

Waste & Recycling Association of South Australia Inc.

26 April 2018

Mr Gavin Jones
Director - Adjudication
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By e-mail: adjudication@accc.gov.au

Dear Mr Jones

Council Solutions & Ors Authorisation Application
Your reference: AA10000414-1

Thank you for the opportunity to provide feedback on the Council Solutions applications in 2016 and again in 2018.

We greatly appreciated the consideration you gave to the evidence we supplied in 2016, its inclusion in your assessment of Council Solutions 2016 application and the resultant Final Determination denying authorisation to the application.

Please find the following attached reports:

1. WRASA Part A – Council Solutions 2018 Application benchmarked to the 2016 ACCC Final Determination
2. WRASA Part B – Response to the Council Solutions 2018 Application
3. Confidential Report of [REDACTED]
4. Professor Brian Dollery's Academic Report
5. Professor Barry Burgan's Academic Report

In summary, the attached reports review the conclusions formed in the 2016 ACCC Final Determination and benchmarks these against the revised 2018 Council Solutions application.

Based on the attached reports, our Members believe the new application varies only marginally from the original application.

The application provides **little to no substantiation to support their public benefit claims**, and does not address the public benefit or public detriment concerns raised by the ACCC in the 2016 Final Determination.

Therefore, after assessing each claimed public benefit claim and potential public detriments in detail we are confident the application should be denied.

Should you require any additional information, please do not hesitate to contact me and we look forward to meeting with the ACCC should you wish to discuss this further.

Yours sincerely

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Public Officer



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26 April 2018

WRASA SUBMISSION (PART A) IN RESPONSE TO COUNCIL SOLUTIONS APPLICATION AA1000414 TO THE ACCC DATED MARCH 14, 2018.

THIS SUBMISSION BENCHMARKS TO THE 2016 ACCC FINAL DETERMINATION A91520

Introduction

The following report reviews the conclusions formed in the 2016 ACCC Final Determination and benchmarks these against the revised 2018 Council Solutions application. We believe the new application varies only marginally to the original application, provides little to no substantiation to support their public benefit claims and does not address the public benefit and public detriment concerns specified by the ACCC in the 2016 Final Determination denying approval of the proposed conduct. Therefore, after assessing each claimed public benefit claim and potential public detriments in detail we respectfully request the ACCC deny this application.

Transaction Cost Savings

ACCC Final Determination December 2016

111. Taking all of these considerations into account, on balance, the ACCC is not persuaded there will be a net public benefit as a result of the proposed conduct in the form of transaction cost savings.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that no public benefit would result from the Transaction Cost Savings asserted in the 2016 Council Solutions application. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

103. In this case, the ACCC considers that the proposed conduct is likely to reduce or remove some duplication by participating councils of tender-related tasks such as the preparation of tender documents, advertising of tenders, information sessions for prospective bidders, and some aspects of contract preparation.

104. However, the transaction cost savings for participating councils are likely to be significantly offset by the additional costs required to coordinate internally within the group of councils.

105. The ACCC considers that, all things being equal, the larger the number of councils and service streams in a collective procurement arrangement and the greater the complexity of the tender process, the greater the need for coordination within the bargaining group and the higher the coordination costs. In this case, under the proposed conduct, the tender process is complex, and each council will remain significantly involved in the tender evaluation and assessment process, and will have to liaise with each other council in addition to Council Solutions when selecting service providers.

WRASA acknowledge that savings can be made for probity and legal costs but this is minor compared with the added costs resulting from the additional layer of bureaucracy added by the Council Solutions proposal. As no reduction in Council labour is proposed, the addition of Council Solutions procurement team is a direct additional cost. Additionally, as Tea Tree Gully Council has elected not to participate in the 2018 procurement any claimed transaction cost savings are further eroded versus their 2016 application.

In Council Solutions 2018 proposal, each step of the tender process from the development of the tender specification, contract development to tender submission reviews and assessments still needs to be reviewed and agreed to by each Council through their independent internal review processes. Therefore, with the need to negotiate and agree with the other Councils and Council Solutions the work involved is greater and more complex than current practice, increasing coordination costs.

Furthermore, the full tender process proposed by Council Solutions, involving all Councils, will need to be repeated at a later date when Council Solutions subsequently elect to tender for waste disposal, recycling processing and organics processing further increasing each Councils time on tendering. As detailed in the Victorian procurement guidelines, optimal tender practice is to initially tender for disposal and processing locations. Once the locations are confirmed, collection tender complexity is reduced proportionately for all Councils. However, under the framework of Council Solutions 2018 proposal, complexity is increased.

Public Benefit

As the Council Solutions 2018 proposal does not substantially differ from their 2016 application and fails to address the ACCC's co-ordination costs and increased complexity concerns raised in

the 2016 Final Determination (see reference 106, 110 and 111), we believe there is **no public benefit**.

Improved environmental outcomes

ACCC Final Determination

229. The ACCC notes the potential for the proposed conduct to facilitate improved environmental outcomes, such as a waste to energy solution, through efficiencies or innovation in each service stream. The ACCC has already considered these issues above in respect of each service stream and concluded that there is likely to be some minimal benefit in respect of improved efficiencies in processing of recyclables and organics, **and no likely benefit in respect of waste collection and waste disposal.**

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that no public benefit would result from Improved Environmental Outcomes for waste collection as asserted in the 2016 Council Solutions proposal. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

225. As indicated earlier, the ACCC considers that each participating council already has significant incentives to reduce the volume of waste going to landfill and these incentives will increase as the SWL rises over coming years, both with and without the proposed conduct. It is therefore not clear that the proposed conduct would alter these incentives.

228. However, the ACCC notes that the participating councils can and do undertake their own community education programs, and so any environmental benefit from improved education is likely to be small. Therefore, the ACCC considers that the proposed conduct is likely to result in a small public benefit in the form of improved environmental outcomes.

229. The ACCC notes the potential for the proposed conduct to facilitate improved environmental outcomes, such as a waste to energy solution, through efficiencies or innovation in each service stream. The ACCC has already considered these issues above in respect of each service stream and concluded that there is likely to be some minimal benefit in respect of improved efficiencies in processing of recyclables and organics, **and no likely benefit in respect of waste collection and waste disposal.**

WRASA agrees with the ACCC's 2016 final determination that there could be small environmental benefits from joint community education initiatives but that no environmental benefits are likely to result from joint waste collection services.

We also note in 228 above, that the ACCC states that "councils and do undertake their own community education programs" and wish to stress that Councils nationwide can and do already share educational resources without the need for a joint collection tender. Furthermore, the most proven method of reducing contamination is via collection drivers tagging contaminated bins. As this is achieved on a house by house basis, no benefit can result from a joint collection tender.

In Council Solutions 2018 application they devote 3 pages to increased environmental outcomes from education, but fail to address the ACCC's concern that no public benefit is likely from joint collection services. Despite this, they claim environmental benefits will result from a joint collection tender without providing any direct evidence to support this assertion.

Public Benefit

In summary, we believe Council Solutions are being misleading and claiming the benefits from one activity (education) on another independent activity (collection). Therefore we support the

ACCC's 2016 final determination that no environmental benefit will result from a joint collection tender.

Stimulation of competition

ACCC Final Determination

208. In these circumstances, based on the information available, **the ACCC is not persuaded that the aggregation of volumes and contracts would be likely to result in a public benefit in the form of stimulation of competition.**

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that it is unlikely a public benefit of increased competition would result from a joint waste services tender. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

205. The ACCC notes that the proposed conduct is likely to result in a larger number of collection points and larger volumes of recyclables, organics and residual waste being offered for tender in a single process, compared to the future without the proposed conduct.

206. The ACCC considers that a larger contract (in terms of scale and value) under the proposed conduct has the potential to stimulate competition in the supply of waste disposal services by attracting bidders (including potentially new suppliers) and helping to make previously uneconomic technologies and services viable.

207. However, previous tenders for waste collection, recyclables and organics appear to have been the subject of a high degree of competition and that a number of multinational companies are already present or interested in the relevant markets. The ACCC also notes that any benefit in the form of attracting bidders to the tender is likely to be offset by the detriment caused by parties being deterred or prevented from tendering (see detriments section from paragraph 232).

Council Solutions assert in 6.2.2 that “only three suppliers are currently contracted to provide... waste collection services”, but fail to acknowledge that all national waste service collectors have participated in prior collection tenders (see 2016 WRASA submission) and all have local Adelaide operations. The current conduct does not in any way prevent collection companies from tendering.

Council Solutions further assert (6.2.2.) that a joint collection tender will provide “all potential suppliers in the market with fair and equal opportunity to secure the contract”. However, this assertion does not address the industry concerns raised in 2016 that a tender of this size may in fact deter companies from tendering due to smaller organisations having limited access to the large capital requirements and bank guarantees required for a tender of this magnitude. Council Solutions have not addressed this concern as raised by industry and supported by the ACCC in the Final Determination, paragraph 255, where they state “Accordingly, the ACCC concludes that **the proposed conduct is likely to result in some public detriment constituted by a lessening of competition** by deterring or preventing some suppliers from participating in the tender process or submitting competitive bids.”

In summary, the ACCC concluded in paragraph 283, “The ACCC considers **the proposed conduct is likely to result in some public detriment constituted by a lessening of competition** through:

- *deterring or preventing some suppliers from participating in the tender process or submitting competitive bids*
- *reducing competition for the supply of waste services to participating councils in the longer term*
- *reducing competition for the supply of waste services to non-participating councils*

Public Benefit

As the 2018 Council Solutions applications fails to address the ACCC's public detriment concerns above, we respectfully request the **ACCC deny the 2018 application.**

Facilitating improved efficiency in the supply of waste collection services

ACCC Final Determination

143. Therefore, while the ACCC recognises the potential for aggregation of the participating councils to result in improved efficiencies in the supply of waste collection services, **it considers that such benefits would be unlikely in this case** for the group of councils and services concerned. This is particularly so given the **geographic spread of the councils, the small degree of shared boundaries and the evidence presented as to the optimal size for efficient waste collection services.**

Accordingly, on balance, **the ACCC is not persuaded that the proposed conduct is likely to result in a net public benefit** in the form of improved efficiencies for the supply of waste collection services.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that a public benefit is unlikely to result from the asserted improved waste service efficiencies from a joint waste services tender. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

137. The ACCC notes WRASA's submission that the **optimal size of a municipal waste collection service is between 20,000 and 50,000 households.** The table below provided by Council Solutions sets out the number of premises entitled to receive a municipal waste collection service in each participating council.

*138. The ACCC observes that **four of the five participating councils individually have more than 20,000 service entitled premises and three have less than 50,000 service entitled premises.***

*141. The ACCC ...considers that the **proposed conduct is likely to enable waste collectors servicing the participating councils to reduce costs by:***

- helping them to achieve or maintain efficient scale to the extent that an individual council is not fully able to do so in the future without the proposed conduct*
- providing opportunity for the **design of more efficient collection routes across participating councils***
- **reducing the number of spare trucks needed to cover repairs and breakdowns across participating councils.***

142. However, the ACCC considers that the opportunity for such cost savings is likely to be confined to participating councils that are geographically proximate and therefore would not extend to the City of Marion, since it is located about 12-15 km to the south of the closest participating councils (being Adelaide City Council and the City of Charles Sturt). Also, such cost savings depend upon participating councils being prepared to share services across council boundaries, which may involve complexities in identifying costs relevant to their respective ratepayers.

In determining that a joint tender is unlikely to produce any net public benefit from collection efficiencies, the ACCC clearly listed substantiated 3 reasons. In Council Solutions 2018 application, these three issues are not even acknowledged and their proposal resorts to mere claims based on assumption.

1. In paragraph 143, the ACCC confirm that due to the “**geographic spread of councils**” improved efficiencies are unlikely. As this has not changed, a net public benefit cannot be claimed.
2. The ACCC also acknowledge that the “**small degree of shared boundaries**” make it unlikely that improved efficiencies will result. Again, as this has not changed nor has Council Solutions addressed the invoicing concerns raised by the ACCC in paragraph 142, a net public benefit cannot be claimed.
3. The ACCC refers to “**evidence presented as to the optimal size for efficient waste collection services**” that was supplied by Professors Dollery and Burgan in 2016 confirming the optimal council size for collections is between 20000 and 50000 households and that diseconomies of scale are present in larger contracts, proving “bigger is not always better”. Again, this evidence and the ACCC’s concerns has been overlooked by Council Solutions showing their intent to implement a service that will result in diseconomies of scale providing a net public detriment, as opposed to the claimed net public benefit.

Council Solutions further presume that efficiencies will be gained via reduced spare vehicles. However, it is currently standard practice of collection contractors to use unbranded ‘clean skin’ spare trucks as this enables them to be used in multiple contracts, Therefore, as this saving is already available to Councils who tender independently, a net public benefit cannot be claimed.

Public Benefit

As the Council Solutions 2018 proposal fails to acknowledge or address the 3 reasons the ACCC detailed in rejecting their service efficiency claim in 2016, **a public benefit cannot be substantiated** and therefore cannot be claimed.

Improved Efficiencies through Information Sharing and Cost Savings

ACCC Final Determination December 2016

126. Overall, the ACCC considers that:

- **No public benefit is likely** in respect of better contract management as increased costs of coordination are likely to offset any efficiencies in coordination.
- Some small public benefits are likely to result from efficiencies in delivering community education programs.

ACCC Decision Rationale applied to the 2018 Proposed Conduct

Upon reviewing the ACCC's December 2016 Final Determination, we believe the following key points lead to the conclusion that a public benefit is unlikely to result from the asserted improved efficiencies through information sharing and cost savings from the 2016 joint waste services tender. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC's concerns:

*122. The ACCC notes that, while Council Solutions will have a role in the ongoing contract management, **day-to-day operational contract management would be undertaken by each participating council**. Any efficiency benefit would therefore be based on broader contract management issues common to each council's individual contractual arrangement.*

123. The ACCC accepts that the proposed conduct is likely to result in increased information sharing and collaboration between participating councils and Council Solutions, and that this in turn may enhance the Applicants' ability to negotiate with service providers during the life of their contracts.

*124. However, compared to the future without, where each council would manage its contract independently, **in the future with the proposed conduct each council would be likely to incur additional coordination and administration costs** through the establishment and implementation of the Contract Working Group, and the need to coordinate responses to broader contract management issues with up to six parties (five councils plus Council Solutions). The ACCC considers that **this increased cost of coordination is likely to offset any benefits gained through collaboration and coordination**.*

*125. In relation to the potential for improved efficiency through the joint delivery of community education programs, the ACCC accepts that the proposed conduct would be likely to allow the participating councils to improve efficiency in the development and implementation of community education programs ... However, the ACCC notes that the participating councils can and do undertake their own community education programs. Therefore, while the ACCC accepts this public benefit, it considers that **any efficiencies that would be likely to be gained when compared to the future where each council undertakes its own community engagement programs are likely to be small**.*

WRASA note that Council Solutions have attempted to streamline the contract management component of their 2018 application by reducing the number of Council representatives. However, by reducing their representation, creating only one service specification and not allowing Councils to opt out of the service, each Council risks losing the ability to customise the service required by their ratepayers. This is unlikely to result in a net public benefit.

Council Solutions have also defined the responsibilities of Council Solutions and the Councils in an attempt to reduce the Contract Management complexity as follows:

Responsibility	Owner	Est.% of Time
1. Innovation, value adds & maximising performance	Council Solutions	5 - 10%
2. Compliance	Council Solutions	
3. Conformance	Council Solutions	

4.Operational	Councils x 4	90 - 95%
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However, they have failed to quantify their claim by providing any substantiation of the time they assert they will save. Council Solutions have stated they will be responsible for items 1-3 above, however these items would only total approximately 5% of the total time invested in contract management. They also fail to mention that these responsibilities are already contained in the collection specifications and are generally listed as the responsibility of the contractor. The remaining 95% of time expended on managing the operations of the contract 5 days a week, 52 weeks a year is retained by each 4 Councils. Again, little has changed from the prior application leaving little benefit if any in relation to Contract Management.

WRASA agrees with the ACCC's 2016 final determination that there could be small environmental benefits from joint community education initiatives. However, we also note in paragraph 228 above, that the ACCC states that "councils and do undertake their own community education programs" and wish to stress that Councils nationwide can and do already share educational resources without the need for a joint collection tender. Furthermore, the most proven method of reducing contamination is via collection drivers tagging contaminated bins. As this is achieved on a house by house basis, it is not dependent upon a joint collection tender.

Public Benefit

As the Council Solutions 2018 proposal does not differ substantially from their 2016 application or address the ACCC's concerns in paragraph 124, we believe any small benefits achieved in education will be offset by additional coordination, administration and Contract Management costs. Therefore, on balance, we believe there is **no public benefit**.

Public Detriments

ACCC Final Determination December 2016

283, “The ACCC considers ***the proposed conduct is likely to result in some public detriment constituted by a lessening of competition*** through:

- *detering or preventing some suppliers from participating in the tender process or submitting competitive bids*
- ***reducing competition for the supply of waste services to participating councils in the longer term***
- ***reducing competition for the supply of waste services to non-participating councils***

ACCC Decision Rationale applied to the 2018 Proposed Conduct

In the ACCC’s final determination, 11 pages are dedicated to assessing and concluding that a public detriment will result from the proposed conduct. In their 2018 application, Council Solutions respond with 7 bullet points totalling less than 1 page.

Upon reviewing the ACCC’s December 2016 Final Determination, we believe the following key points lead to the conclusion that 3 public detriments are likely to result from the proposed conduct. The commentary below benchmarks the 2016 conclusions to the 2018 application to assess if the new application addresses the ACCC’s concerns:

1. ***Deterring or preventing some suppliers from participating in the tender process or submitting competitive bids***

251. The ACCC notes that there is significant uncertainty about the extent to which the arrangements would attract tenders from waste services providers that would not otherwise participate in tenders to supply the participating councils in the likely future without the proposed conduct. This, combined with the likelihood that some potential tenderers will not participate in the RFP due to its increased scope and complexity and the greater costs involved, leads the ACCC to conclude that there is a real chance that the proposed conduct will lead to fewer participants in the tender process than would be the case without the proposed conduct.

252. The ACCC considers that fewer participants in the tender process would reduce the competitive tension between tenderers and therefore be likely to result in public detriment.

255. Accordingly, the ACCC concludes that the proposed conduct is likely to result in some public detriment constituted by a lessening of competition by deterring or preventing some suppliers from participating in the tender process or submitting competitive bids.

WRASA acknowledges that the 2018 application has reduced in scope to collections only. However, this alone will not ensure all potential collection contractors will bid on the tender as the increased capital requirements and bank guarantees required by a tender this large may be beyond the means of smaller contractors who may normally bid for one Council at a time. Additionally, due to the size of the tender, the risk profile is greatly increased, acting as a deterrent for smaller contractors to tender.

2. *Reducing competition for the supply of waste services to participating councils in the longer term*

271. While the participating councils have both financial and statutory obligations to provide cost-effective waste services to ratepayers, **the ACCC considers that the proposed conduct has the potential to result in the awarding of a contract or contracts which substantially reduce the overall number of suppliers of waste services to the participating councils.** This could occur **within service streams** where there are currently multiple providers or across councils where there are, in some cases, different providers of services to different participating councils.

272. The ACCC is of the view that, compared to the likely counterfactual, the proposed conduct would be likely to:

- **reduce the ability of existing providers to innovate and continually improve** their offers to supply waste services over time through successive and frequent opportunities
- **make entry into the supply of waste services** in metropolitan Adelaide less likely by making entry on an incremental basis more difficult.

273. The ACCC accepts that the RFP is intended to generate competition ‘for the market’ in respect of the waste service requirements for the participating councils. However, **the ACCC is concerned that if the proposed conduct results in fewer waste service providers** in metropolitan Adelaide, **competition** for provision of these services to the participating councils **will be lessened in the longer term** as existing suppliers are likely to be in a stronger position to compete in subsequent tender processes.

274. Overall, the ACCC considers that there is a real chance that **the proposed conduct will result in fewer providers of waste services providers** in metropolitan Adelaide and that this is likely to constitute some **public detriment** in the form of reduced competition in the longer term.

3. *Reducing competition for the supply of waste services to non-participating councils*

281. *However, for the reasons set out at paragraphs 270 to 274, the ACCC considers that the proposed conduct is likely to result in fewer waste service providers in metropolitan Adelaide and is likely to advantage existing suppliers in future municipal waste tender processes in Adelaide. The ACCC considers that this is likely reduce competition for the provision of waste services to other councils in Adelaide that do not participate in the Council Solutions arrangement.*

282. *Overall, the ACCC considers that there is a real chance that the proposed conduct will result in some public detriment in the form of reduced competition in the supply of waste services to councils in Adelaide that do not participate in the Council Solutions arrangement.*

WRASA acknowledges that the 2018 application has reduced in scope to collections only. However, the awarding of 4 collection contracts, representing 180,000 properties, in one tender will reduce the attractiveness of the Adelaide market to unsuccessful tenders and potential new entrants, thus reducing competition in the long run.

It also appears that Council Solutions have amended the total market definition as they stated the total Adelaide market contained 585,473 properties in their 2016 application (see paragraph 137), yet they are now claiming the total market has 686,236 properties (see Table 1). Based on their earlier market definition Council Solutions represents 30.7% of the total market. As the NAWMA group is contracted for 11 years and contractors cannot tender against East Waste in those Councils, only 50% of the Adelaide market remains open to tender. This dramatic reduction in available tenders makes the market unattractive to tenderers in the long term.

Furthermore, Council Solutions have sought to extend the application from 17 to 23 years, hence reducing competition for a longer term.

In their 7 point response to the ACCC's public detriment concerns, Councils Solutions state in 7c: ***"If there was any loss in competition, the resultant detriments, such as increased prices or lower quality of service, would impact on the Participating Council's ratepayers and communities. The Participating Councils, however, in assessing the Proposed Conduct, see the benefits in collaboration and do not believe there will be any detriments to service or competition."*** In this statement, Council Solutions appear to understand that their application may result in a loss of competition, increased prices or a low quality service that would negatively impact ratepayers and the community. However, they appear to discount these risks, potential costs to ratepayers and the long-term competition concerns expressed by industry and the ACCC as they "do not believe there will be any detriments" but fail to provide any evidence to support their "belief".

Public Detriment

As Council Solutions 2018 proposal does not provide any evidence to counter the ACCC's concerns regarding the likely public detriments of **reduced long-term competition** in the Adelaide market, other than an unfounded "belief" that there won't be any detriments, we respectfully ask the ACCC to **deny the application**.

Summary

Claimed Public Benefit	2016 ACCC Final Determination	Addressed Council Solutions Proposal	2018 Public Benefit Assessment
Transaction Cost Savings	111. ACCC is not persuaded there will be a net public benefit	No substantive change from the 2016 application. No claim substantiation provided.	No public benefit
Improved Efficiencies through Information Sharing and Cost Savings	126. No public benefit is likely in respect of better contract management as increased costs of coordination are likely to offset any efficiencies in coordination	No change from the 2016 application. No claim substantiation provided.	No public benefit
Facilitating improved efficiency in the supply of waste collection services	143. ... such benefits would be unlikely in this case	No change from the 2016 application. No claim substantiation provided.	No public benefit
Improved environmental outcomes	229. no likely benefit in respect of waste collection and waste disposal	No change from the 2016 application. No claim substantiation provided.	No public benefit
Stimulation of competition	208. , the ACCC is not persuaded that the aggregation of volumes and contracts would be likely to result in a public benefit	No substantive change from the 2016 application. No claim substantiation provided. No acknowledgment or response to the ACCC's public detriment concerns	No public benefit
Public Detriments	The ACCC considers the proposed conduct is likely to result in some public detriment constituted by a lessening of competition	No substantive change from the 2016 application. No claim substantiation provided. No acknowledgment or response to the ACCC's public detriment concerns	Public Detriment

Based on the above assessment, WRASA believes the new application does not vary substantively to the original application, provides little to no substantiation to support their public benefit

claims and does not address the public benefit or public detriment concerns specified by the ACCC in the 2016 Final Determination denying approval of the proposed conduct. Therefore, after assessing each asserted public benefit claim and the potential public detriments in detail we respectfully request the ACCC **deny this application**.

26 April 2018

WRASA SUBMISSION (PART B) IN RESPONSE TO COUNCIL SOLUTIONS APPLICATION TO THE ACCC DATED MARCH 14, 2018

WRASA has reviewed the new 2018 Council Solutions application and provide the comments below.

The following introductory points should be noted:

- I. Although Council Solutions engaged Wright Corporate Strategy (clause 4.2.1), no evidence has been conveyed by Council Solutions from Wright in the Application and a copy, or excerpts from the Wright report have not been included at all.
- II. No reference is made to the findings from the 2016 ACCC Final Determination, nor does the new Application recognise the issues raised by the ACCC.
- III. As was the case throughout Council Solution's 2016 Application to the ACCC, Council Solution's new Application has provided a collection of unsubstantiated statements with no further evidence provided. Many statements made in the new Application were found by expert evidence and the ACCC determination to be false in 2016 however they have been repeated in the new 2018 Application. These statements are referred to throughout this submission.

Working through the new Application we provide the following comments:

Executive Summary

1. Page 1, Clause 1 -The proposed contract is now a single contract which binds all Councils for a 3 bin collection system and supply, distribution and maintenance of bins. This is being done in the absence of a tender specification or contract document discussion and agreement process between the Councils and Council Solutions.
2. Page 1, Clause 1 - Council Solutions proposes to be the agent for procurement, negotiation and contracting. They have provided no further detail about how they will address their lack of waste industry knowledge and experience.
3. Page 1, Clause 1 - Council Solutions again make a set of claims for public benefit that have already been exhaustively investigated during all of 2016 by many stakeholders, plus the ACCC. In addition to WRASA's submission Part B below, please also refer to the WRASA'S submission Part A titled 'Council Solutions 2018 Application benchmarked to the 2016 ACCC Final Determination'.

Parties to the Proposed Conduct

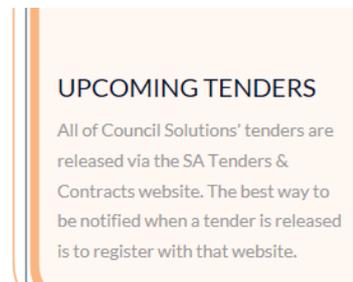
4. Page 4, Clause 3 - We note that the City of Tea Tree Gully Council has abandoned the project
5. Page 4, Clause 3.1 - Council Solutions note \$63.5 million of Council expenditure in total for their procurement services for any Council service they have tendered. The combined operating expenditures of the constituent Councils for just 12 months is approximately 10 times that at \$698 million or over \$1 billion including capital

expenditure programs. Or even more if other Participating Councils were included. This indicates that Council Solutions is an unproven part of the Councils' procurement process reinforced by the fact that since 2016 only 8 tenders have been advertised on Tenders SA by Council Solutions on behalf of a variety of combinations of the Councils, continuing the extremely low representation leading up to 2016. Tenders SA records show that 0 of the 8 tenders have been awarded suggesting that decision making is difficult and timeframes and costs are extended. In addition we note that Council Solutions financial health continues to deteriorate with their 2016/17 financial report showing a loss increase from \$6,000 in the previous year to \$76,000. Their website shows no upcoming tenders whereas their constituent councils individual websites show a combined 12 current tenders, including a new Pest Control tender which Council Solutions are currently administering and many tenders for which other Councils would have a need. The evidence suggests that from the beginning of this process, Council Solutions has sought to secure a massive combined waste contract as it provides them with an essential cash injection to prop up what appears to be a floundering operation.

Item 1 - Council Solutions website shows zero upcoming or current tenders

UPCOMING TENDERS

There are currently no advance notices of upcoming tenders.



Item 2 - Tenders SA website shows no current Council Solutions tenders

Find Tenders

Find tenders that match a specified criteria. When signed in, you can also configure saved searches and set up new ter
(Clicking detailed help will open a new browser window)

No results found! [Click here to refine your search.](#)

You searched for tenders with 'Open' state issued by 'Council Solutions'

Search Criteria

Keywords	<input type="text"/>
Tender State	Open
Tender Type	Any
Category	Any
Issued by	Council Solutions

6. Page 5, Clause 3.2 - We note that the number of rateable properties tabled by Council Solutions fall within or close to the “sweet spot” for municipal collection contract size as highlighted by Professors Dollery and Burgan in our 2016 submissions. No new evidence has been provided that would suggest any net public benefit.

7. Page 6, Clause 3.2 map - A major issue with the previous Application was the wide spread of the 5 Councils over 3 state government designated regions. The new Application sees 4 Councils in 3 regions. This has resulted from the Council Solutions process of inviting all or a majority of Adelaide metropolitan Councils to participate but because only 4 Councils have elected to participate, there is a wide geographical spread between the 4 Councils which undermines the capability of Council Solutions achieving waste collection cost savings. We emphasise the fact that the model from other states where Councils work within state government defined procurement regions (when it is determined to be beneficial) is necessary to avoid unclustered Councils establishing inefficient and disruptive groups that can cause long term negative impacts to its own ratepayers and also neighbouring Council ratepayers. In Adelaide, in conjunction with the federal government's Regional Development Australia program, the state government has established the four South Australian Government Regions for metropolitan Adelaide as follows from the RDA website (www.rdametroadelaide.com.au/node/25):

The Adelaide Metropolitan region may be described as the region that includes the four South Australian Government Regions which in turn comprise the 17 respective local councils.

Eastern Adelaide Government Region

City of Prospect
Corporation of the Town of Walkerville
City of Norwood Payneham and St Peters
Campbelltown City Council
Adelaide City Council
City of Burnside
City of Unley
City of Tea Tree Gully

Western Adelaide Government Region

City of Port Adelaide Enfield
City of Charles Sturt
City of West Torrens

Northern Adelaide Government Region

City of Playford
City of Salisbury

Southern Adelaide Government Region

City of Mitcham
City of Marion
City of Holdfast Bay
City of Onkaparinga

These are the clusters in which the Councils should be assessing collaborative procurement (if deemed necessary by respective Councils), not Council Solutions type groups where only 1 or 2 Councils are taken from each region.

8. Page 7, Clause 3.2 - Council Solutions submit that section 7 of the Local Government Act states that each Council must provide services and facilities that benefit **its** area, support programs that benefit **its** area and plan for the requirements of **its** area. No new evidence has been provided by Council Solutions to suggest that the new Application will now help each individual Participating Council ensure that it is ensuring **its** area and ratepayers are prioritised over an uncertain and unclustered **group** tender, for which the

only evidence submitted to date, and in the absence of tender specifications, suggests a compromised result for ratepayers.

The Proposed Conduct

Description of the Proposed Conduct

9. Page 7, Clause 4.1 - The new Application now requires that the Participating Councils commit to a joint contract. At this point, with no specification written (more advanced Victorian collaborative procurement guidelines require a specification for ACCC approval), and evidence presented thus far showing that Councils (and ratepayers) will be worse off and ongoing contract management by an inexperienced Council Solutions team in a dynamic industry with recycling in crisis, establishing a joint contract commitment with little knowledge of the final product and ongoing challenges is extremely likely to deliver net public detriment and negative distortions to the Adelaide markets, which pricing and recycling evidence indicates is the most progressive and cost effective waste industry market in Australia.

Context to the Proposed Conduct

10. Page 7, Clause 4.2.1 - Council Solutions state that the Wright Corporate Strategy report advises significant benefits however no evidence is provided and they seem to repeat benefits submitted by Council Solutions in 2016 which were considered by the ACCC to be unproven or hopeful at best. These are unsubstantiated claims and no new evidence has been provided that would suggest any net public benefit.

11. Page 7, Clause 4.2.1 - Council Solutions advise that this Application is for a joint contract. With regards to the organics processing, recyclables processing, waste disposal or processing and ancillary services (which arguably should be separated given different equipment) which Council Solutions suggest will be the subject of future applications to the ACCC, it is concerning that:

- a. If permission is granted by the ACCC for the collection services then it would be difficult for the ACCC to refuse permission for disposal, processing and ancillary services.
- b. A contractor successful in winning the Council Solutions proposed cartel collection services contract would have a distinct advantage for the processing, disposal and ancillary services contracts.
- c. Best practice for collection contract tendering is for a Council to confirm the disposal and processing locations prior to tendering for collection services. Changes to disposal and processing locations during a collection contract often leads to higher collection prices that are based on contracted 'alternate facility rates' that are ultimately funded by the ratepayer. Importantly, under this highly likely scenario where the successful tender's base price will have to be adjusted via a standard 'alternate facility transport rate', the market will be not tested as to the full costs of collection as Council Solutions will be obliged to apply the 'alternate facility transport rate' of the successful tenderer only, which often results in higher costs to a Council, as against costs obtained by a variety of tenderers based on them knowing where the disposal and processing locations are.

d. We note that a “consultation” briefing in Oct, 2017 one of our members was advised that all tenders (collection, processing, disposal, etc) would be released around the same time. This would promote the scenario that attracted heavy criticism in 2016 due to the variety of possible submission combinations and also provide an opportunity for only a limited few out of the many current operators in Adelaide i.e. large multinationals with the capital backing to submit alternate tenders for all services, to the ultimate detriment to the public due to the loss of players in the industry resulting in reduced competition in the medium to long-term.

With regards to Council Solutions proposal for processing and disposal, we stress that as the federal and state governments already have established regional waste management infrastructure programs in place, any major infrastructure planning and procurement that is not aligned will have serious long-term consequences for the region, surrounding regions and neighbouring Councils in particular.

12. Page 8, Clause 4.2.2 - Council Solutions proposed contract is based on all participating Councils having a 3 bin system and they mention on several occasions the benefits of the installation of RFID tags for information.

Any ability for Council Solutions to gain any savings in education programs (a typical education program cost is \$1 per household per year) is predicated on the participating Councils having the same bin systems with the same lid colours. At present, they are significantly different among all 4 Councils for the standard 3 garbage, recycling and organics wheelie bins and totally different for multi unit dwellings and bulk bins.

As evidenced in our 2016 WRASA submissions the variations in current bin systems, combined with the good quality of existing bins in the field and the recommendation to install RFID tags creates a potential cost of \$27.0 million (180,000 households x 3 bins x approximately \$45 per bin + delivery) that would likely be avoided under individual Council contracts. To put this in perspective, the added cost of the largely unnecessary bin expenditure would increase collection costs by 20-30%. By far the most economical method is to replace residents’ bins when they NEED replacing.

It is clear that this problem will become apparent to Council Solutions immediately as they draft any specification for the new contract as all Councils have differing bin colours as summarised below.

Table 1 - Participating Council Bin lid colours and kitchen caddy systems

Waste Stream	Port Adelaide Enfield	Charles Sturt	Marion	Adelaide City
Garbage	Blue Lid, 140 litre	Blue Lid, 140 litre	Red Lid, 140 litre	Red Lid, 140 litre
Recycling	Yellow Lid, 240 litre	Yellow Lid, 240 litre	Yellow Lid, 240 litre	Yellow Lid, 240 litre
Organics	Dark Green Lid, 240 litre + kitchen caddy	Dark Green Lid, 240 litre, no kitchen caddy	Nature Green Lid, 240 litre, no kitchen caddy	Lime Green Lid, 240 litre, no kitchen caddy

Due to the high unnecessary cost of replacing bins to establish a uniform 3 bin system for their education activities, Council Solutions and certain Councils may agree to change lid colours to that of other Councils. Lid retrofits in the field cost approximately \$15 and a decision would need to be made by the Councils as to who bore the cost, given, for the garbage bins, for example, 2 (two) Councils would get new lids and 2 (two) wouldn't.

There would still remain the issue of the RFID tags, which Council Solutions have argued will add value to their service. If Council Solutions were to avoid the costs of new bins to harmonise the bin system colours, a full field retrofit program would be required for 540,000 bins. The cost of adding a \$2 RFID tag at point of bin manufacture is generally free. The cost of the difficult retrofitting in the field is approximately \$5 per bin (\$2.5 million vs \$0). We can advise from member experience that a retrofit never achieves 100% of bins which significantly undermines data analysis efforts.

With regards to RFID tags, several Councils have elected to fit them but most still do not. If installed they require accompanying truck readers, maintenance, computer hardware, computer software and additional human resources depending on what the objective is with the data generated. All Councils using RFID tags have either not used them or used them for marginal projects of extremely low return, for example, identifying stolen bins, which is laborious and may yield a saving of only a fraction of the RFID cost. As GIS technology has advanced rapidly in recent years, progressive Councils are now using GIS positioning data for reporting as this provides improved information at a lower cost.

In summary, RFID tags to date have proven to be unreliable and a very expensive investment for little to no return.

Council Solutions have either not recognised the cost and difficulty in aligning the bin systems of the 4 (four) Councils or chosen to brush over them, however, as stated in our 2016 submissions, Council Solutions proposal to align all 4 (four) bin systems will inevitably result in additional costs funded by the ratepayer.

13. Page 89, Clause 4.2.3 - We note that Council Solutions have over stated the market size by using the entire MSW market. They have included all MSW, including material taken to landfills by Councils from street maintenance and construction operations, all Council commercial waste and all material taken to landfills privately from renovations, etc. instead of using only kerbside collected waste.

Proposed Tender Structure

14. Page 9, Clause 4.3.2 - Council Solutions note that evaluation criteria will be established and communicated, which has been standard practice for many years. Council Solutions listing of parties involved sounds reasonable however as articulated and proven in 2016, having Council Solutions manage the tender process does not take work away from assessment staff at each individual Council.

It is very unlikely that a Council tendering for a \$50 million contract via Council Solutions will only have one Council representative involved in the assessment and decision making process. In fact, as the contract will still have the same value for the Council it will need to be diligent and retain an evaluation team, rather than one Council representative.

As Council Solutions note, the staff on the evaluation team at each Council will still need to submit their individual requirements for the tender specification, approve probity plans, tender schedules, pricing combinations, evaluation criteria, and conditions of

contract. The result is that the workload for each Council to prepare and assess the tenders will be the same as the current situation and each Council's Probity Officer will still be obliged to monitor and review the work of the respective Council staff.

Additionally, the Council Solutions proposal differs greatly to standard practice and the Victorian procurement model where the tender specifications are completed prior to confirming each Council's commitment to the project and prior to requesting the ACCC approval. This provides Councils and subsequently the ACCC with detailed plans to allow each party to make an informed decision regarding the impact of the services being offered. Council Solutions note that a "Negotiation Plan" will be required which will (1) increase an individual Council's workloads surpassing an individual Council tender submission and (2) reduce each Council's ability to customise and refine their service requirements. As concluded in the 2016 final determination, this phase of joint procurement increases coordination time, adds complexity and ultimately increases costs to Councils and ratepayers

15. Page 10, Clause 4.3.2 - Council Solutions state they will award all 4 (four) collection contracts to 1 (one) contractor. However, as is often the case, different Councils will see advantages, in particular pricing and service, from different supplier tender submissions and therefore some Councils will need to select a less preferable supplier to support the combined Council Solutions contract.

16. Page 10, Clause 4.3.3 - WRASA wishes to stress the importance of the duties and responsibilities listed in this clause for each Council and Council Solutions. Council Solutions state that each Council will be responsible for the management of individual ratepayer queries, bin requests and new services. However, our member knowledge of waste collection contracts confirms there is an essential link between operational management and contract management. Council Solutions will be responsible for KPIs, data, contract options and pricing reviews, even though they have NO experience in waste contracts. 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. Again, many changes will need to be made to each Council's waste management processes and compromises made to align with the service that Council Solutions will provide, which is yet to be specified. It is important to note the emphasis that the control of the waste management contract will be largely removed from each Council ("central contract management role" for Council Solutions versus "retain some contract management responsibility" for each Council.) Council Solutions lack of experience, track record on this project to date, poor financial strength, baptism with a massive contract (possibly half a billion dollars with other services) and geographical structure which sets the scene for major contract difficulties is a major concern for WRASA members. These concerns were not addressed by Council Solutions in 2016 and they have not been addressed with this new Application.

17. Page 11, Clause 4.3.4 - Table 2 clearly highlights that each Council must still go through every step of a standard tender process. In addition it makes no mention of the need to negotiate and compromise with other Councils and Council Solutions.

Relevant Provisions of the Competitions and Consumer Act 2010

18. Page 11, Clause 4.4 - As industry has previously responded to a very similar Council Solutions Application in 2016, resulting in the ACCC undertaking a thorough assessment of the evidence supplied by industry, we believe this revised Application should be assessed for ANY evidence that address the issues raised by the ACCC in their Final Determination denying approval. No references have been made to the issues from the ACCC Final Determination in 2016 and, like 2016, the new Application contains only unsubstantiated claims, most of which are repeats of 2016 Council Solutions submissions. For all of the reasons uncovered during 2016 by a number of parties and further reasons presented by interested parties this year, it is clear that the proposed conduct will NOT provide any public benefit and WILL substantially lessen competition through their cartel like conduct.

Rationale for the Proposed Conduct

19. Page 11, Clause 4.5.1 - As with the 2016 Application, Council Solutions have tried to make the link between the state's targets and their existence and objectives. On this:

- a. Council Solutions have provided no detailed targets, objectives, plans or contract specifications. Council Solutions state that the Councils have plans that align with the state targets. Therefore, the Councils are already well positioned to address targets, compared with Council Solutions, who have no waste management experience.
- b. Investigation of the previous Application found that waste diversion percentages were poorer for large contracts and Adelaide metro "sweet spot" Councils were already producing nation leading results.
- c. The truth is that the Councils have been performing well already, progressing with new waste diversion initiatives throughout current and previous contracts. The evidence suggests that the Councils have a better chance through "sweet spot" size, flexibility and adaptability to meet targets than they would if they became a part of a Council Solutions controlled contract.
- d. The next major increase in diversion percentages will possibly be made through taking garbage to a waste to energy facility. The 2016 ACCC process found that the tonnes available from a Council Solutions tender were totally insufficient for a waste to energy facility, which would require a state coordinated effort using established regions for transport efficiency.

Term of Authorisation

20. Page 12, Clause 4.6 - The contract term has been revised from Council Solution's original term of approximately 14 years to 2 x 10 year terms over a 23 year period. Given the estimated useful life of collection vehicles is 8-10 years, there are no economies of scale to be achieved by having a collection contract term longer than 8-10 years. A contract term in excess of 8-10 years only serves to add uncertainty and risk and therefore cost to the Ratepayers. Other elements of this contract term issue are ignored, such as when will processing and disposal contracts start and finish, which contracts will be shorter or longer than 2 x 10 years (lower or higher prices) and will all tenderers be able to participate. Another issue overlooked by Council Solutions in their proposed conduct, is the lead time required to set up a contract of this size. This collection contract will require an estimated 72 trucks, which would require a build time greater than the time period allowed in this proposal, leaving Councils with a 'limbo' period between current contracts expiring and trucks being available in the new service. Furthermore, tendering

risk increase proportionally with longer tender lead times as contractors have to estimate pricing further into the future. The impact of a greater risk profile is higher pricing.

Under the proposed conduct of 2 x 10 year terms, the same lead times will be required for the second tender period. If other Council Solutions constituent Councils participate in second tender, the lead time will need to be extended, further increasing the risk profile for tenderers and potentially prices for ratepayers. This is an example of diseconomies of scale that exist in larger contracts, as confirmed by Professor Brian Dollery's review of the impacts of Council mergers in Qld:

However, due to the effects of these forced amalgamations nearly a quarter of all councils (13 councils) were now found to exhibit diseconomies of scale. The proportion of Queensland residents represented by local governments operating in the diseconomies of scale segment of the cost curve in 2009/10 had thus increased to 84%.

However, in the disaggregated analysis performed by Drew, Kortt and Dollery (2016) economies of scale were only observed for expenditure on parks and gardens, which constitute around 5% of ongoing Queensland council expenditure. On the other hand, no scale economies were observed for either road or domestic waste collection and removal expenditure. (See attached report p 11).

Documents to be Submitted to the Board

21. Page 13, Clause 4.7 - Council Solutions proposal states here that 'Relevant papers have been provided to the ACCC at Annexure 1...'. As a minimum, Council Solutions should provide excerpts from the 'Relevant papers' to industry to substantiate the unsupported claims and respond to the concerns raised in the ACCC Final Determination in 2016.

Market Information and Concentration

Market Definition

22. Page 13, Clause 5.1 - Council Solutions note that the Councils are legally obliged to make decisions that benefit their ratepayers. It is therefore imperative that Council Solutions provide substantiation to support their claims of Net Public Benefits and more importantly provide evidence responding to the Net Public Detriment concerns raised in the ACCC's Final Determination. This will ensure that Council Solutions and neighbouring Councils ratepayers are not disadvantaged by the proposed conduct.

Relevant Industry

23. Page 13, Clause 5.2 - Council Solutions note they will appoint processors and disposal locations later. Another reason the preferred practice is to decide on processing and disposal locations before progressing to collection tenders is that different disposal locations have varying material, contamination and compaction requirements at differing locations, all of which have a direct and considerable impact on collection tender pricing. Again, this 'reversed tender' process increases the risk profile to collection tenderers potentially resulting in higher tendered pricing.

Market Share

24. Page 14 & 15, Clause 5.3. - WRASA agrees with most of the figures that Council Solutions has tabled in this clause, however note the following:

a. As the City of Onkaparinga perform their own garbage collection service and outsource their fortnightly recycling and 4 weekly organics services to approximately 70,000 households, or 11% of all GAR Councils, an estimated 6-7% of the work is unavailable.

b. We believe the categorisation of Councils is misleading. If the Council Solutions application is approved and awarded to one contractor as intended, approximately 75% of the Councils will be unavailable to tender for 8-10yrs, due to NAWMA having just started a new contract. It is clear in the event Council Solutions application is approved by the ACCC, this will result in a lack of tendering opportunities during the next decade which will lessen competition. Less than 25% of the market will be available over the next decade.

A realistic view of tender opportunities was shown in 2016 and we believe the following table provides a more accurate assessment of the available market after the proposed conduct. Critically, Council Solutions numbers are misleading due to inclusion of non metro Councils, mistaken categorisation of Councils and advantageous inclusion of Onkaparinga garbage as open to tender which it is not as it is operated by Council in-house. The following table shows the correct Adelaide metro councils, current service numbers and their tender status.

From this it is clear that following a Council Solutions tender, only 24% of the market will be open to tender before NAWMA becomes available again in 8-10 years.

Council	Region		Subtotal	%
Tea Tree Gully	Available		42000	
West Torrens	Available		28600	
Unley	Available		19400	
Holdfast bay	Available		19300	
Onkaparinga Recycling & Organics	Available		37000	146300 24.36%
Onkaparinga Garbage	In house		37000	37000 6.16%
Port Adelaide Enfield	Council Solutions		61000	
Charles Sturt	Council Solutions		55200	
Adelaide City	Council Solutions		22500	
Marion	Council Solutions		41500	180200 30.01%
Burnside	East Waste		22000	
Adelaide Hills	East Waste		20000	
Campbelltown	East Waste		25200	
Norwood, payneham and St Peters	East Waste		18200	
Walkerville	East Waste		3500	
Prospect	East Waste		8600	
Mitcham	East Waste		32500	130000 21.65%
Gawler	NAWMA		10500	
Playford	NAWMA		37500	
Salisbury	NAWMA		59000	107000 17.82%
Total			600500	600500 100%

Competitive Constraints

25. Page 16, Clause 5.4.1 - Council Solutions have raised the concept of competitors and noted that the other Councils are competitors for the acquisition of waste services. They have incorrectly identified their market position. Simply put, the very few larger organisations that would be capable of tendering for the proposed Council Solutions contract would be willing to perform all Adelaide Councils, although perhaps not all at once. For that reason, other Councils are NOT competitors. If Council Solutions awards a contract, that tenderer is able to win other contracts.

In fact, Council Solutions is the entity seeking approval and they have NO competitors. From the start of the process to the end of the contract they have no other entities that are able to compete to manage the work, due to the entity being established by the Councils, and then, with internal management, having a drive of its own to financially succeed.

With regards to waste companies being competitors for the work available, this is more applicable given that the ACCC is trying to determine whether there will be a lessening of competition in the market.

As was proven with factual statistics and other local market information in 2016, larger municipal contracts:

- a. Favour a smaller number of larger suppliers (for example, Brisbane City Council where only 2 companies (both large multinationals) submitted tenders)
- b. Attract fewer tenderers
- c. Establish a foundation for the successful tenderer to dominate surrounding areas in other services

Council Solutions' comments in Clause 5.4.2 are also off track. WRASA addressed the likelihood of new competitors in 2016 by finding that the organisations Council Solutions say they will attract from other states already have offices in Adelaide and have already tendered for waste services. In any case, the reality is that the South Australian market is the most competitive, in particular for waste collection delivering the cheapest bin collection rates in Australia. Given the wide geographical spread and long distances between the participating Council Solutions Councils, collection costs will only increase not decrease given the inefficiencies of additional travel distances, traffic issues and potential for more accidents. New competition is unlikely to provide a cheaper option that is sustainable and provides as high quality service as is being provided by Australia's major waste companies already present in Adelaide.

Furthermore, the statement, *"There is unlikely to be any entry of new competitors to the Participating Councils in the procurement of Waste Collection Services unless any member of East Waste or FRWA decided to procure Waste Collection Services outside of its applicable Regional Subsidiary"* highlights the point that collaborative tenders or Council groupings closed to open tender reduce competition. In this one statement, Council Solutions confirm the competition concerns expressed by industry and the ACCC's Final Determination. If these two smaller Council groupings have reduced

competition, then impact of Councils Solutions proposed conduct will create a far larger public detriment. WRASA believes this Application should therefore be denied.

26. Page 16, Clause 5.4.3 - There are many erroneous statements in this clause including:

- “Potential suppliers have significant bargaining power and are able to exert strong influence,” but actually Adelaide has the country’s lowest collection prices and is incredibly competitive.
- “Ongoing contract management are critical, expensive and time consuming responsibilities for the councils,” with the implication it will be cheaper under Council Solutions with no waste experience, another tier of decision making and more parties to agree on each decision, plus the additional cost of Council Solutions services.
- “Should a council wish to exit a contract (*suggesting poor procurement or management*) the potential interruption to service and cost and effort for the Council can be prohibitive.” We are certain it would be much worse if the Council wrests control of the contract with Council Solutions due to the added bureaucracy, and the vested interest that Council Solutions has in continuing the contract income. In the case that the service provided to one Council breaches the contract, would the other Councils also have to break the contract or would the one Council need to retain poor service provision?
- “Potential suppliers also have access to a significant pipeline of council opportunities.” This issue was dealt with in detail in 2016 and with the exception of Tea Tree Gully, nothing has changed and Council Solutions have provided no evidence to support their subjective comment. If the Council Solutions contract was awarded, only 25% (maximum) of the local market would be available for tender over the next 8 to 10 years and an additional 30% of the market (being Council Solution’s) would be tied up for 20 years.
- “The majority of potential suppliers for the provision of a 3 bin system is only one element with many providing multiple other services.” This is actually true for only a small percentage of suppliers and we have seen companies that lose several contracts sub contract their services, sell infrastructure or leave the area entirely.

To summarise, focusing on the concept of bargaining power, given the proven fact that Adelaide has some of the lowest kerbside collection rates in the country, at the same time as receiving high quality 3 bins systems and achieving high diversion rates, it is clear that the bargaining power is balanced. The Council Solutions proposal would skew that power through lessening competition and establishing a contract that does not benefit the public residing in each individual Council and create forces which have proven elsewhere to generate higher prices, poorer service quality and lower landfill diversion rates. We note also that Council Solutions will need to seek revised pricing from the winning tenderer once the undefined disposal points are finalised. This puts the Councils and Council Solutions in a poor negotiating position and will totally undermine the tender process as only the successful collection tenderer will have the opportunity to revise its collection prices.

Public Benefit

27. Page 17, Clause 6 - WRASA and our members find the public benefit claims summarised in this clause totally misleading. Council Solutions continue to make statements that ignore the investigations by all interested parties during 2016 as well as the comprehensive ACCC Final Determination. Their statements are simply repeats of their 2016 claims and remain unsubstantiated.

a. How can Council Solutions assert tender process efficiencies will occur when it was determined by the ACCC from 2016 that the extra level of bureaucracy and the added requirement for individual Councils to negotiate and compromise with other participating Councils will create complexity and increased workloads for Councils. Even with the services separated, they have created a tender structure which individual Councils could have performed more efficiently.

b. We recognise that the ACCC determined that there may be some education related environmental benefits realised from the process, but Council Solutions fail to acknowledge the ACCC's conclusion that there would be "no likely benefit in respect of waste collection" (See Final Determination 229). Furthermore, we reaffirm our position from investigation of other large contracts that their landfill diversion is generally poorer and their price higher, which means more resources and more emissions. Lower productivity per truck hour comes from the broad geographical spread of the participating Council Solutions Councils, more difficult driver management and overall contract supervision.

c. How can Council Solutions assert lower costs via purchasing power, increased competition and improved service efficiencies when all of the evidence provided from 2016 proved the opposite, for example, Brisbane City Council prices reportedly being approximately 15% greater than rates for average Adelaide rates and Adelaide households being provided with better services, such as mandatory 3 bin system with food waste diversion and achieving much higher landfill diversion rates. All this with an average of one tenth of the households of Brisbane City.

Again, although the ACCC has likely identified this, we reaffirm that Council Solutions have made statements that are absolutely untrue and unsupported by any evidence.

Public Benefits That Will Occur

Tender Process Cost Savings and Efficiencies

28. Page 17, Clause 6.1.1 - Council Solutions state they will reduce administration costs without providing any real evidence to support their assertion. As concluded by the ACCC in the 2016 Final Determination, we believe costs will increase due to the increased complexity as each council will need to sign off on every stage of the tender and each aspect of contract management during the term, and negotiate between each Council while being lead by an entity with no waste management experience. The Jeff Tate report referred to by Council Solutions states 70% of costs are through contracted services. This does not mean the costs are currently inflated. It just means that contractors are performing most of the work. Councils often retain services such as landfill or transfer station operation (SRWRA), garbage collection (Onkaparinga), street litter bins or community education (Holdfast Bay). History shows that individual Councils do not shed staff or reduce administration costs when they participate in a joint tender process. Administration is simply duplicated and the individual Council staff spend time managing

the joint tender administration. In short, another layer of bureaucracy is added to the detriment of Ratepayers.

29. Page 17, Clause 6.1.1 - Council Solutions have referred to the Jeff Tate report of August, 2014; *Transitioning the roles of Local Government in Waste management*. Whilst Council Solutions have extracted a single phrase, we believe the overall intent of the report to be important; that being that where a collaborative approach is required, that it be undertaken on a geographical region basis. Council Solutions use the increases in waste costs to justify its application however Jeff Tate's report notes that the cost increases are total waste expenditure, including the increases in the state levy, additional services such as separate organics bins, higher landfill compliance costs and a devalued recycling market. The actual cost of collection, the subject of this Application, has arguably decreased over the past decade. The report actually suggests that the LGA, which represents all Councils in the state, should lead waste management issues rather than a geographically splintered regional subsidiary taking that role.

30. Page 17, Clause 6.1.1 - Council Solutions have again argued that waste contractors workload increases significantly when submitting individual tenders. We reaffirm that our members would prefer to prepare, cost and submit individual tenders as (1) the risk (and therefore the cost to Ratepayers) of contracting separately for appropriately sized contracts is much lower and (2) the work involved in assessing each area's streets, topography and disposal locations still needs to be completed with only perhaps the basic insurance/company/quality type schedules work being reduced, which is literally only a few hours work. In total, a joint tender process only saves approximately 5% of tender preparation time, as approximately 95% of the time invested is on operational scouting, costings and pricing.

Council Solutions highlight that individual Councils would ordinarily have their own service specification, conditions of contract, evaluation criteria and customisations. These are lost to the Council Solutions lowest common denominator specification.

To summarise, as the ACCC's Final Determination concluded from the evidence provided in 2016, the extra time and financial costs are far outweighed by the time and financial costs of coordinating the collaboration. The application process thus far being just one example of that.

31. Page 18, first dot point - Regarding alignment, Council Solutions submit that there is no consistency or standardisation when Councils tender separately. WRASA are sure that consistency or standardisation with other Councils that are tasked with looking after THEIR OWN ratepayers should not be a priority and instead each Council should specify exactly the service it requires after consultation with its ratepayers, who may live in the city or by the beach, or in a high rise or on a house block. In any case, the Councils around Adelaide are already using the model contract to establish basic contract requirements and customising as required for their own tenders. Council Solutions comments on tender documents are misguided which is demonstrated by the absence of their own specification documents which should have been prepared by now.

32. Page 18 & 19, Page 34 & 35 - On a similar point, Council Solutions have stated that there will be a clear and significant reduction of unnecessary duplication of work for all parties from the Proposed Conduct without providing any evidence or acknowledging the complexity concerns raised in the 2016 Final Determination. We make the following points:

a. all of the documents and schedules Council Solutions list to make the workload look substantial already exist for waste contracts at each Council (many use the previous contract that has been refined for the next contract) and already exist in the model contract. By Council Solutions making a new lowest common denominator specification, the Councils will have more work to verify that it suits THEIR OWN Council and ratepayer needs. This is another example of the change to Council Solutions creating more work for Councils and increasing the risk of a vague specification which often occurs when previous contract documents are not used as a base for the new contract.

b. As mentioned previously each of the documents will still need to be reviewed by each individual Council and the responsibility for making decisions for each Council as part of any Council Solutions process WILL NOT be left with one officer. The single Council representative at a Council Solutions lead meeting will still have to brief and discuss with internal staff at each Council. Correspondence and meeting time will increase, not decrease.

c. The first paragraph of this dot point (Reduction of replication of resources and work) lists the Council staff resources used in a tender. These resources will still be used, perhaps with the exception of the probity officer. However Council Solutions seem to be remiss in not mentioning that they will charge an administration fee for their involvement as an extra level of bureaucracy, which is believed to be around 1%, or approximately \$5 million for the group of services to be tendered. Although this covers ongoing work also, Council Solutions involvement in the contracts is undoubtedly more expensive than Council's doing the work in house. \$5 million would pay for 1-2 people at each Council to manage the contracts over the 10 years. This happens at present with these staff normally also managing Council waste duties, whether that be education, EPA liaison, internal briefing and reporting, strategic planning for the council, etc. The Council Solutions proposal does not state that these internal Council resources will now be removed, hence increasing wage costs overall. In practice they cannot be, as they will still be required to check Council Solutions correspondence, decisions and importantly, performance for their own Council.

33. Page 19, final dot point - regarding 'Reduced tender process administration costs', Council Solutions have again listed steps in the process. Aside from being miniscule compared with the cost of the contract, all of these steps will need to involve officers from each Council. The ACCC Final Determination concluded this would be the case and Council Solutions have provided no further evidence that this 2018 Application would be any different. To say there is a clear benefit is misleading and unsubstantiated.

34. Page 20 - WRASA agree that the relatively small cost of probity and legal advice could be shared amongst the Councils.

35. Page 20 & 21 - Regarding contract management, we apologise for making the same points repeatedly but this is another case of Council Solutions providing no evidence to support what has already been found in 2016 to be ill-informed and unsubstantiated. Council Solutions tables that it will take over maximising performance, compliance and conformance, but their team, including their new CEO has no waste management experience.

Environmental Benefits

36. Page 22, Clause 6.1.2 - The ACCC's Final Determination concluded that there would perhaps be some environmental benefits from the Council Solutions proposed conduct for education, but not for collection. We note that:

a. By Council Solutions referring to the state has targets does not mean they will help to achieve them. In fact evidence from around Australia suggests that larger contracts are less effective at diverting waste from landfill due to their inflexibility over a long contract term and driver anonymity above "sweet spot" size which makes kerbside bin checking and tagging more difficult to effect.

b. Council Solutions hopes to gain efficiencies from a joint education program. It may gain some printing cost savings but there remains the fundamental problem of all of the participating Councils having different bin colours. These are perhaps the major part of education in each community as the primary identifier of bin type and waste stream.



Even if the bins were the same, there is no evidence that the Council Solutions team, with no waste education experience, can perform better than Council staff with experience and operational knowledge and established education outsourcing in a field where the proven best way to reduce waste to landfill is by rejecting and tagging bins at the time of collection, by far.

37. Page 24 - Regarding contributing to state government targets, WRASA members find it arrogant and misguided that Council Solutions suggests that with no waste experience and without providing any plans or evidence, that they will achieve targets that the industry and Councils have been unable to achieve. This also ignores the evidence that South Australia has nation leading waste diversion results that are the result of decades of collaboration between contractors and Councils. There has been no evidence provided that they will be able to do that.

Public Benefits That Are Likely to Occur

Lower Costs through Improved Purchasing Power

38. Page 25, Clause 6.2.1 - Again, Council Solutions state that standardisation and aggregation drives lower costs and optimises value for money. All evidence from 2016 proved the opposite was true with a sweet spot being 20,000 to 50,000 households and

diseconomies of scale confirmed in larger Councils. Council Solutions are proposing 180,000 households, which the ACCC concluded in the 2016 Final Determination is likely to be highly undesirable to suppliers, not attract significant competition and provide worse results for individual Councils and their ratepayers, as well as neighbouring Councils in the Adelaide metropolitan area.

39. Page 25, Clause 6.2.1 - Council Solutions note the savings quoted by Georges River Council and Rockdale City Council. We can confirm that prices for recycling has decreased to such an extent that massive savings were experienced over the past decade relative to the decade before. Our members report having contract rates that were halved due to changes in the recycling market over the past 2 contract periods. We repeat, larger contracts beyond the sweet spot do not deliver cheaper rates than would be available within the sweet spot for any given contract. In fact, when comparing like for like, they become more expensive.

40. Pge 25, Clause 6.2.1 - Council Solutions talk about a “new platform” to “unlock additional service improvements” and establishing a “new benchmark” to “lift the service across all Councils.” As was the case in 2016, Council Solutions continue to make unsubstantiated statements that the evidence proves are misleading.

- “New platform” - which will potentially result in a compromise between participating Councils to find the lowest common denominator service for residents
- “Unlock additional service improvements” - 2016 proved that innovation rose from smaller contracts where the risk of failure was less likely and less expensive
- “New benchmark” - large contracts struggle to keep pace with more agile smaller sweet spot contracts and are not known for new benchmarks
- “Lift service across all Councils” - a bold statement in a state where value for money is nation leading due to appropriately sized contracts and flexible, agile working relationships between Councils and contractors. The opposite will more likely occur if Council Solutions Application is approved.

Increased Competition

41. Page 26, Clause 6.2.2 - It is unproven and unlikely this tender will attract “all potential suppliers capable of providing Waste Collection Services” as it is a high risk contract capable of forcing many waste companies into bankruptcy if they price it incorrectly. Council Solutions note that 1 supplier holds a 68% market share. This is incorrect. Referring back to the table in No. 25, that supplier actually holds only 44%, with just over half of that to be tendered under a Council Solutions scenario. We note that the Council Solutions chart 2 is incorrect and misleading. It includes several non metropolitan contracts and in-house work not performed by a private contractor.

42. Page 26, Clause 6.2.2 - Council Solutions state again that participating Councils will receive the “maximum number of tenders.” As was conveyed in 2016, recent Adelaide metro tenders saw more tenderers for sweet spot Councils like Unley. NAWMA’s tender on the other hand (which comprised 107,000 households) only attracted 2 tenderers.

In relation to Council Solutions consultation, we confirm that our members attended a brief advisory session by Council Solutions of their updated approach. A promised industry briefing session did not eventuate and feedback was not sought.

43. Page 27, Clause 6.2.2 - Council Solutions note that there will be stimulation of competition and public benefits. The 2016 Application investigation confirmed that all national waste suppliers capable of tendering were already active in Adelaide and Council Solutions tender would not provide a more attractive tender opportunity than a “sweet spot” Council on its own. Stating that the public benefits will occur without proving any substantiation clearly conflicts with the ACCC Final Determination.

Improved Service Efficiency

44. Page 27, Clause 6.2.3 - Council Solutions have again ignored the findings from 2016. It was clearly articulated by submissions and the ACCC’s Final Determination that vehicles are restricted to individual Council areas because mixed loads cannot be taken to disposal sites for unloading and as Council specific truck loads are required for correct invoicing, especially for the waste levy. This means trucks must deliver to respective disposal sites before collecting any material from another Council. Given all Councils will have a number of trucks in their area, it is unlikely a truck from a neighbouring Council would be used to collect a missed bin, especially as it will mean waste from two (2) Councils will be mixed creating invoicing difficulties. Current contractors share unbranded spare trucks between contracts so no savings will result by formalising that sharing arrangement under a Council Solutions scenario. We repeat, trucks will not be free to roam amongst all Councils (ignoring the geographic separation issue that would logistically preclude it) due to invoicing requirements for disposal and individual Councils will not want KPI reporting that is a mix of all Councils.

45. Page 28, Clause 6.2.3 - Council Solutions proposed conduct will not deliver safer vehicles. No examples of new safety technology have been provided in the proposal.

46. Page 28, Clause 6.2.3 - Council Solutions proposed conduct will not produce “smarter” trucks. Low emission technology and RFID tag readers have been included in contracts as low as 10,000 households by our members. No savings can be realised for implementation of this service as it will require either a lid retrofit, a new bin rollout or an expensive RFID tag retrofit, which Council Solutions have failed to recognise or mention. A cost estimated up to \$27 million would be required to provide the “greater monitoring” Council Solutions state they will achieve. Our members’ experience is that RFID technology is as yet unproven and is not realising returns on Council investments and progressive Councils are using GIS data in place of RFID technology as it provides greater detail at a lower cost. Again, the larger the contract, the more complex this “greater monitoring” becomes. Sweet spot Councils have managed a simple monitoring structure which is compatible with operations and customer service departments managing the contract.

Public Detriment

47. Page 28, Clause 7 - Council Solutions summarise their Application by suggesting “*there will be negligible to no public detriment*” despite failing to address the three (3) Public Detriment concerns expressly raised in the ACCC’s 2016 Final Determination or by providing evidence to counter the following concerns:

1. Deterring or preventing some potential suppliers from tendering or from submitting competitive bids.
2. Reducing competition for the supply of waste services to participating Councils in the longer term.
3. Reducing competition for the supply of waste services to non-participating Councils. Although separating the collection tender is positive on the face of it, Council Solutions advise it will still tender for all Councils and subsequently all disposal and processing services which only spreads the prior Application over a longer period of time. The single joint contract, whilst providing partial reduction in the number of combinations of tender pricing it must assess, also creates a single contract which all Councils must agree to up front and on an ongoing basis. No customisation is available without significant negotiation and/or compromise.

Conclusion

As the Application does not provide any evidence to substantiate their net public benefit assertions and fails to address the concerns raised in the ACCC's Final Determination, we respectfully request the ACCC deny this Application.