proposed conduct.

Terms defined in this submission have the same meaning as in application AA1000414 unless stated otherwise.

WRASA PART A

Council Solutions notes this document focuses on the Proposed Conduct as a response to the Final Determination given by the ACCC to the application for authorisation A91520.

For the reasons outlined below, Council Solutions submits that the various statements made within WRASA PART A are incorrect, as they have not objectively or independently considered the conduct proposed under AA1000414. As such, Council Solutions submits the ACCC should consider the weight it affords to this submission and all interested party claims that undertake a similar assessment of the Proposed Conduct as a response to A91520.

1. The conduct proposed under AA1000414 is substantially different from A91520

Council Solutions articulates the material and substantive differences between the Proposed Conduct in AA1000414 and that proposed in A91520, including:

ACCC Final Determination on A91520	AA1000414
Distinguished A91520 from the previous 27 (successful) waste management authorisation applications on the basis that it was the first one to involve four service streams.	The Proposed Conduct is for <u>one service stream</u> (being Waste Collection Services). Additionally, the scope of the collection services has reduced by also separating out the Ancillary Service Streams into a separate RFT.
Found a risk of deterring or preventing some potential suppliers from tendering, or from submitting competitive bids on the basis of the size and complexity of the proposed conduct, i.e. RFP structure.	The current project adopts a more traditional <u>Request for Tender (RFT)</u> , rather than a Request for Proposal (<u>RFP</u>) process.
Found a risk of a reduced number of suppliers to the participating Councils.	One supplier across all service streams is no longer a possible outcome.

ACCC Final Determination on A91520	AA1000414
	<p>The outcome of this Proposed Conduct will be a single supplier in relation to Waste Collection Services only.</p> <p>The Proposed Conduct now involves four rather than five Participating Councils.</p>
<p>Found transaction cost savings for Councils were unlikely to eventuate due to the coordination costs in situations where offers are contingent on other Councils' acceptance of that offer.</p>	<p>A supplier must tender for Waste Collection Services for all four councils, and only one supplier will be awarded a contract.</p>
<p>Found transaction cost savings for tenderers were unlikely to eventuate due to complexity and uncertainty in tendering for four service streams at once (or multiple alternative bids with different permutations of Councils and service streams)</p>	<p>This removes the complexity for tenderers needing to determine which permutations of service streams and Councils to tender for.</p>

Council Solutions notes the role of the ACCC in considering an application for authorisation is to satisfy itself that the conduct proposed:

- would not have the effect, or would not be likely to have the effect, of substantially lessening competition; or
- would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed conduct.

Council Solutions is concerned this, and a number of other, submissions appear to be seeking to replace this legal test with an enquiry into how the Proposed Conduct in AA1000414 differs from A91520. Council Solutions submits it is clearly incorrect to characterise the Proposed Conduct and A91520 as "almost identical" or as having "no substantive difference".

In any event, Council Solutions respectfully submits that the Proposed Conduct in AA1000414 should be considered on its own merits, and not solely by reference to a comparison with an earlier authorisation application.

2. Public benefits are applied in the context of the proposed conduct

WRASA PART A criticises Council Solutions for making submissions on the basis of the same public benefits that were relied upon in A91520.

Council Solutions notes that the majority of the authorisation applications in the field of waste management have addressed identical public benefits. As such, the fact that these same public benefits form the basis of AA1000414 is neither material nor noteworthy.

Furthermore, the public benefits claimed in support of the Proposed Conduct do not apply in a vacuum. The appropriate approach is to assess the likelihood of those public benefits and detriments anew, on the basis of the conduct which is now proposed, i.e. within the context of the current project, rather than merely to compare the Final Determination to A91520 and the application in AA1000414.

3. Submissions in relation to the Final Determination to A91520 should be disregarded

Council Solutions are also concerned by WRASA's submissions that purport to "*maintain their position*" in respect of submissions made in relation to A91520. These submissions have not applied any arguments made in respect of A91520 to the conduct now proposed under AA1000414.

Furthermore, WRASA's submissions (and some of other interested parties) seek to apply specific conclusions of the ACCC in the Final Determination to A91520 (i.e. rather than the facts on which those conclusions were based), directly to the Proposed Conduct under AA1000414.

Council Solutions respectfully submits arguments of this nature should be disregarded.

Council Solutions wishes to further reiterate that AA1000414 is not an appeal to the ACCC's Final Determination to A91520. Rather, it is a new application that seeks authorisation of new conduct that has been scoped specifically:

- to ensure the Participating Councils can continue to collaborate in an effective manner and achieve the public benefits outlined in AA1000414;
- to address the ACCC's primary concerns as set out in its Final Determination to A91520; and
- in consultation with the ACCC and interested parties.

Council Solutions respectfully submits that AA1000414 should be considered on its own merits, and not solely by reference to a comparison with an earlier authorisation application.

As such, Council Solutions does not intend to respond to WRASA PART A in detail, however highlights the following point that is not made elsewhere in WRASA's submissions:

- WRASA proposes a breakdown of time spent on contract management, with the Innovation, Value Adds and Maximising Performance, Compliance and Conformance tasks being allocated an estimated 5-10% of total time spent on contract management. WRASA allocates Operational tasks the balance of time.

Council Solutions rejects this allocation of contract management time and submits that as Council Solutions currently manages collaborative contracts under which Councils spend in excess of \$63.5 million annually, we are well placed to understand the time and effort associated with collaborative contract management within the South Australian local government sector. As noted in sub-paragraph *combined contract management* in paragraph 6.1.1 of the application, time and resource constraints within Councils may lead to the strategic elements of contract management, such as Innovation, Value Adds and Maximising Performance being overlooked. Where this occurs and an unbalanced amount of time is spent on the Operational tasks, neither party receives the full benefit and value of the contract and a focusing 90-95% of effort on Operational contract management as submitted by WRASA is not best practice and will not be the approach adopted under the Proposed Conduct.

The Proposed Conduct will allow a central resource to focus on and manage these aspects and extract the maximum value and performance. In addition, this will ensure the data collected by the collection contractor through the use of any technology is not simply 'filed away', but analysed and compared across the Participating Councils to inform education programs, service delivery and contamination management within the Participating Councils. Additionally, it will also inform policy and strategy development and measure the effectiveness of education programs and community attitudes and behaviours, both at the Participating Councils and at a State level through consultation with GISA. GISA has supported this aim in their submission to the ACCC dated 12 April 2018.

WRASA PART B

Council Solutions notes this document focuses on application AA1000414.

Throughout WRASA PART B, many statements are made that are not supported with evidence or are incorrect interpretations of the Proposed Conduct. Council Solutions unreservedly maintains the information submitted in AA1000414 is correct and provides the level of detail required to assess the Proposed Conduct within the requirements of the *Competition and Consumer Act*. Council Solutions provides the following additional information and/or observations in response to WRASA's PART B submission.

Participating Councils and collaborative groups

The Participating Councils are the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield who have chosen to collaborate in the procurement of Waste Collection Services because of the benefits the Proposed Conduct will provide to their ratepayers and communities as evidenced in the submissions made to the ACCC by each of the Participating Councils.

WRASA submits at Point 11 how it believes Councils should cluster for collaborative procurement. As explained below, Council Solutions can confirm Regional Development Australia did not establish these clusters for the purposes of collaborative procurement, let alone as an indication as to how Councils should collaborate specifically for the procurement of Waste Collection Services. As such, they are neither relevant to nor reflective of how Councils in the Greater Adelaide Region have chosen to collaborate for Waste Management Services.

Regional Development Australia (**RDA**) is "an Australian Government initiative that aims to enhance growth and strengthen the **regional communities** of Australia and plays a pivotal role in ensuring sustainability of Australia's **regions**." There are 8 entities in South Australia, of which only one is the Adelaide metropolitan entity, namely Regional Development Australia Adelaide. Council Solutions submits the sub-grouping put forward, and indeed the RDA areas generally, have no relevance as to how Councils in the Greater Adelaide Region choose to collaborate for Waste Management Services, noting:

- East Waste consists of Councils from the Adelaide Metropolitan (including Eastern and Southern Adelaide Government Regions) and the Adelaide Hills, Fleurieu and Kangaroo Island RDA areas;
- NAWMA consists of Councils from the Adelaide Metropolitan (Northern Adelaide Government Region) and the Barossa RDA areas;
- AHRWMA consists of Councils from the Adelaide Hills, Fleurieu and Kangaroo Island and Murraylands & Riverland RDA areas; and
- BRPG consists of Councils from the Barossa and Murraylands & Riverland RDA areas.

RFT process

Council Solutions rejects the statements made by WRASA at Point 11 which appear to demonstrate a lack of understanding of both the ACCC authorisation process and tender processes. Council Solutions outlines the following in response to the four sub points provided in at Point 11:

- a) Council Solutions and the Participating Councils would welcome a positive determination from the ACCC for all applications. However, Council Solutions understands that the ACCC will assess, and interested parties should consider, all applications for authorisation on their respective merits and not in relation to AA1000414. That is, although application AA1000419

for the Processing Service Streams and AA1000420 for the Ancillary Service Stream are all within the South Australian waste industry, they each reflect different markets, attract providers with different areas of expertise and will have different impacts.

Council Solutions notes that in Business SA's submission it states:

"We further note and support Council Solutions' suggested intention to seek separate ACCC approval for the Processing Service Streams and Ancillary Service Streams."

- b) WRASA states the successful contractor for Waste Collection Services will have a "distinct advantage" for the other Service Streams but offers no evidence as to why. The RFT for Waste Collection Services is a discrete tender process, as will be the RFT for the Processing Service Streams and as will be the RFT for the Ancillary Service Streams (each stream requiring an individually acceptable submission).
- c) Council Solutions notes the centroids outlined in the application have not been disputed by WRASA as to the applicability of their locations in regards to any processor or disposal site. These centroids have been carefully considered and the need to implement the alternative facility rate may well be unlikely. As such, there will be no change to drop-off location post award, the tendered rates will not require any adjustment and there will be no opportunity for higher collection fees to be levied as a result of the confirmation of the processor. All tenderers will be competing on the same basis, will be comparable and thus fully tested in a competitive tender environment.
- d) Council Solutions advised all market participants (and not just "one of [WRASA's] members") that all RFTs would be released at the same time. However, they are separate and discrete RFTs.

Under the Proposed Conduct in AA1000414, Council Solutions confirms that the Participating Councils will not appoint a single supplier for provision of all service streams across the three RFTs.

The proposed conduct of the two additional applications is a matter for discussion once WRASA has had an opportunity to consider those applications, however as they have been raised by WRASA at this time, Council Solutions provides the following:

- Waste Management Service Packages: The Applicants are not packaging all waste management services into a single RFP. Under the Proposed Conduct the approach to market separates the service streams into three discrete RFTs to:
 - reduce the complexity of the procurement process by simplifying the bidding process for suppliers and the tender evaluation process for the Participating Councils;
 - group the waste services to align with the supply market capabilities and specialisations; and
 - allow the small to medium enterprises, who typically deliver the Ancillary Service Streams, the opportunity to more easily participate in the procurement process by releasing a discrete RFT for these services.

This will simplify the approach and **maximise the opportunities for small businesses to participate in the procurement process.**

RFT 1 for Waste Collection Services is as per the Proposed Conduct outlined in AA1000414.

RFT 2 for the Processing Service Streams consists of:

- Receipt and processing of recyclables;
- Receipt and processing of organics; and
- Receipt and processing or disposal of residual waste.

Tenderers may bid for one, two or all Service Streams. If bidding for more than one Service Stream each offer of a Service Stream must be separable.

RFT 3 for the Ancillary Service Streams consists of:

- Multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins);
- Kerbside collection and processing or disposal of Hard Waste; and
- Collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.

Tenderers may bid for one, two or all Service Streams. If bidding for more than one Service Package each offer of a Service Stream must be separable.

Alignment of Specification and use of RFID tags

WRASA states the Participating Councils currently have “significantly different” bin systems across the four Participating Councils, which is inconsistent with the information provided in Table 1 of WRASA’s submission.

Waste Stream	Port Adelaide Enfield	Charles Sturt	Marion	Adelaide	Council Solutions comments
Garbage	Blue lid, 140 litre	Blue lid, 140 litre	Red lid, 140 litre	Red lid, 140 litre	All bins are the same size. There are two lid colours, red (the ‘standard’ for Residual Waste) and blue. Both Port Adelaide Enfield and Charles Sturt plan to change lid colour to red to match the standard, which may be through new bins or retro-fitting of lids.
Recycling	Yellow lid, 240 litre	Yellow lid, 240 litre	Yellow lid, 240 litre	Yellow lid, 240 litre	Identical across all Councils.
Organics	Dark green lid, 240 litre + kitchen caddy	Dark green lid, 240 litre + kitchen caddy*	Nature green lid, 240 litre + kitchen caddy*	Lime green lid, 240 litre + kitchen caddy*	All bins are the same size. All lids are green. * Corrected by Council Solutions: All Participating Councils have a kitchen caddy program and accept Food Organics.

Council Solutions submits that two distinct lid colours in the Residual Waste stream and variations on green in the Organics stream do not constitute significant differences and the suggestion this will impact on drafting the specifications is false. The specifications have been drafted without any issues and will be provided to the ACCC in confidence.

Additionally, all Participating Councils provide Kitchen Caddies which is evidenced by their respective websites.

At Point 12 of its submission, WRASA assumes an initial roll-out of over 540,000 MGBs would be required to achieve consistency and installation of RFID tags and puts the cost of this at \$27 million that would **likely be avoided** under individual Council contracts. This statement does not reflect the reality that bins are replaced on fail through the life of a contract and, given the age of some bins in

the Participating Councils, the cost of a mass rollout with RFID tags may actually be more economical than an RFID retrofit and replace on fail program. Refer CONFIDENTIAL Attachment 2 to this submission [REDACTED]

[REDACTED]

Further, Council Solutions notes WRASA has put forward the cost of alignment as a static, upfront cost that has not been considered by the Participating Councils. As WRASA's own table shows, alignment does not require all new bins for all Councils and, where Participating Councils are required to change, this is being assessed by the Council in direct relation to their current expenditure on 'replace on fail' due to ageing of the current stock.

Council Solutions notes WRASA's comments regarding the reliability and usefulness of RFID tags, however the Participating Councils have made an informed decision to pursue this, which is supported by GISA in its submission to the ACCC. Furthermore, having a central contract management role responsible for gathering and analysing the data they collect will ensure maximum value is extracted from the cost of implementing.

Value of the Waste Management Services Project

WRASA makes a statement in Point 14 that suggests the Proposed Conduct for all the services in the Waste Management Services Project has a value of \$50 million (per annum). This is reinforced by further statements in Point 16 and Point 32 which puts the value of the Waste Management Services Project at \$500 million. WRASA provides **no evidence** for this value. Council Solutions rejects both the assumed value and the relativity of the value to the involvement of the Participating Councils. As stated elsewhere, the roles, responsibilities and personnel requirements from the Participating Councils in the tender process are clearly stated in the application.

Additionally, as Council Solutions made clear at the industry and association briefing day attended by a representative from WRASA, and to every stakeholder in one-one-one consultations when asked, **no administration fee** will be applied as part of the Proposed Conduct.

Acknowledgement of benefits

In Point 16 of its submission, WRASA notes an area where Councils differ when managing contracts individually. It states "from our members we know that different Councils have different internal reporting, KPIs, systems and processes for data, pricing, contract compliance and day to day political requirements involving waste services." The assumption is made by WRASA that alignment will require "many changes" and "compromises." Council Solutions highlights that not only will alignment require **minor** changes, but in doing so, there will be a public benefit. Council Solutions confirms the specification will be provided to the ACCC in confidence (for reasons of probity this is not a public document at this time, but the specification will be publicly available upon release of the RFT to market).

Council Solutions also notes that **"uniform tender and contract management processes should benefit both the Participating Councils and those suppliers providing tender bids"** has been acknowledged and supported by Business SA in its submission at Point 16.

Council Solutions confirms:

- The internal reporting required by each Participating Council may differ slightly in format, but contains the same key information. While any one Participating Council may currently provide a "lighter" internal report than others, streamlining the information will not only allow for

consistent data provision by the contractor, but will provide benefit to that Participating Council's community with the increased transparency of the service they are being provided.

- By ensuring the KPIs are consistent across the Participating Councils, the contractor will be able to provide relevant information in a consistent format and be accountable for the provision of high quality services to all Participating Councils.
- Whilst pricing will be different for each Participating Council based on **topographical and service density differences**, the foundation of the pricing will be the same for all Participating Councils. The price review mechanism will be consistent also. Again, this streamlines the application of pricing by the contractor to the Participating Councils.

“Sweet spot” sizing

WRASA asserts a “sweet spot” exists for the size of collection contracts, outlined as being 20,000 to 50,000 **households** in Point 38, after which “diseconomies of scale” exist. This differs from the report put forward by WRASA in WRASA PART D which finds “diseconomies of scale” beyond **populations** of 98,000 in Queensland post amalgamation of Councils and 99,000 **residents** after amalgamation across **four areas** of Council spend.

Council Solutions rejects the concept of this “sweet spot” in relation to the Greater Adelaide Region waste industry.

The size of collection contracts around the country varies considerably from what might be the smallest contract in Hunters Hill, NSW of around 5,000 serviced premises, to what is undoubtedly the largest collection contract in the country at Brisbane City Council where upwards of 500,000 premises are serviced under the one collection contract – one hundred times the size of the Hunters Hill contract.

Despite this significant variance in size of collections contracts in this country there are few (if any) known published and reputable papers on what might constitute an optimal size for a collection contract. Many papers have been published expressing pros and cons regarding the amalgamation of councils – forced or otherwise – and scale issues form a consistent theme in the various arguments for and against larger council areas.

WRASA's submission for the 20,000 to 50,000 **households** “sweet spot” cites multiple reference documents as the source of this number, all of which can be traced to an academic paper authored by Barbara J Stevens, first submitted for publication in September **1976**, with a revised edition in April **1977**.

It is regrettable that none of the authors of the submissions made by WRASA appear to have read the depth and breadth of the academic dissertation; rather they have grasped a number presented as a threshold tipping point in the paper, without interrogating the basis for either that number or indeed the rational of the study itself. For multiple reasons the paper by Stevens is inappropriate in the context in which it has been used in the submissions and in our view has no relevance to this Application and should carry no weight with the ACCC for the following reasons:

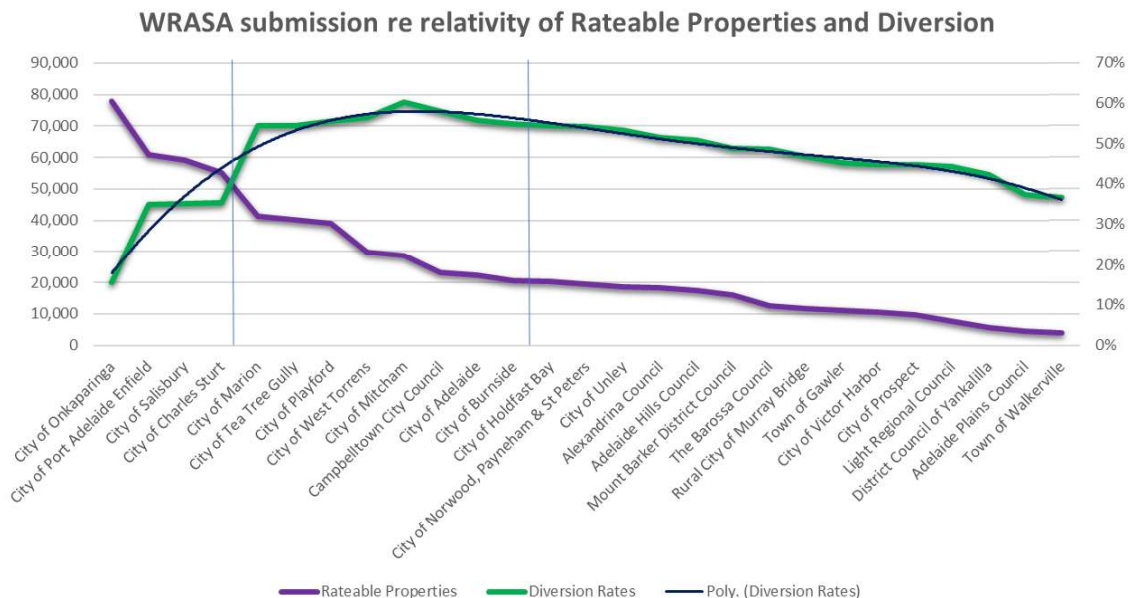
- the study is based on data from the waste collection industry in the **USA**;
- the study represents an academic attempt to develop regression analysis on cost data provided by the various authorities and does not delve into the costs themselves;
- by its own admission the paper states that the scale range of the study is constrained – “*All cost comparisons across market structures must hold the scale of operation constant, at least for the*

range of markets where scale economies may be reached” – a statement on page 439 of the article in the section headed Theoretical Framework;

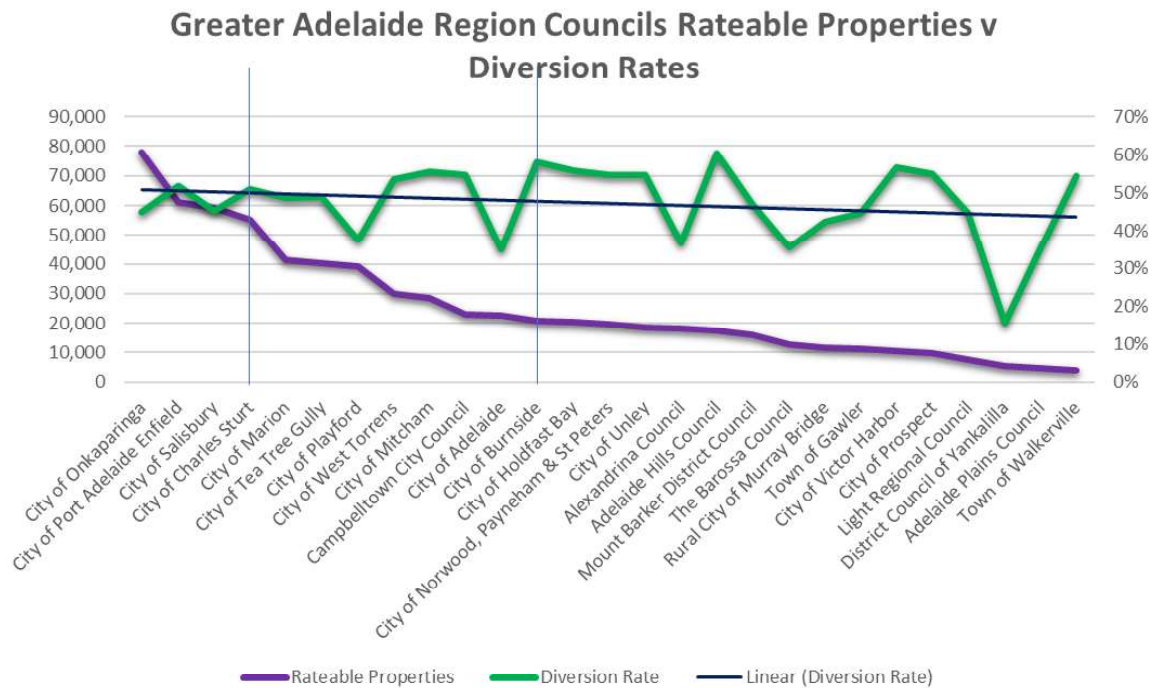
- the data must obviously pre-date the submission date for the paper (circa 1976) and is therefore **over 40 years old**;
- the waste collection industry in the USA in the years preceding 1976 is vastly different from the waste collection industry in the Greater Adelaide Region in 2018; and
- the study was a comparison between the costs for collection of monopoly government providers and monopoly private sector providers – which bears no relationship to a competitively tendered contract for Waste Collection Services in the Greater Adelaide Region, whether procured collaboratively or independently.

For these reasons alone we contend this paper, and thus every subsequent paper citing the relevant data from this paper, has no relevance to this submission and should be completely disregarded by the ACCC in reviewing this application.

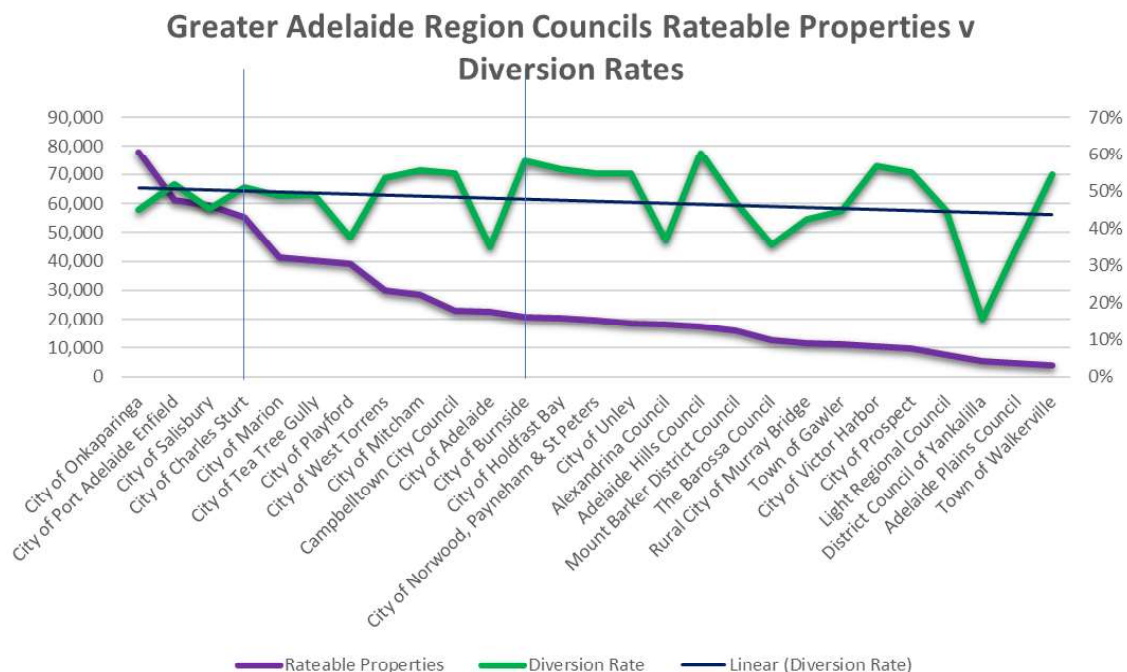
To further try and correlate this to diversion provides evidence to the contrary of statements made by WRASA. At Point 19.b, WRASA states “waste diversion percentages [are] poorer for large contracts and Adelaide metro “sweet spot” Councils [are] already producing nation leading results.” This would suggest diversion is highest in Councils where, by WRASA’s definition of the sweet spot, the number of Rateable Properties is between 20,000 and 50,000, which would lead to a chart as follows:



However, what we actually see occurring in the Greater Adelaide Region is below:



As the above clearly shows, size has little relation to diversion, although it can be seen that the average diversion rate **increases** as the size of the Council increases. When the existing collaborations, East Waste and NAWMA, are put together, the diversion can be shown as follows:



As the above chart demonstrates, diversion rates are more consistent and on average higher the larger

the number of Rateable Properties under a contract or arrangement. The so called “sweet spot”, particularly the lower end, however, is far less stable and has a lower average diversion rate.

Council Solutions does not directly correlate the number of Rateable Properties to diversion rates. Diversion is achieved through effective education, community awareness and the behaviour of the ratepayer. The Proposed Conduct will assist in these education programs being more effective through consistent messaging, awareness of policy, strategies and targets and reinforcement. The data collection and reporting the collection contractor will provide is one of the strongest tools to measure the success of these programs.

In regards to diversion, Council Solutions rejects the assumption that because South Australia has “nation leading” diversion rates, no more can be or needs to be achieved. This view is not consistent *South Australia’s Waste Strategy 2015-20* which clearly demonstrates complacency is setting in, diversion rates are slipping and trying to just maintain the status quo will not achieve the targets set by the State government.

Finally, Council Solutions rejects all comparisons of the Proposed Conduct with the Brisbane City Council as an example of larger groups experiencing inefficiencies. Brisbane City Council is a giant single local government, with upwards of 500,000 Rateable Properties, over 2 ½ times the Proposed Conduct and over 70% of the entire Greater Adelaide Region. Brisbane City Council faces many challenges but, as a single entity, has no choice but to have extremely large contracts. Council Solutions submits there is no basis for comparison between Brisbane City Council and a group of Councils in South Australia who have carefully considered their options and elected to collaborate.

Contract Term

In Point 20 of its submission, WRASA states “the contract term ... [will be] 2 x 10 year terms over a 23 year period.” This is incorrect and Council Solutions does not understand how WRASA came to such a conclusion.

Paragraph 4.6 of the application states **a proposed maximum 10-year contract operating term**. This is repeated three times in this paragraph and is stated again in paragraph 7. In addition, a representative from WRASA was present at the industry and association engagement session, as well as the small business engagement session, where this was stated, and was provided with a copy of the presentation from those sessions that went to all stakeholders consulted with that again set out a proposed maximum 10-year contract operating term.

This has been clearly apprehended by other interested parties, including Business SA who states at Point 9 of their submission *“The Current Application seeks a proposed maximum 10-year contract operating term, being a 7-year initial term with a 3-year extension option. **Council Solutions submitted that this format is generally accepted for waste collection contracts. Business SA’s consultation with members in the waste collection services industry supports this assumption... the proposed term is in line with what would be applied in the market anyway.”***

Estimated truck numbers and supply of trucks

WRASA raises a concern in Point 20 of its submission over the supply of new collection vehicles for the Proposed Conduct, citing:

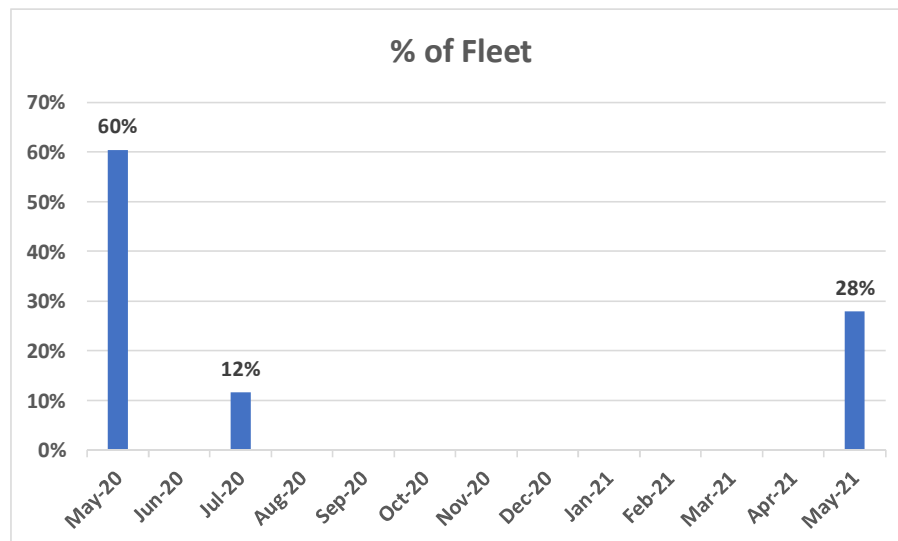
- 72 trucks would be required, and
- There would be insufficient time between contract award and commencement of services to procure trucks and bodies.

Council Solutions notes the estimate of trucks put forward by Business SA (as discussed further below)

is 20 trucks. Neither submission provides evidence as to how these estimates were acquired. In working with the Participating Councils, Council Solutions has formed a view on the likely number of vehicles required for the purposes of tender evaluation and assessment of the capacity of each tenderer to deliver the services and this is contained in CONFIDENTIAL Attachment 3.

As the actual number of collection vehicles estimated by a tenderer as being needed to deliver the services is one issue of competitive tension that vests with tenderers and depends on each tenderers' assessment of the services to be provided and the risks of providing those services in the time and for the cost tendered, this estimate will not be made public for commercial reasons.

Notwithstanding this, Council Solutions can state that the number of vehicles is highly likely to be less than 50 and more than 30 in number. This number of vehicles (and associated bodies), and the associated monitoring and digital equipment and livery preparation is not an unreasonable sized order for the Australian supply market to deliver, especially in the light of the following expected demand for the vehicles based on commencement timing for the Participating Councils:



On this basis:

- between 18 and 30 vehicles will commence May 2020,
- between 3 and 6 vehicles will commence July 2020, and
- between 9 and 14 vehicles will commence May 2021

As stated in paragraph 4.6 of the application, the Proposed Conduct allows for contracts to be awarded by May 2019. All things being equal, the delivery timeframes for the trucks, complete with associated bodies and the associated monitoring and digital equipment and livery preparation, would be:

- between 18 and 30 vehicles – 12 months,
- between 3 and 6 vehicles – 14 months, and
- between 9 and 14 vehicles – 24 months.

By any measure these delivery timeframes are well within standard industry expectations and will not unduly burden either the successful tenderer or the vehicle supply sector. This was reaffirmed by one potential supplier who stated during the consultation undertaken that plenty of time should be allowed for the building of the trucks and nominated a timeframe of **eight months**.

Confidential information

Council Solutions reiterates the Board papers are confidential and, as such, have been withheld from the public register, however the ACCC has access to these.

The Participating Councils and Council Solutions are entitled to retain commercial-in-confidence information.

Pricing

WRASA submits at Point 23 that for a tenderer to submit a price without the processing locations being known “increases the risk profile to collection tenderers” and will “potentially [result] in higher tendered pricing. Council Solutions submits tendering to deliver to a location within a 5km radius is not uncommon or difficult to price appropriately.

The destinations or drop-off points for the materials collected by the collection vehicles have been defined, as outlined at paragraph 4.3.2 of the application, being a centroid around a designated intersection of major roads in Adelaide and the surrounding a 5km radius.

The technical specification for the contract, on which tenders will be invited and prepared, will also clearly set out:

- the materials that are acceptable for collection in each stream;
- the contamination expectations, obligations and management for the organics and recyclables streams; and
- the maximum compaction levels permissible (where relevant).

These criteria are set by the Participating Councils, not unreasonably in consultation with the receiving and processing industry participants, and are thus independent of the actual recipients of the material streams for processing or disposal.

On this basis:

- tenderers for the collection services will have a common set of services criteria;
- tenders will be submitted in a fully tested and competitive environment;
- all tenderers will be at an equal advantage; and
- all tenderers will be subject to the same basis for individual risk assumptions and thus pricing decisions.
- there will be no change to drop-off locations post award – except in exceptional or emergency situations where standard contract provisions are made to protect the interests of both the contractor and the Participating Councils,
- the tendered rates will not require any adjustment,
- there will be no opportunity for higher collection fees to be levied on the Participating Councils and their communities,
- all tenderers will be tendering on the same basis, and
- all tenders will be comparable and thus fully tested in a competitive tender environment.

Market assessment

Council Solutions rejects the market information in AA1000414 is misleading as stated by WRASA in Point 24 and refers the ACCC to paragraph 5.3, and particularly Chart 1, of the application which clearly outlines the market share of all Greater Adelaide Region Councils, including those that currently provide the service inhouse and do not use private sector suppliers.

Whilst some of this market share may not currently be available to the private sector, that does not mean a) it is not part of the market and b) that it will remain unavailable for the duration of the

Proposed Conduct.

Additionally, WRASA acknowledges in Point 20 that Waste Collection Services contracts are best aligned with the estimated useful life of collection vehicles, being “8-10” years. In WRASA’s analysis of the available market, they have failed to consider the future with and without the Proposed Conduct. In the future with the Proposed Conduct, following a robust and competitive RFT processes, the four Participating Councils will collectively award a contract for seven years with the option for a three year extension period. NAWMA will still have time to run on their current contract (which, despite WRASA’s statement of it “becom[ing] available again in 8-10 years” “following” the Proposed Conduct, will be available between 2024 – 2026, depending on the take up of extension options), as will all other contracted Councils.

In the future **without** the Proposed Conduct, the Participating Councils will all tender within 12 months of each other, as they all require this service to commence within 12 months of each other. Individually, the Participating Councils could award contracts for eight years, 10 years, or even eight + eight for a total of 16 years. If they did all individually award an 8-10 year contract, which WRASA acknowledges aligns with the life of collection vehicles, NAWMA would still have time to run on their current contract, as will all other contracted Councils. The availability of the market will be no different under the Proposed Conduct, other than providing certainty the contract will only be up to 10-years and will not be longer. Additionally, all other public benefits will occur that will not be present in the future without the Proposed Conduct.

Competitive constraints

With respect, WRASA has not understood the position of Councils as competitors within the scope of the *Competition and Consumer Act 2010* (the **Act**). If the Councils were not competitors, the relevant provisions of the Act would not apply and authorisation would not be necessary. As such, Council Solutions submits the ACCC should not apply weight to the statements made in regards to this section of WRASA’s submission as it is founded on a fundamental misunderstanding of the Act.

Size and capacity of the existing and potential suppliers

In Point 26. WRASA rejects Council Solutions submission that for the majority of potential suppliers, the provision of Waste Collection Services is only one element of their business, with many providing multiple other services.

WRASA also states in WRASA PART A “due to the size of the tender, the risk profile is greatly increased, acting as a deterrent for **smaller** contractors to tender.”

Council Solutions refers the ACCC to the existing and potential suppliers at Annexure 2 of the application, which has not been challenged by WRASA. A quick view of each of these organisations’ websites clearly shows the breadth of services they undertake in addition to Waste Collection Services, as demonstrated in Attachment 4.

There are no small businesses who provide 3-Bin System Waste Collection Services to either the Participating Councils or any of the Greater Adelaide Region Councils. Additionally, any of the potential suppliers who could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services are not small businesses.

Council Solutions further notes:

- The Waste Collection Services market in Adelaide is comprised of a relatively small number of participants with the demonstrated experience and financial capacity that would convince any

Council, regardless of size, to confidently enter into a ten-year contract for 3-Bin System collection;

- Each of these providers is a known entity with substantial resource backing in respect of human, financial and physical assets, and are not small businesses; and
- The small, medium and large collection suppliers who operate collection services **other than** 3-Bin System collection generally operate either in the Ancillary Service Streams (such as Bulk Bin Collection, Hard Waste Collection and Street Litter Collection), the direct to resident market (such as provision of skip bins to home renovators) or the C&I or C&D source sectors. The Applicants have **excluded** the Ancillary Service Streams from the Waste Collection Services RFT.

The conduct proposed in Application AA1000420 is to conduct a discrete RFT process for **Ancillary Collection Services**. This will provide the opportunity for small business who typically deliver Ancillary Collection Services to more easily participate in the procurement process, including the ability to bid only for the ancillary service stream that is their core business, i.e.

- Multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins);
- Kerbside collection and processing or disposal of Hard Waste; and
- Collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.

Public Benefits

Council Solutions maintains the tender process cost savings and efficiencies outlined in paragraph 6.1.1. will occur and comments on WRASA's concerns as follows:

- Council Solutions directs the ACCC's attention to paragraph 4.3.2, Table 2 in paragraph 4.3.4. and the sub-paragraphs *reduction of replication of resources and work* and *reduced tender process administration costs* in paragraph 6.1.1 of the application.
 - These articulate the roles of all Applicants and the extent of administration required in a procurement process, including but also well beyond, the evaluation process. It is inaccurate to assert, as WRASA does in Point 33, that all the steps in the sub-paragraph *reduced tender process administration costs* "will need to involve officers from each Council." Council Solutions clearly articulates the tasks it will perform that the Participating Councils will not be required to perform. Council Solutions submits that the time and effort for a Participating Council to review the outcome of a task performed by Council Solutions is substantially less than the time and effort that would be required for the Participating Councils to each individually perform these tasks. Indeed, the point of collaborative procurement is to **avoid** these steps being repeated four times by each Participating Council. In addition, Council Solutions rejects the cost of these tasks should be compared to the cost of the **contract** but, rather, to the cost of the **procurement process**. These administrative tasks can constitute up to 50% of the work hours of the procurement process and are not to be underestimated. Council Solutions refers to its extensive history in undertaking collaborative procurement processes to evidence this.
 - WRASA states Council Solutions' involvement is as "an extra level of bureaucracy." This is incorrect. As noted in the application Council Solutions will perform numerous tasks instead of the Participating Councils, such as document preparation, evaluation of insurances, licenses, accreditations and referees, clarifications, negotiations, price review assessments and KPI collation and reporting. These are all tasks throughout the lifecycle of a procurement that each Council would need to undertake if conducting their own tender process. In

addition, as procurement specialists, Council Solutions ensures there are formal structures, experienced personnel in procurement and the subject matter, and full consideration of the market is given to the procurement process, which is a role that would otherwise be undertaken by the procurement team at each individual Council. The benefit of this collaboration is that the cost of procurement is **shared** over four Councils. Council Solutions rejects the cost of **one** collaborative procurement is more expensive than **four** individual procurements, as would occur in the future without the Proposed Conduct.

- Council Solutions directs the ACCC's attention to sub-paragraph *combined contract management* in paragraph 6.1.1. where the tasks to be performed by Council Solutions in the ongoing management of the contracts is clearly stated. Council Solutions comprises of procurement specialists, including contract management specialists, and utilises the subject matter experts at the Councils as required to ensure the contract is well managed to ensure the gains made in the establishment of the contract do not evaporate and the savings continue over its life. However, it is overreach to assume only a waste industry expert within a Council would be able to ensure a contractor is insured, has applied correct pricing indices in a pricing review, can lead meetings or prepare accurate documentation. Indeed, these functions generally always reside with the procurement team in an individual Participating Council unless that Council determines its waste industry expert is **capable** of undertaking this work.
- Council Solutions confirms it is not the intent of the Participating Councils to move from the 'standard' bin sizes as part of the alignment of bin types but, rather, an alignment of bin lid colour consistent with Recycle Right® tagging where Residual Waste bins have red lids rather than a mix of red and blue across the Participating Councils. To restrict alignment to bin size ignores the other areas of alignment, including contamination management.

Finally, Council Solution submits while some benefits within the tender process cost savings and efficiencies may be incremental, the net benefit is an accumulation of the incremental benefits, yielding a significant benefit in total.

Council Solutions maintains the lower costs through improved purchasing power outlined in paragraph 6.2.1. is likely to occur and comments on some of WRASA's concerns as follows:

- Council Solutions continues to reject WRASA's notion of a "sweet spot" and that rates become more expensive when outside of this as stated in Point 39. It dismisses the evidence put forward by SGROC in its application A91530, which states a clear saving of \$46 million over the initial term of the **collection** contracts. WRASA mentions changes in the recycling market but does not explain how that impacts on the cost of **collection**. Individually, at the time of the application for authorisation for the conduct outlined in A91019, Hurstville (29,100), Kogarah (20,780) and Rockdale (35,700) all fell within the "sweet spot". After combining to 85,580 Rateable Properties, they achieved a saving of \$46 million. Council Solutions acknowledges *some* of those savings may be attributable to other elements of the conduct, however it must be acknowledged it was due to collaboration.
- In Point 40 WRASA asserts "large contracts struggle to keep pace with more agile smaller sweet spot contracts and are not known for new benchmarks." This is **contrary to the evidence** in the South Australian market. In 2016 NAWMA, with a combined group of 109,274 Rateable Properties (or over double the supposed "sweet spot"), went to market for the collection of their 3-Bin System. A result of that procurement, the decision was made to implement High Density Compressed Natural Gas (**HDCNG**) to the fleet of collection vehicles. Using HDCNG "significantly

reduces greenhouse gas emissions, particulate and noise pollution”¹ from the vehicles.

Finally, Council Solutions reiterates that analysis of the costs associated with a Waste Collection Services contract by our expert industry advisors indicates that savings are likely to be attained in the following typical areas as the size of a contract is increased:

- the purchase price negotiated for vehicles, bodies, included data and monitoring equipment and livery;
- the purchase price for fuel throughout the term of the contract;
- fleet consolidation involving fewer vehicles through utilisation efficiencies and less back-up vehicles;
- consolidation of fleet depots and their operation;
- more efficient vehicle maintenance and the costs of out sourced servicing;
- efficiencies in the delivery of the Waste Collection Services;
- improved efficiencies in the delivery of customer service support through consolidation and consistency of service, and
- better utilisation of management, supervisory and administrative staff over a larger number of services.

In addition to these direct beneficial savings to the contractor in delivering the services, the procuring parties may also benefit from a preparedness on the part of some tenderers to reduce the margin they apply to their tendered prices. Large waste collection contracts are seen as representing a solid base load of work for a contractor’s resources, with significant and reliable cash flows and reduced commercial risks. Notwithstanding the extent to which any tenderer is prepared to “share” these reductions, the benefits will accrue to either or both of the parties over the term of the contract.

These may be incremental benefits, yet when accumulated can lead to significant savings across the Proposed Conduct. The fact an individual benefit may be small in isolation is no reason for the benefit to be discounted or discarded. Without collaborative procurement the individual benefits will not accrue and without the individual benefits the cumulative benefits will not be achieved.

Council Solutions maintains the increased competition outlined in paragraph 6.2.2. is likely to occur and comments on some of WRASA’s concerns as follows:

- Point 41 of WRASA’s submission states the contract envisaged by the Proposed Conduct “is capable of forcing many waste companies into bankruptcy if they price it incorrectly.” Council Solutions rejects this statement. In reality:
 - The potential suppliers will have all the information required to make an informed tender submission, including:
 - the materials that are acceptable for each stream;
 - the contamination expectations, obligations and management for the Organics and Recyclables Processing Service Streams; and
 - the maximum compaction levels permissible (where relevant);
 - Tenders will be submitted in a fully tested and competitive environment, with an evaluation process that will consider:
 - if the pricing presented reflects a clear understanding of the service requirement;
 - the ability to clarify any ‘outlier’ prices or submissions that seem unusual; and
 - an examination of a tenderer’s financial viability to support the tender it has put

¹ NAWMA FY 2016-2017 Annual Report, page 15

forward;

- The potential suppliers are all experienced waste collection providers. The assumption as per WRASA's submission, that they will be incapable of correctly tendering for a standard waste collection service, albeit across four Councils, is not shared by Council Solutions and no such concerns were expressed by any potential suppliers during the consultations undertaken by Council Solutions.
- Point 42 of WRASA's submission relates the number of tenders received in a tender process to the proposed "sweet spot" size of the Councils. Unless WRASA has conducted one-on-one confidential consultations with each and every potential supplier for a 3-Bin System collection procurement made available over the past ten years (and not just the last two tenders), it will not be fully informed on each potential supplier's reason for tendering or otherwise. This may have occurred but would need to be confirmed to the ACCC. Even then, it would only tell them history and not intent for the Proposed Conduct. Council Solutions, on the other hand, has conducted one-on-one consultations with a large portion of the potential suppliers who expressed their opinion both on the current approach to tendering by individual Greater Adelaide Region Councils and the Proposed Conduct. Our consultation indicated:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- Council Solutions does not accept that there will likely be fewer suppliers participating in the RFT for Waste Collection Services. Council Solutions notes that while two providers currently service the Participating Councils, one services three of the four Participating Councils. In terms of all Greater Adelaide Region Councils, there are only 3 suppliers who currently hold waste collection contracts:
 - one provider services 13 Greater Adelaide Region Councils,
 - a second provider services three Greater Adelaide Region Councils; and
 - the third provider services one Greater Adelaide Region Council.

This distribution has arisen without the Proposed Conduct and is a result of, as WRISA outlined in their submission, not all potential suppliers tendering for all available opportunities.

Council Solutions contends the Proposed Conduct is, in fact, an effective way to entice other potential suppliers to step into the market or to address this imbalance. [REDACTED]

Council Solutions maintains the improved service efficiency outlined in paragraph 6.2.3. is likely to occur. WRASA has challenged the achievement of this benefit, particularly with the 'geographic spread' of the Councils. Council Solutions makes the following observations:

- WRASA states at Point 44 that "trucks will not be free to roam amongst all Councils." Council

Solutions refutes this on the following grounds:

- Where the truck collects from premises in multiple Participating Councils' areas, the Contractor will only charge each Council for those bins collected within the respective Council's area. Collection vehicles will identify where collections are made, the Council in question responsible for payment and the number of bins for that Council. Periodic invoicing will be on a business as usual basis with invoices identifying the number of bins collected per Council times the rate for collection for each Council. This process is as per today and in no way differs from usual custom.
- the arrangements established between Participating Councils and the processors regarding invoicing are outside the scope of the Proposed Conduct and will have no bearing on the services provided, or the fees charged, by the collection contractor. Notwithstanding this lack of relevance, for clarity, where bins from multiple Councils are loaded into the same collection vehicle, Councils will split payment to the disposal or processing contractor on a pro-rata basis using the numbers of bins collected from each Council – on the assumption that bins with the same material stream but from different Councils are most likely to yield the same or close to weights per bin lift:
- WRASA also states at Point 44 that “the geographic separation issue that would logistically preclude” trucks crossing boundaries. Council Solutions provides the following examples where vehicles collecting in one Council might subsequently be effectively and efficiently deployed in collections within another Council's area, prior to or after the vehicle departing to one of the drop-off points for unloading:
 - Collection vehicles for restricted access areas. The productivity of these vehicles will be enhanced where an individual Participating Council does not have sufficient sites to maximise the efficient use of the vehicles. The ability to maximise the efficiency of this vehicle is not dependent on an adjoining boundary.
 - Collection vehicles requiring a two person crew to facilitate productive bin presentation at the kerbside. The flexibility to move between Participating Councils, particularly in pockets of adjacent but not adjoining similar density areas, will see the productivity of the vehicles and crew reach better levels than is typically achieved in individual contracts.
 - Bin maintenance vehicles facilitating bin repairs and maintenance will be another instance where crossing artificial Participating Council boundaries will be common and yield greater efficiencies and productivities from these vehicles than is currently the case.
 - Back-up vehicles resolving missed collection issues and other service complaints will produce greater productivity and cost efficiency as the vehicle will be addressing service issues across all four Participating Council and will be unconstrained by the issue of Participating Council boundaries.

These examples are all in addition to where the Contractor determines that the most efficient collection route for a vehicle will be to cross the Participating Councils' boundaries in a standard route, which will typically occur where Participating Council boundaries are in near proximity or adjoining.

Finally, Council Solutions rejects that more effort will be required to manage one large contract under the Proposed Conduct, than the total effort required for a supplier to manage each of the four Participating Councils' smaller contracts. Indeed, consolidating a number of contracts into one single contract will lead to more efficient contract management. The contract will require the application of common terms and conditions of contract and performance specification across the Participating Councils, so the major portion of contract management from the contractor's side, i.e. the aspects of

service delivery, will be common and thus far simpler to manage than would be the case than with four separate contracts, specifications and performance requirements.

The fact that there is a geographical spread of the Participating Councils has no bearing on the efficacy of managing contracts, and there is evidence to support the supposition that contract management will be more challenging in this collaborative procurement because of the location of the council areas. Indeed, there are currently contracts in place with all of the Participating Councils and three of those four are managed by the same service provider, without any known contract management challenges.

The role and capabilities of Council Solutions

Council Solutions refers the ACCC to paragraphs 4.3.2., 4.3.3. and 4.3.4. as well as sub-paragraphs *reduction of replication of resources and work*, *reduced tender process administration costs* and *combined contract management* in paragraph 6.1.1. of the application to understand the respective roles and responsibilities of those involved.

In undertaking the procurement process on behalf of the Participating Councils, Council Solutions notes brings specialists in all aspects of procurement, including qualified and accredited procurement professionals. Council Solutions was established in 2012 as a Regional Authority and provides the legal structure to the G6 Procurement Group formed in 1994 by the Cities of Adelaide, Charles Sturt, Marion, Onkaparinga, Salisbury and Tea Tree Gully. For more than 20 years we have been providing a collaborative and strategic approach to the procurement of goods and services to attain the best value for the community and optimise the financial sustainability of Councils by reducing administrative costs, the number of tender processes and replicated contract management activities. Council Solutions also notes the submissions made to the ACCC by the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield outlining the benefits to be delivered to their ratepayers and communities by the Proposed Conduct.

In 2016-17 in excess of \$63.5 million of Council expenditure was undertaken under Council Solutions collaborative procurement arrangements. These contracts have a wide range of subject matter and in each of them technical advice was inputted by the Councils participating in that process. Contrary to WRASA's submission at Point 5, Council Solutions has, in fact, 23 contracts in place, servicing a total of 12 Councils across the Greater Adelaide Region.

Specifically, for the Proposed Conduct, Council Solutions is developing the Request for Tender for Waste Collection Services **in conjunction with the expert and specialist Waste Industry Advisors** and the Participating Councils nominated waste service specialists. The role Council Solutions undertakes in these collaborative procurement processes would otherwise be undertaken by a procurement professional within each individual Council who may or may not have "industry knowledge and experience" in the relevant procurement.

The Waste Management Services Project, including the RFT outlined in the Proposed Conduct, is well structured, follows, as far as relevant, a 'traditional' procurement process with refinement to ensure best practice, and is well advanced.

In addition, Council Solutions has undertaken consultation with existing and potential suppliers for Waste Collection Services regarding the Proposed Conduct and the RFT structure (refer Annexure 2 of AA1000414). All suppliers that Council Solutions met with indicated that the opportunity presented by the proposed RFT process was attractive, which was reinforced by the use of a traditional tender structure. No concerns were expressed by the existing or potential suppliers to Council Solutions regarding the structure or complexity of the Proposed Conduct outlined in AA1000414.

Finally, Council Solutions notes the Participating Councils who currently procure and are the recipients of, Waste Collection Service from the market, have directed Council Solutions to undertake the Waste

Management Services Project being fully cognisant of the roles and responsibilities of all stakeholders in the procurement process, as confirmed in each of their submissions to the ACCC.

WRASA PART C

Council Solutions notes this document purports to be an examination of the application for authorisation number AA1000414, with a focus on the Proposed Conduct in comparison to the final determination given by the ACCC to the application for authorisation A91520, and Economic Research Consultant's assessment of that application.

Council Solutions notes Economic Research Consultants, as the author of this submission, refers to the term of the application being "extended from 17 years to 23 years." This fundamental misunderstanding is then repeatedly referenced throughout the submission as a critical failing of the current application (AA1000414) in not considering the impact a 23-year contract would have on the market. Council Solutions must respectfully question if Economic Research Consultants has reviewed the application for authorisation in its entirety, or with sufficient care, to have such a fundamental misunderstanding of the Proposed Conduct (as outlined in response to WRASA PART B above), a misunderstanding that has not been repeated by any interested party outside of the WRASA submission².

Given this misinterpretation of the Proposed Conduct, Council Solutions does not intend to respond to the document in detail unless the ACCC would like any individual points clarified.

WRASA PART D

Council Solutions notes this document intends to provide an evaluation of the application for authorisation number AA1000414, with a focus on the public benefits claimed. However, its primary assertions clearly demonstrate it has been assessed in comparison to the final determination given by the ACCC to the application for authorisation A91520 and not on its individual merits.

Council Solutions notes Brian Dollery, as the author of this submission, refers to the term of the authorisation being "23 years to allow [for] preparation time, contracts to expire and 2 x 7+3 year collection terms" and states this is an "increase of six years" on A91520. The "claimed public benefits" are compared from A91520 to AA1000414 in a table with a simple statement "no change" given to each item. Additionally, AA1000414 is claimed to be "an almost identical proposal" that "barely differs from [A91520] in substantive terms."

Council Solutions must respectfully question if Professor Dollery has reviewed the application for authorisation in its entirety or with sufficient care. Of the points outlined above:

- As categorically stated in the application and this response to all submissions by WRASA, the maximum term of a contract is **up to 10 years**. Council Solutions is unclear as to where the claimed 23-year contract term has come from, other than to say it could not have come from a sufficient consideration of AA1000414
- Clearly, the maximum contract term of 10 years is not an "increase of six years" from A91520.
- A key reason given for rejecting the public benefits in AA1000414 appears to be that they are not accompanied by a specific dollar savings. Council Solutions notes that it is both impossible

² Other than by Hatch Waste & Recycling, however Council Solutions addresses the error in this submission confidentially to the ACCC.

to quantify a benefit that has not yet occurred, even where it is certain to occur (such as transaction cost savings) or likely to occur (such as improved purchasing power) and there is, in fact, very little empirical evidence that actually considers the relative scope of the Proposed Conduct. The ‘empirical evidence’ offered by WRASA PART D is considered further below.

- To state the Proposed Conduct “barely differs from [A91520] in substantive terms” demonstrates a fundamental lack of understanding of both A91520 and the Proposed Conduct. To avoid repetition, Council Solutions directs the ACCC to our response provided earlier in this submission to WRASA PART A.

Much of the ‘empirical evidence’ put forward in WRASA PART D has been based on an analysis of the pros and cons regarding the amalgamation of Councils – forced or otherwise – and scale issues form a consistent theme in the various arguments for and against larger Council areas. To simply ‘lift and apply’ this analysis to the operation of Waste Collection contracts without a thorough analysis of the South Australian market, the waste industry generally and the Proposed Conduct specifically and suggest it constitutes “evidence” is problematic at best.

Given the clear and fundamental misapprehension of the Proposed Conduct under AA1000414 repeated throughout this submission Council Solutions questions the consideration it should be afforded.

Business SA

Council Solutions acknowledges that Business SA has sought in its submission to consider both factors “in support of” and “against” the Application.

Council Solutions notes that Business SA states:

“The Current Application may benefit Business SA’s members in the Participating Councils’ areas. These members (and non-member businesses) may benefit from increased standardisation, improved education and more efficient collection routes...The Current Application may also benefit Business SA members (and non-members) operating in the waste collection services industry. Adopting industry standard contract terms and use of an RFT approach...may allow more businesses to bid for the tender.”

Council Solutions provides the following with regards to feedback or concerns identified by Business SA.

- Business SA notes at Point 17 that differences between Councils, as outlined in sub-paragraph *alignment of specification, service standards, reporting and bin types* in paragraph 6.1.1., occur between the Councils and encourages these to be addressed as part of the Proposed Conduct. Council Solutions confirms these areas are the focus for standardisation and alignment, as outlined later in the sub-paragraph.
- At Point 22, Business SA notes the City of Marion is “entirely isolated” from the other Participating Councils and this “may, or will, limit a number of potential benefits” outlined in AA1000414. Council Solutions submits:
 - The public benefits that will occur, as outlined in paragraph 6.1. and namely Tender process cost savings and efficiencies and Environmental benefits do not rely on shared boundaries and will not be limited by the City of Marion’s location in relation to the other Participating Councils.
 - Lower costs through improved purchasing power, as outlined in paragraph 6.2.1, are still likely to occur. As considered by Wright Corporate Strategy as waste industry experts:

Analysis of the costs associated with a kerbside collection contract indicate that beneficial savings are likely to be attained in the following typical areas as the size of a contract is increased:

- *the purchase price negotiated for vehicles, bodies, included data and monitoring equipment and livery,*
- *the purchase price for fuel throughout the term of the contract,*
- *fleet consolidation involving fewer vehicles through utilisation efficiencies and less back-up vehicles,*
- *consolidation of fleet depots and their operation,*
- *more efficient vehicle maintenance and the costs of out sourced servicing,*
- *efficiencies in the delivery of the kerbside collection services,*
- *improved efficiencies in the delivery of customer service support through consolidation and consistency of service, and*
- *better utilisation of management, supervisory and administrative staff over a larger number of services.*

In addition to these direct beneficial savings to the contractor in delivering the services, the procuring parties may also benefit from a preparedness on the part of some tenderers to reduce the margin they apply to their tendered prices. Large waste collection contracts are seen as representing a solid base load of work for a contractor's resources, with significant and reliable cash flows and reduced commercial risks. Notwithstanding the extent to which any tenderer is prepared to "share" these reductions, the benefits will accrue to either or both of the parties over the term of the contract.

- Council Solutions notes only two of these savings relate to service efficiencies, which is also a public benefit outlined at paragraph 6.2.3. of AA1000414, that may be gained through adjoining or adjacent Councils. However, even here, there will still be public benefits and Wright Corporate Strategy provides the following examples where vehicles collecting in one Council might subsequently be effectively and efficiently deployed in collections within another Council's area, prior to or after the vehicle departing to one of the drop-off points for unloading:
 - *Collection vehicles for restricted access areas. The productivity of these vehicles will be enhanced where an individual Participating Council does not have sufficient sites to maximise the efficient use of the vehicles. The ability to maximise the efficiency of this vehicle is not dependent on an adjoining boundary.*
 - *Collection vehicles requiring a two-person crew to facilitate productive bin presentation at the kerbside. The flexibility to move between Participating Councils, particularly in pockets of adjacent but not adjoining similar density areas, will see the productivity of the vehicles and crew reach better levels than is typically achieved in individual contracts.*
 - *Bin maintenance vehicles facilitating bin repairs and maintenance will be another instance where crossing artificial Participating Council boundaries will be common and yield greater efficiencies and productivities from these vehicles than is currently the case.*
 - *Back-up vehicles resolving missed collection issues and other service complaints will produce greater productivity and cost efficiency as the vehicle will be addressing service issues across all four Participating Council and will be unconstrained by the issue of*

Participating Council boundaries.

These examples are all in addition to where the Contractor determines that the most efficient collection route for a vehicle will be to cross the Participating Councils' boundaries in a standard route, which will typically occur where Participating Council boundaries are in near proximity or adjoining.

- Business SA, at Point 28, expresses concern at the ability for the Cities of West Torrens and Holdfast Bay to develop alternative collaborative waste collection service procurement being restricted should the Proposed Conduct be approved. Council Solutions notes:
 - Councils are free to choose if they wish to collaborate and if so, who they wish to collaborate with. The Proposed Conduct does not prevent the Cities of West Torrens and Holdfast Bay seeking to collaborate with each other and/or any other Councils who are not participating in AA1000414, such as the City of Unley or the City of Onkaparinga. The benefits of collaboration will come from the structure and strategy of the collaboration, not simply from location.
 - Council Solutions also notes Business SA acknowledges "It is not Business SA's place to set out which Councils should partner". Respectfully, Council Solutions agrees – it is up to each individual Council within South Australia to make that decision based on the best outcomes they perceive will come from the collaboration.
 - In that vein, Council Solutions notes the City of Marion has chosen to participate in the Proposed Conduct under AA1000414 with the Cities of Adelaide, Charles Sturt and Port Adelaide Enfield as the City of Marion "*firmly believe[s] that the Council Solutions submission will deliver resident-value through:*
 - *Increased service efficiencies.*
 - *Cost savings in tendering / procuring waste services through 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 that this will bring.*
- Marion's procurement policy requires [them] to seek the best value for money via open and transparent competition for services to ensure the optimal outcomes for our residents and fair and equitable treatment of suppliers. The [Proposed Conduct] supports this important, high-level objective."*³
- At Point 30 Business SA states the Proposed Conduct would 'lock' a waste collection services supplier out of over a quarter of the Greater Adelaide Region Councils' Rateable Properties. It goes on to highlight a short and long term concern, namely the ability of "smaller service suppliers" to compete and "fewer small suppliers surviving or remaining...which will in turn decrease future competition."
 - This impact on "smaller suppliers" is further discussed by Business SA in relation to the number of trucks required to service the Proposed Conduct and the ability of "smaller suppliers" to

³ Letter of support for AA1000414 submitted by the City of Marion to the ACCC dated 12 April 2018.

finance this requirement in Points 35 and 38.

- Council Solutions notes in regards to “smaller suppliers” competing for the Proposed Conduct:
 - The Proposed Conduct is straightforward, that is, to undertake a public Request for Tender on behalf of four Greater Adelaide Region Councils to award a contract to a sole supplier for Waste Collection Services (collection of the 3-Bin System only) and will result in a highly competitive tender process. Business SA has acknowledged at Point 11 that an RFT for Waste Collection Services only “*will significantly reduce the scope and complexity for tendering service providers*” and at Point 15 “**this RFT approach should enable more potential suppliers to provide a tender bid.**”
 - Council Solutions has identified at Annexure 2 of AA1000414 existing and potential suppliers for Waste Collection Services. All suppliers that Council Solutions met with to discuss the Proposed Conduct of AA1000414 indicated that the opportunity presented by the proposed RFT process was attractive and **no concerns were expressed by the existing or potential suppliers** to Council Solutions regarding the scale of the Proposed Conduct.
 - The scope of the Proposed Conduct is for Waste Collection Services and there are no small businesses who provide 3-Bin System Waste Collection Services to either the Participating Councils or any of the Greater Adelaide Region Councils. Additionally, any of the potential suppliers who could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services **are not small businesses**.
- When considering the ‘locking away’ of the Rateable Properties, the future with and without shows.
 - **without** the Proposed Conduct each Participating Council will be required to undertake their own procurement processes for Waste Collection Services and will establish contracts for 10 years (or more), locking away the same proportion of the Greater Adelaide Region Councils’ Rateable Properties;
 - **without** the Proposed Conduct each Participating Council will be required to undertake their own separate procurement processes for Waste Collection Services and currently the same supplier is contracted by three out of the four Participating Councils for provision of Waste Collection Services;
 - **with** the Proposed Conduct the only outcome where one provider would have a greater market share than the current market leader currently enjoys is if that market leader won the Waste Collection Services contract under the Proposed Contract, in which case their market share would grow by one Council. As the current market share analysis shows (as demonstrated at Attachment 1), this outcome could occur without the Proposed Conduct; and
 - **without** the Proposed Conduct the extent of the public benefits detailed in AA1000414 will not be realised by the Participating Councils and their communities.
- Regarding “smaller suppliers” facing a barrier in acquiring the trucks required, Council Solutions submits:
 - As stated previously, the scope of the Proposed Conduct is for Waste Collection Services and there are no small businesses who provide 3-Bin System Waste Collection Services to either the Participating Councils or any of the Greater Adelaide Region Councils. Additionally, any of the potential suppliers who could demonstrate the experience and

- financial capacity that would convince any Council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services are not small businesses.
- The industry standard is for trucks to be financed off of the cashflow established by a signed contract. Large multi-nationals may finance off of balance sheet, but where this is not done, the established method is off the cashflow established, in this case, from the award of a Waste Collection Services contract for four Councils for up to 10 years. If a bank was unwilling to provide financing off of this cashflow, Council Solutions respectfully suggests there's likely to be other underlying issues with the company.
 - Council Solutions notes Business SA's estimate of 20 trucks and also notes WRASA PART B's estimate of 72 trucks.
 - Council Solutions, in consultation with the Participating Councils, has formed a view on the likely number of vehicles required for the purposes of tender evaluation and assessment of the capacity of each tenderer to deliver the services and the reasoning for this is contained in CONFIDENTIAL Attachment 3.
 - As the actual number of collection vehicles estimated by a tenderer as being needed to deliver the services is one issue of competitive tension that always vests with tenderers and depends on each tenderers' assessment of the services to be provided and the risks of providing those services in the time and for the cost tendered, this estimate will not be made public for commercial reasons.
 - Notwithstanding this, Council Solutions can state that the number of vehicles is highly likely to be less than 50 and more than 30 in number. This number of vehicles (and associated bodies), and the associated monitoring and digital equipment and livery preparation is not an unreasonable sized fleet for the potential suppliers, noting that approximate fleet numbers across Australia for the potential suppliers can range from 600 to 3,000.
 - Business SA states at Point 34 "there is insufficient evidence...that the Proposed Conduct will achieve monetary benefit for affected ratepayers" yet Council Solutions also notes Business SA has stated "we view collaborative conduct, such as that proposed in the Current Application, as a potential method for councils to apply their resources effectively and achieve results for their constituents"⁴ and "uniform tender and contract management processes should benefit both the Participating Councils and those suppliers providing tender bids."⁵ Council Solutions further submits as per AA1000414, the public benefits claimed by the Applicants will be achieved and this is consistent with:
 - the advice provided by our expert waste industry advisor (Wright Corporate Strategy), who have participated in numerous successful collaborative waste services procurements and, with an understanding of the South Australian market, advised the Participating Councils will achieve significant benefits that would not occur without the Proposed Conduct;
 - the views of the Participating Councils who currently procure Waste Collection Services from the market and have chosen to participate in the Proposed Conduct because of the benefits they will achieve (as outlined in the submissions made by the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield); and
 - the public benefits previously acknowledged by the ACCC for similar procurement activities as identified in the numerous references provided in AA1000414. The Applicants see no

⁴ Point 5.

⁵ Point 16.

reason why comparable benefits will not be achieved under the Proposed Conduct.

- Finally, Business SA notes at Point 43 “the viability of South Australia’s recycling processors is a pressing concern for Business SA,” acknowledging also that this is outside the scope of the Proposed Conduct.
- Council Solutions confirms that processing of recyclables is not within the scope of AA1000414. Processing of recyclables is the subject of a separate application and a separate RFT processes is planned for the Processing Service Streams. As per AA1000419, RFT 2: Processing Service Streams consists of:
 - Receipt and processing of recyclables;
 - Receipt and processing of organics; and
 - Receipt and processing or disposal of residual waste.

Council Solutions notes that any future changes in the recycling market will occur irrespective of whether the Councils collaborate or go it alone. Council Solutions also notes that the LGASA state in their submission dated 20 April 2018 “the LGASA’s view is that, given the significant transition currently underway in the recycling and waste management industry generally, collaborative procurement processes may in fact offer a number of public benefits that may help to provide stability during this time of change”.

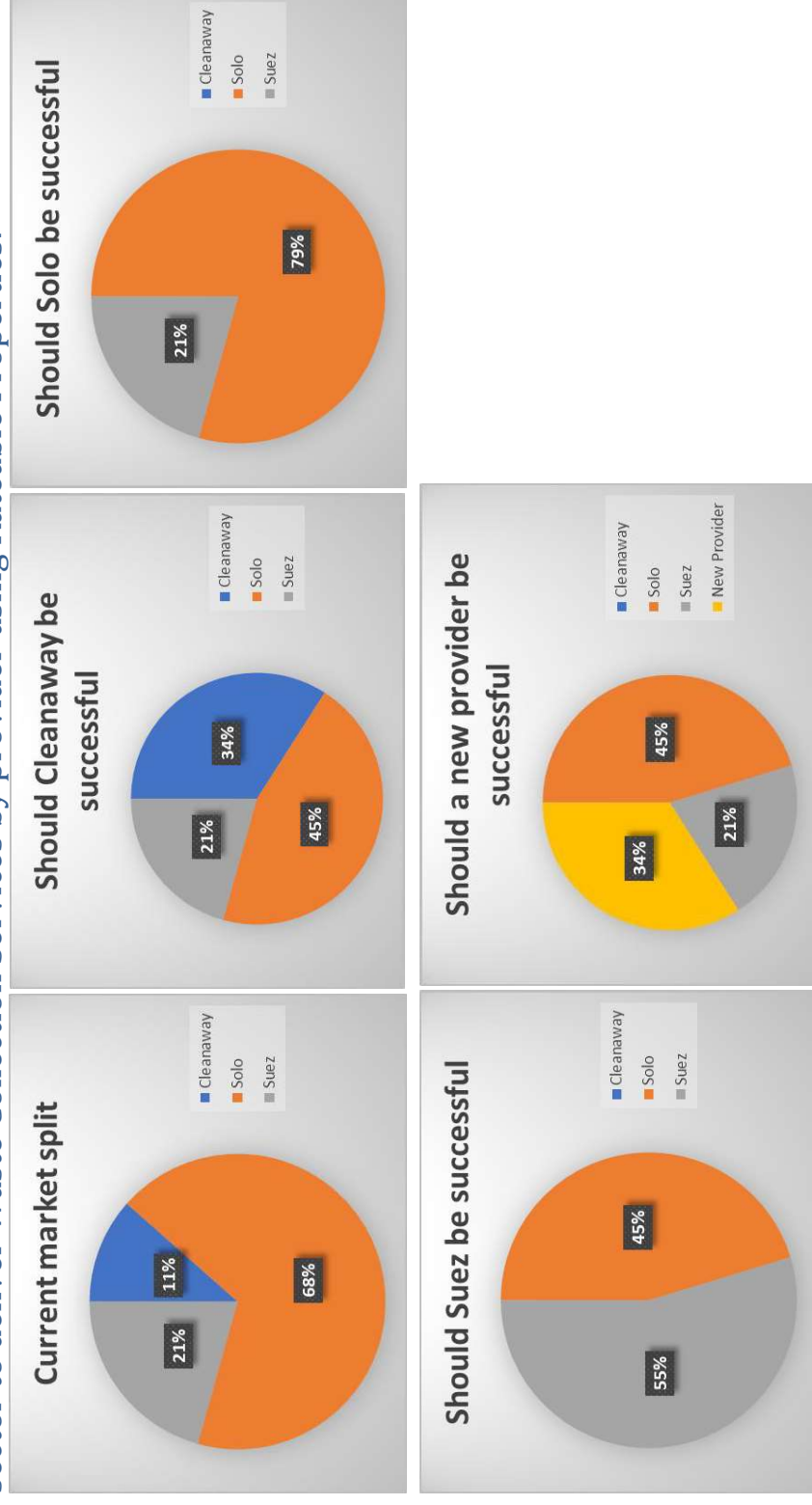
Ultimately, the future cannot be foreseen however appropriate contract terms and conditions that provide flexibility to manage change on mutually beneficial terms is the most effective way to manage this risk and will be incorporated into the contract terms and condition to be used.

Cleanaway

Council Solutions notes Cleanaway’s endorsement of the submission of WRISA. As such, Council Solutions refers the ACCC to its response to the WRISA submission dated 17 May 2018.

ATTACHMENT 1

Current and potential future market share of the 16 Greater Adelaide Region Councils who use the private sector to deliver Waste Collection Services by provider using Rateable Properties.



ATTACHMENT 2

Analysis of the cost of bin roll-out versus replace on fail, including cost of RFID tags.

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ATTACHMENT 3

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ATTACHMENT 4

Services provided by the existing and potential suppliers as sourced from their websites.

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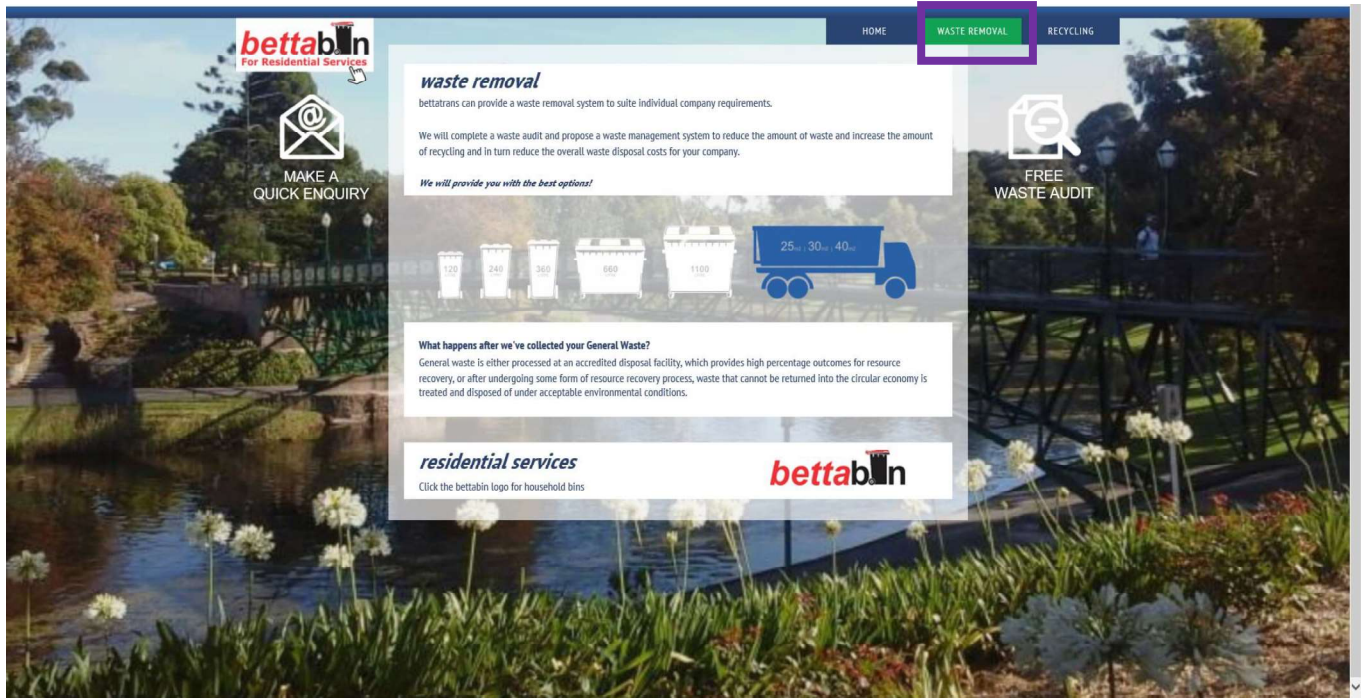
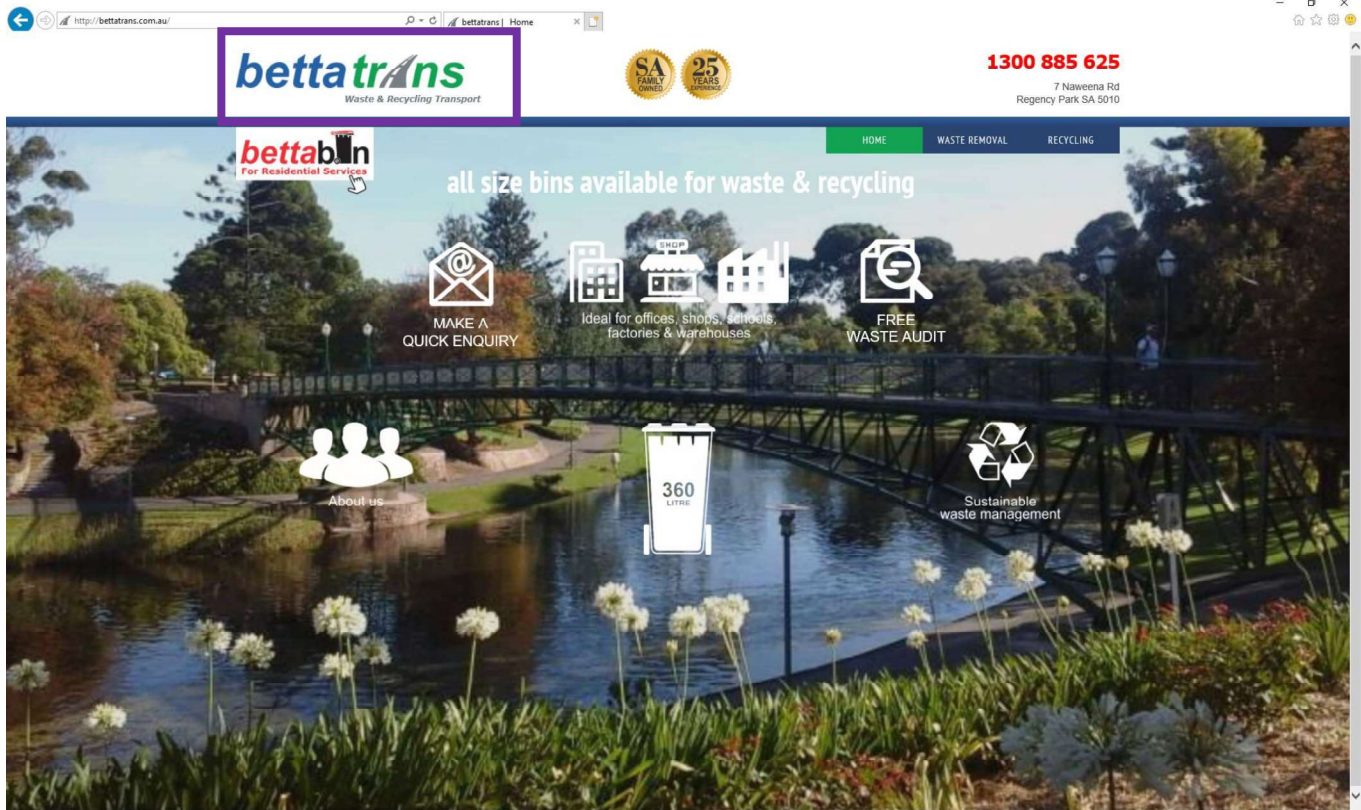
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