

The following submission is provided to address statements made by WRASA in their submission to the ACCC re AA1000414 on 24 August 2018.

No new information has been provided that counters the ACCC Draft Determination finding that the proposed conduct would result or be likely to result in public benefit that would outweigh any detriment to the public.

This submission addresses (WRASA submission section headings):

1. Future with and without.

WRASA states “..... new evidence that has not been identified to date.the most likely scenario in a future without Council Solutions is that Port Adelaide Enfield and Charles Sturt tender together.....”. Such a statement of ‘new evidence’ is false as there is no evidence but merely speculation by WRASA.

2. Transaction Cost Savings

WRASA claim (point 4.1 Transaction Cost Savings) that “New evidence submitted in the attached from Dr Frank Ashe of Quantitative Strategies show that the final price schedule will have potentially 1188 price combination options for tenderers to complete to accommodate centroid, stream and council/tonnage bracket combinations”, this is incorrect.

RFT1, the subject of this Application, requires straight forward tendering input on the part of tenderers, without complexities, and without the pricing in of unquantifiable risks on the part of tenderers.

The work by Ash may be of academic interest to some but is entirely irrelevant when considering the demand on tenderers in preparing responses to the RFTs. Setting aside at least one factual error in Ash’s work, the paper attempts to imply that tenderers will be required to undertake an inordinate amount of work in completing pricing schedules, on the simplistic proposition that each price submitted is a completely independent estimate of price based on separate modelling and estimation of resourcing needs. This is not correct and is explained below.

RFT1 is for the collection in MGBs of three kerbside waste streams (mixed waste, recyclables and organics) and the delivery of those waste streams to facilities located within 5 km radii of two nominated centroids. Tenderers will be invited to tender collection prices for each Participating Council for the following:

- *mixed waste – one tendered price to each of a facility within a 5km radius of the northern centroid and a facility within a 5 km radius of the southern centroid,*
- *recyclables – one tendered price to each of a facility within a 5 km radius of the northern centroid and a facility within a 5 km radius of the southern centroid, and*
- *organics – one tendered price to each of a facility within a 5 km radius of the northern centroid and a facility within a 5 km radius of the southern centroid.*

These collection services will be the basis for tender modelling of fleet configurations, collection routes, financing and resourcing needs, from which estimates of tendered prices will be developed – for these core services. It is considered that upwards of 85% to 90% of all modelling and estimating for the collection services involved in RFT1 will be dedicated to these core services.

On this basis tenderers are invited to submit 6 core/base prices for collection and delivery for each Participating Council, and then provide prices for variants, which will be based on the core prices.

In addition, a price will be provided for a drop-off location outside the centroids, this price will be a haulage rate for \$/tonne/km for haulage only from the centroid perimeter boundary to the drop-off location.

The vast majority of additional pricing within RFT1 will be a variant of the core/base price, for example, if a council opts for a smaller or larger bin, or would like to increase or decrease collection frequency (to weekly or fortnightly).

In respect to the supply of bins, tenderers will obtain a bin supply quote from a bin manufacturer for the variously sized bins then add on their estimate for supply and maintenance.

It is important to note that the prices being sought for the services to be delivered are the same as those commonly requested in similar tenders around the country and that each and every one of the tenderers most likely to prepare and submit tenders for this project will be familiar with these requirements and will have in place modelling systems, capabilities and expertise to undertake this work. There is little or no unique resourcing or skilling required to tender for these RFTs than is the case for the majority of similar tenders across Australia.

3. Improved efficiencies in the supply of kerbside waste collection services.

WRASA state (point 4.3, para 7) “.....it would be impossible to properly allocate disposal costs to the correct Council area when picked up by a truck servicing both areas.”, this statement is incorrect. Bin collections are all charged by the collections contractor on a per lift rate, that is, the number of bins collected times a rate for each bin lift. It is a simple calculation to determine the exact collection charge applicable to each Council. Further, the processing cost has been agreed between councils to be a simple pro-rata calculation using lift counts and average bin weights determined from bin audits and weights of trucks at discharge depots.

WRASA also incorrectly asserts that the relative cost of waste services, as expressed in rates charges, and the cost of a collection contract are directly related. The cost of rates to residents is calculated from a myriad of factors, which includes the cost of collection, but is not directly related to the collection cost.

WRASA implies that collaborative procurements do not save money, this has been refuted by the Participating Councils who have first-hand experience and have expressed such to the ACCC at the pre-decision conference and in submissions as interested parties.

Dollery Report:

The paper by Dollery cites empirical evidence from papers prepared by Dollery and others that were prepared specifically to mount arguments against council amalgamations. The findings relating to NSW are not supported by the actual evidence from the St George councils’ case and verbal advice received from the Metropolitan Waste Management Group in Melbourne, where collaborative procurement is used extensively and reported to deliver benefits to the participating councils and further evidenced by the Participating Councils in their submissions as interested parties to the ACCC. In addition, the NSW study appears to be an analysis seeking ‘optimum size of provider entity’ not optimum size of contract.

In the paper by Dollery and others relating to Queensland local government pre and post amalgamation, two sets of cost data appear to have been used (2006/07 and 2009/2010) to compare expenditures on

waste management costs pre and post amalgamation. Whilst the background facts are not provided, it is highly unlikely that the comparison in costs included the impact of a new tender for waste management services post amalgamation, where the real impact of economies of scale would be observed. Indeed, given the length of waste services contracts, and the challenges facing councils post amalgamation, it is considered highly unlikely that a new waste services contract would have been prepared, tendered and awarded in the three years between the sets of data used, and thus the comparison is likely to have been unrepresentative of what can be achieved when new contracts are tendered under the amalgamated situation. Indeed, the post amalgamation costs could quite reasonably be expected to be higher on a unit cost basis than was the case prior, given the inefficiencies on managing multiple separate contracts across the newly amalgamated council. Through direct experience Wright Corporate Strategy is aware of the cases in both the Northern Beaches (NSW) and Toowoomba (QLD) where new wastes services were not procured under the amalgamated configuration until at least three years had elapsed from the time of amalgamation.

Dollery is comfortable in refuting claims by the applicant on the grounds that he believes no material evidence is presented, yet fails to support his refuting of the claim with any evidence supporting his refute.

4. Improved environmental outcomes

WRASA claim that there is an inverse relationship between the size of a council (presumably the number of rateable tenements) and the level of resource recovery achieved, with the inference that small sized councils deliver higher levels of resource recovery, and thus if resource recovery is an objective from the collaborative tender this is unlikely to be achieved given the size of the combined group of Participating Councils.

This claim is disingenuous, mischievous and intentionally misleading and is refuted.

Resource recovery is related to behaviour, opportunity, motivation and a number of other human and demographic factors, of which the size of a council may possibly be a minor contributor.

Perhaps of more relevance is the correlation between size of council and the socio-economic demographics of the council. By and large, smaller councils are comprised of relatively wealthy and more tightly grouped socio-economic populations than is the case for larger councils. And those councils can survive as small entities because of the higher collective net worth of their communities to financially support the budgets of the smaller council. On this basis one might reasonably assume that in the smaller councils there is:

- greater potential for behaviours that are conducive to good resource recovery, and
- less diversity across the population thus yielding a more uniform behaviour trend in respect of resource recovery.

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.

5. Stimulation of competition (*number of Tenderers*)

WRASA/MRA contend that the larger the contract the fewer tenders received but the conclusion that size and number of tenderers is directly (and uniquely) related is a gross mis-use of data. The number of tenderers for a collection contract will depend on multiple factors, including (but not limited to):

- the location of the Council and the number of providers operating in the region;
- the number of other tenders/contracts that are operative in the region (i.e. existing business commitments of local participants);
- the complexity of the documentation;
- the complexity of the contract;
- the financial attractiveness of the prospective contract - i.e. the potential margin.

There is no doubt that large contracts of the size proposed by Council Solutions will limit the number of tenderers with the experience, capacity, balance sheet and risk appetite to tender for the works. Notwithstanding that, there is a reasonable expectation that a minimum of 3 and a maximum of 6 tenderers will be attracted to this tender.

In the data presented by WRASA/MRA the mode (most common value) is evenly split between 3 and 4 tenderers and the average is 4 tenderers - quite in line with what Council Solutions reasonably expect to be the number of tenders for RFT1.

WRASA also provides an argument “.....to explain why new entrants are unlikely, the incumbent providers have significant competitive advantage in respect of subsequent tenders for later contestable contracts in the Region.”.

“Such incumbency and scale advantages (regarding future tenders for processing and other collection and ancillary services) will include:

- *Knowledge of Council priorities and strategic intent*
- *Knowledge of densities and weights of bins*
- *Knowledge of collection areas and household patterns*
- *Access to detailed auditing data on waste types, characterization and organic content*
- *Bin and truck productivity*
- *Intimate knowledge of education success and failure*
- *Truck operating costs and maintenance*
- *Operation of depots*
- *Waste calorific values.*

These are significant competitive advantages”

Such an analysis by WRASA/MRA may help explain the current market concentration resulting from councils' tendering individually.

MRA further discusses risk associated with not having knowledge/experience of the local geography and topography down to location of trees, on this basis MRA seem to imply that the incumbent is the best candidate to undertake the collection services because of their local experience – there is no secret that one contractor currently services 3 of the 4 Participating Councils and that MRA, by their own admission to the ACCC, is advising that contractor.

In waste collection contracts the guarantee of supply of waste, and therefore payments from the Participating Councils to the contractor, provides a guarantee of cash flow with which a successful

contractor can underwrite capital repayments. Given this guarantee of supply, collection contractors with a demonstrable record of successfully undertaking collection contracts rarely have difficulty arranging debt finance for the advance purchase of collection vehicles from traditional debt financing sources.

In the Adelaide market, any contractor currently servicing a number of councils would be most likely to be able to demonstrate capacity to deliver on the services, and thus capacity to manage debt.

In addition, the quantum of capital required is nowhere near the exaggerated amount suggested.

If for any reason a tenderer believed the level of debt needed was outside their internal borrowing limit, or debt to equity limit, or any other internal financial performance metric, then the decision not to tender would rest entirely with that entity.

The Participating Councils requirement for security by way of a bank guarantee or surety bond is no different whether an individual council tender or a collaborative tender, security is related to the contract value and assessed risk. It has been assessed that the amount of bank guarantee for this conduct is likely to be no more than the combined total of individual bank guarantees currently held by each Participating Council for their current waste collection contracts.

6. Competition for the supply of MGBs

Council Solutions has previously advised that a full roll-out of new bins for any of the collection service streams is not required and does not form part of this conduct. What is included in RFT1 and forms part of this conduct is the replacement and/or maintenance of existing bins and supply of bins to new premises. This will amount to some thousands of bins not hundreds of thousand or even tens of thousands. Any bulk roll-out of new bins will be negotiated with the contractor where the bins will be paid for by the Council on delivery and ownership transfers to the Council.

Council Solutions agrees with the ACCC Draft Determination that the successful tenderer will make decisions about how to acquire bins and whether to enter into long term arrangements for the supply of bins with an arrangement that would not reduce competition in the longer term to ensure the availability of competitively priced bins continues into the future.

Council Solutions and the Participating Councils recognise the need for collection contractors to have some accountability for the handling of bins to ensure damage is minimised and use their influence on the manufacturer to ensure bins are strongly constructed so that the working life of a bin is maximised without needing hinge pins, lids and wheels periodically replaced.

7. Order of Tenders.

There are a number of reasons behind the release of the three RFT's to the market at the same time for tender, including – practical necessity, strategic necessity, economic efficiency, and equity. These are discussed below.

- a) **Practical Necessity** – the lead time for a successful tenderer in RFT1 to procure collection vehicles and have truck bodies built and fitted is typically 12 months in advance of commencement of services. With the intention of commencing the new collection services in May 2020, this would mean that the latest award date for RFT1 would be May 2019. It is not feasible to complete the tender and award process for RFT2 before commencing the tender process for RFT1 and still meet the timeframe for preparing collection vehicles.

- b) **Strategic Necessity** – waste processing facilities for recyclables and organics that service metropolitan Adelaide are, broadly speaking, found to the north and to the south of the metropolitan area, hence the use of centroid locations to the north and south.

With the final locations of drop-off facilities undecided at the time the collections are being tendered, tenderers for RFT1 will be compelled to prepare competitive prices for both drop-off in the north and drop-off in the south, irrespective of the disposition of the tenderers' depots and other facilities (see Equity below), and without any advantage that may arise had the actual drop-off locations been known during tendering.

- c) **Economic Efficiency** – of the three RFT's, the collections contract (RFT1) is likely to represent over 60% of the total value. On this basis alone, it is most appropriate to consider the collections contract first as this will be the main driver of total cost.

Maintaining equitable neutrality with respect to the location of facilities of the collection tenderers (see Equity below) is most likely to result in the most competitive tenders for the collections.

In addition, with the final cost to Participating Councils being the combined value of the accepted tenders for all three RFT's it will be important during tender evaluation to compare the various offers for delivery to both centroids by the collector and receipt from both centroids by the processors, to identify the most attractive total cost to the Participating Councils.

- d) **Equity** – the likely tenderers for the collections (RFT1) have existing garaging and servicing depots for their vehicles variously to the north and the south of the collection areas. If the actual drop-off locations are known (either the north centroid or the south centroid) then tenderers for RFT1 would not be tendering on a level playing field basis and comparable, competitive tenders are less likely. Retaining the actual drop-off locations un-decided while the collections tender is in progress will provide equity across the whole tendering market and the most competitive environment for fair and balanced tendering.

For similar reasons, for the tenderers for processing (RFT2), the most equitable and competitive tendering situation arises when they offer tenders for the receipt centroid that best suits their competitive position and are not influenced by a pre-determined knowledge of the preferred drop-off centroid from the collections tender.

On this basis, equity and competition is most enhanced when all tenders are prepared in parallel, assessed individually and determined on collective value.

8. Improved Efficiencies through combined contract management

WRASA state ...“The ACCC finds that due to lack of data certainty the claim that centrally coordinated data analysis, policy and strategy development and monitoring of the services provides a material public benefit, cannot be determined or supported.”

Council Solutions provides below the estimated labour resources (FTE) under the scenarios of 'With' and 'Without' Council Solutions undertaking the Collaborative Procurement with the Participating Councils.

Estimated Labour Resource (FTE) With and Without Collaborative Procurement

Task	Without Council Solutions					With Council Solutions				
	CS	CoA	CoCS	CoM	CoPAE	CS	CoA	CoCS	CoM	CoPAE
Overall Project including Contract Management (<i>excludes external advisers</i>)	0	1.75	1.75	1.75	1.75	1.0	0.5	0.5	0.5	0.5
Drafting RFT Process: <ul style="list-style-type: none"> • Develop Specification • Compile Data – Information for Tenderers • Develop Response Schedules • Conditions of Tender • Conditions of Contract • Editor/checking final RFT draft • <i>Consult External Advisors:</i> <ul style="list-style-type: none"> ➤ <i>Technical</i> ➤ <i>Legal</i> ➤ <i>Probity</i> ➤ <i>Financial</i> • Review and endorse RFT documents 		0.30	0.30	0.30	0.30	0.25	0.1	0.1	0.1	0.1
Tender call Process: <ul style="list-style-type: none"> • Tender call and closing • Setup Tender on SA Tenders website • Contact person for tender clarifications • Prepare tender addendums • Tender close process • Tender compliance check 		0.1	0.1	0.1	0.1	0.10				
Evaluation Process: <ul style="list-style-type: none"> • Evaluation Plan • Score sheets/weightings • Probity Plan • Establish Evaluation Panel • Conduct Tender Evaluation • Compile Panel clarifications • <i>Consult External Advisors:</i> <ul style="list-style-type: none"> ➤ <i>Technical</i> ➤ <i>Legal</i> ➤ <i>Probity</i> ➤ <i>Financial</i> • Review and endorse Evaluation Plan 		0.35	0.35	0.35	0.35	0.25	0.1	0.1	0.1	0.1
Negotiation Process: <ul style="list-style-type: none"> • Develop Negotiation Plan • Establish Negotiation Team and brief • Lead Negotiations • Undertake negotiations • Document & report negotiated outcome 		0.25	0.25	0.25	0.25	0.15	0.05	0.05	0.05	0.05

<ul style="list-style-type: none"> Review and endorse Negotiation Plan and Final Report 										
Contract Award Process: <ul style="list-style-type: none"> Prepare Recommendation to Award Seek approval to award contract Prepare final Contract document with negotiated outcome and established performance criteria. Consult external legal adviser Award Contract Manage bank guarantee Check compliance with insurances and licenses and accreditations Debrief unsuccessful tenderers 		0.15	0.15	0.15	0.15	0.15	0.05	0.05	0.05	0.05
Contract Management (per annum): <ul style="list-style-type: none"> Develop Contract Management Plan Compile contract performance data, analyse and prepare reports Conduct contract management meetings, prepare Minutes and Actions Participate in contract management meetings and actions Review request for variation Prepare and issue variation addendums Approve variations Manage Rise & Fall process Manage Price Reviews Ensure compliance with insurances and licenses Ensure compliance with New Heavy Vehicle Law (Chain of Custody) OW&S compliance Manage contract extension review Contract administration (review council invoices and reports) Day to day liaison with contractor re local issues 		0.6	0.6	0.6	0.6	0.5	0.2	0.2	0.2	0.2

This table is based on the percentage of time to undertake the Tasks using FTE as the measure. The length of time each Task category is undertaken is based over year 1; Contract Management is based on the FTE per annum requirement over the contract term.

The FTE percentage of time is determined by estimating and combining total labour-hours allocated to each Task and are derived from various council departments (waste/environment, procurement, finance et al).

The collaborative procurement using Council Solutions is estimated to save the Participating Councils a total of 4 FTE's, an average of 1.0 FTE per Council. (Without CS: $1.75 \times 4 = 7.0$; With CS: $(0.5 \times 4) + 1 = 3$; ie $7.0 - 3.0 = 4.0$ FTE)

Without Council Solutions the engagement of External Advisers is estimated to total 0.56 FTE's per Council (2.24 FTE across all 4 Participating Councils). With Council Solutions the engagement of External Consultants would be reduced to 0.56 FTE, saving an estimated 1.68 FTE in External Advisers.

Overall, FTE savings are estimated to be in the order of 5.68 FTEs (ie not a reduction of employees but the reduction in equivalent labour hours by removing duplication in undertaking the same Tasks across 4 Councils). The net saving in Contract Management labour hours continues for the term of the contract.

This demonstrates a net public benefit will result from Council Solutions' collaborative procurement.