

Response to submissions from interested parties

Opening Statement

At the time of preparing this submission, Council Solutions notes the submissions provided from the following interested parties:

1. In support of AA1000419 Processing Service Streams and AA1000420 Ancillary Service Streams and/or the associated goals and outcomes to be achieved:
 - The Local Government Association of South Australia (**LGASA**), dated 6 June 2018;
 - The Environmental Protection Agency (**SA EPA**), dated 22 June 2018;
 - the City of Adelaide, dated 5 June 2018;
 - the City of Charles Sturt, dated 4 June 2018;
 - the City of Marion, dated 4 June 2018; and
 - the City of Port Adelaide Enfield, dated 31 May 2018.

2. Expressing concern with aspects of AA1000419 and/or AA1000420:
 - The Waste & Recycling Industry Association of South Australia (**WRISA**), dated 15 June 2018;
 - Cleanaway (*in support of WRISA's submissions*), dated 18 June 2018;
 - Peats Soils & Garden Suppliers (**Peats**) (*in support of WRISA's submission for AA1000419 only*), dated 14 June 2018;
 - Trident Plastics (**Trident**) (AA1000420 only), dated 4 June 2018;
 - Small Business Commissioner of South Australia (**SBC**), dated 6 June 2018;
 - Jeffries Group (AA1000419 only), dated 14 June 2018;
 - Business SA, dated 15 June 2018; and
 - Australian Small Business and Family Enterprise Ombudsman, dated 18 June 2018.

Council Solutions provides the following responses with regard to the submissions that expressed concerns with aspects of AA1000419 and/or AA1000420.

Council Solutions has addressed both AA1000419 and AA1000420 in this document as a number of submissions from interested parties are either identical or largely the same for both applications.

Where Council Solutions has not responded directly to a specific concern raised in a submission made by an interested party, that should not be construed as Council Solutions' agreement to the relevant submission.

Small Business Commissioner South Australia, 6 June 2018

This submission is the same for both AA1000419 Processing Service Streams and AA1000420 Ancillary Service Streams. The SBC refers to being “*made aware of the following concerns which WRASA has with the applications lodged by Council Solutions*” and appears to echo the views expressed by other parties whilst offering no new independent thought or justification.

Council Solutions addresses the concerns provided to the SBC by WRASA below and confirms the following:

- there are no Small Businesses providing Processing Services (AA1000419); and
- a key objective and opportunity provided under the Proposed Conduct for the Ancillary Service Streams (AA1000420) is to allow small businesses to tender to the Participating Councils as prime contractors instead of being relegated to a subcontract role under a kerbside 3 bin collection contractor. As a subcontractor, small business is a price taker and would likely see margins squeezed to fit within the cost and margin profile of the head contract. In these circumstances the small business operator would be in a less advantageous position than one might reasonably expect if the same small business were the prime contractor, for example, for the street litter collection services in their own right.

"Adelaide is already among the most competitive markets as all national companies listed in already operate in the market. Hence, no new entrants.

As per Application AA1000419 Processing Service Streams, Section 11.2.2 Maximised competition the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Processing Service Streams to compete and submit tenders when the RFT is called.

Without the stimulation of competition through the Proposed Conduct, the same scenario regarding the current or any future division of the respective markets may arise. If the Participating Councils each undertake their own separate RFT processes, they may still all appoint the same supplier or suppliers, as the case may be, that could be appointed under the Proposed Conduct. However, fragmented and inconsistent approaches would not provide the same public benefits that will occur due to the Proposed Conduct.

The feedback provided by potential suppliers across the Processing Service Streams to Council Solutions during consultation with market indicated that the contract opportunities presented by the Proposed Conduct is attractive. Receiving the maximum number of tenders will allow the Participating Councils to compare all service options available and unlock the best Value for Money. Additionally, where the successful supplier/s establishes new Reprocessing Infrastructure, such as energy-from-waste, there will also be increased competition for feedstock in the market for all Greater Adelaide Region Councils and this will support new levels of service.

Accordingly, tendering the Processing Service Streams via a public RFT process will maximise competition, providing all potential suppliers in the market with fair and equal opportunity to compete for a contract.

As per Application AA1000420 Ancillary Service Streams, Section 11.1.1 Increased opportunity for competition the tendering of the Ancillary Service Streams by the Participating Councils under the Proposed Conduct increases the opportunity for competition as it allows potential suppliers who are

capable of providing any or all of the Ancillary Service Streams to tender for that Service Stream/s without also being required to provide 3-Bin System collection services. This will open up the Ancillary Service Stream opportunities to potential suppliers, large and small, generalist and specialist, to tender.

Without the stimulation of competition through the Proposed Conduct that offers all Participating Councils' Ancillary Service Stream requirements as separable opportunities, the same scenario regarding the current or any future division of the respective markets may arise. Additionally, if the Participating Councils each undertake their own separate RFT process, given the small volume of the current requirements of some Participating Councils, particularly in Bulk Bin Collection, it is unlikely each would receive as many submissions. If the Participating Councils each undertake their own separate RFT processes, they may still appoint the same supplier or suppliers, as the case may be, that could be appointed under the Proposed Conduct. However, fragmented and inconsistent approaches would not provide the same public benefits that will occur due to the Proposed Conduct.

Maximising competition and the number of tenders received, including from potential suppliers who may not previously have been provided with the opportunity to tender for an Ancillary Service Stream directly to the Councils, will allow the Participating Councils to compare all the service options available and unlock the best possible Value for Money.

Accordingly, tendering the Ancillary Service Streams via a public RFT will maximise competition, providing all potential suppliers in the market with fair and equal opportunity to compete for a contract.

Council Solutions state that Adelaide is already serviced by a high number of facilities. Hence no savings will result from a joint tender. If new facilities are required (eg; Alternate Waste Treatment facilities) Councils are already able to work together collaboratively on facility development initiatives.

The fact that the Adelaide market may be well served by existing infrastructure for waste processing is not a basis for deterring either new entrants contesting for market share, for deterring existing participants from investing in new and innovative infrastructure, or for deterring Council Solutions and the Participating Councils from seeking to encourage innovation and new processing options.

Further, whilst there may be various opportunities and avenues for Councils across the Adelaide metropolitan area to collaborate on various initiatives, without contracted commitment for supply of waste for a medium- to long-term timeframe, new entrants will not be encouraged to commit the capital investment required to enter the market. The type of collaboration alluded to above by the SBC, does not involve the requisite long-term commitments of supply.

As per Application AA1000419 Processing Service Streams, *Section 11.2.3 Further environmental benefits*, for an existing or new potential supplier to invest in infrastructure, in the form of either upgraded or new facilities, availability and security of feedstock volumes are required to underpin and finance the investment.

Council Solutions submits the Proposed Conduct provides a single point of access to a significant pipeline of aggregated volumes in each Processing Service Stream underpinned by up to a 10-year contract commitment. This provides a level of support for infrastructure investment that would not be provided if the Participating Councils went to market separately.

This reduces operational risk to a potential supplier and provides support for an earlier return on

investment on newly established infrastructure, the upgrade of existing infrastructure to new technology, or the commissioning of brand new facilities.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000419, dated 22 June 2018:

“In particular the application has the potential to result in improved resource recovery by:

- *better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- *supporting innovation within the resource recovery sector through economies of scale.”*

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000420, dated 22 June 2018:

“In particular the application has the potential to result in improved resource recovery by:

- *better management of collected waste streams driven by secure contracts of larger volumes and an improved focus on the processing of recyclables, organics and residuals from these waste sources due to ancillary services being contracted separately, rather than as an add-on to kerbside waste contracts,*
- *supporting innovation within the resource recovery sector through economies of scale, including the potential trial and deployment of smart technology in public bins,”*

A joint tender focused on lower prices will not result in improved environmental outcomes as Councils are already able to share resources on environment initiatives.

The Proposed Conduct under AA1000419 and AA1000420 will deliver significant public benefits (of which lower costs for the Participating Councils through improved purchasing power) is but one element.

As per AA1000419 Processing Service Streams the Proposed Conduct will result in significant public benefits including:

- tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;
- environmental benefits from the increased diversion of waste from landfill;
- lower costs for Participating Councils through improved purchasing power;
- maximised competition from the stimulation of the market; and
- infrastructure investment and increased service efficiencies, leading to further environmental benefits

As per AA1000420 Ancillary Service Streams the Proposed Conduct will result in significant public benefits including:

- increased opportunity for competition from the stimulation of the market;
- tender process and contract management cost savings and efficiencies by reducing the

replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process and collaborative contract management;

- environmental benefits from the increased diversion of waste from landfill;
- lower costs for Participating Councils through improved purchasing power; and
- increased service efficiencies.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency (**SA EPA**) with regard to AA1000419, dated 22 June 2018:

“The Council Solutions’ application offers significant environmental benefits that align with South Australia’s Strategic Plan target of a 35% reduction of waste to landfill by 2020...In particular the application has the potential to result in improved resource recovery by:

- *reduced waste production and less contamination of recyclable, organic and residual waste streams, by better informed ratepayers due to combined education materials and better targeted and managed communication strategies,*
- *better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- *supporting innovation within the resource recovery sector through economies of scale.*

...The application also supports the waste management objective of the Environment Protection (Waste to Resources) Policy 2010 to achieve sustainable, best practice and accountable waste management by:

- *having effective recording, monitoring and reporting systems for waste transport, resource recovery and waste disposal, and*
- *within the community promoting environmental responsibility and involvement in waste avoidance, waste minimisation and waste management.”*

There is no evidence that the joint tender proposed in the applications are “focused on lower prices”.

A joint tender does not produce any transport efficiencies or savings. Costs will rise due to the unusual geographical spread of the Councils if distances travelled in performing waste collection and disposal services are increased.

These claims by WRASA, and repeated by SBC, have been put forward on a “blanket” basis to cover all services under both applications. This demonstrates a lack of any serious independent investigation on the part of both WRASA and SBC.

For Processing Services (A1000419), transport is not an issue and thus the claim is irrelevant as the collection contractor will transport to the processors.

For Ancillary Services (A1000420), transport is relevant as the services that are the subject of this application all involve the collection of various waste streams. The Ancillary Services RFT comprises three elements and the claim above makes no differentiation in its objection between those three

services. In the case of Bulk Bins, shared boundaries are unlikely to be a key factor. In the C&I sector bulk bin market notional geographical boundaries, such as LGA boundaries, do not feature in the planning and scheduling of collection runs. Using sophisticated software systems, service providers juggle location, waste type, collection days and fleet dynamics to arrive at the most efficient collection run at the time – with no consideration of who the owner (council or business enterprise) might be.

In the case of Street Litter and Hard Waste, shared boundaries is only one of a number of benefit areas associated with service efficiency – the others include shared overheads, shared maintenance, shared garaging, shared management and supervision, shared customer service – all of which contribute to service efficiency and will be available all Participating Councils, including to the City of Marion.

Whilst Marion does not have shared boundaries with the other Participating Councils, it is acknowledged that route-related service efficiencies for Street Litter and Hard Waste may not be achieved in respect of Ancillary Services delivered to Marion. However, the other Participating Councils do have shared boundaries and route-related service efficiencies will be realised in respect of the Street Litter and Hard Waste services delivered to those Councils

In respect of bulk bins, street litter and hard waste collection, lower costs for Participating Councils through improved purchasing power and improved service efficiency are outcomes that will be maximised under the Proposed Conduct where the market is afforded the opportunity to tender and secure a greater volume of work that is consolidated and assured under a combined Council contract for an attractive period, compared to the fragmentation that occurs currently.

A key stated objective in offering street litter and hard waste collection services to the market as separable and standalone service is to foster the participation of small business. And through bundling the services from all Participating Councils, to provide a level of surety of cash flows to small businesses that would encourage those businesses to invest in appropriate fleet infrastructure.

Traditionally local government contracts out street litter services as part of the kerbside collection package, which means small businesses are excluded from tendering as the prime contractor and relegated to a subcontract role, if such a role is offered by the prime contractor. As a subcontractor, small business would be a price taker and would likely see margins squeezed to fit within the cost and margin profile of the head contract. In these circumstances the small business operator would be in a less advantageous position than one might reasonably expect if the same small business were the prime contractor for the street litter services in their own right.

A joint tender does not result in a more efficient tender submission as all Council tenders require individual costings which is the major time component of tender

Refer extract below from the table of contents from the Tender Return Schedules for RFT 2: Processing. This comprises 17 Schedules to be completed and returned as part of the RFT process by potential suppliers.

When preparing a tender response for the joint tender potential suppliers will calculate aspects of pricing/ costing that may differ between the Participating Councils. However, the other 16 Tender Return Schedules will need to be completed only once by potential suppliers responding to the joint RFT.

This compares to the equivalent of all 17 Tender Return Schedules needing to be completed four times (68 Tender Response Schedules) for any potential supplier wanting to tender to the 4 Participating Councils if the Councils are to conduct their own separate RFT process. Council Solutions submits the joint procurement is clearly more efficient for both potential suppliers who tender and for the Participating Councils.

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Excluding Marion and Port Adelaide/Enfield Councils from the landfill tender will not result in savings as they represent 52% of the annual volume.

The City of Port Adelaide Enfield is **not** excluded from residual processing (landfill tender).

Due to the promised savings, that we feel will not eventuate, some Councils are rejecting contract extensions that would save Councils and ratepayer considerable amounts. Yet other Councils are accepting contract extensions for collections and processing that undermines the Council Solutions premise of increased buying power. Tea Tree Gully have exited entirely from the 2016 application showing uncertainty, even though they are part owner of Council Solutions.

Council Solutions' notes that on the one hand the submission asserts "*Adelaide is already among the most competitive markets as all national companies listed in already operate in the market.*" But then goes on to state above that, "*Due to the promised savings, that we feel will not eventuate, some Councils are rejecting contract extensions that would save Councils and ratepayer considerable amounts.*"

This raises questions as to the competitiveness of existing individual Council contracts if current suppliers are able to offer considerable savings to Councils if they extend current contracts rather than seek competitive tenders from the open market.

A joint tender will not result in greater innovation as contractors do not hold back innovation with individual Council contracts. Innovation has been proven to occur in lower risk small to medium contracts."

Whilst innovation is seen as part of tender responses under traditional tendering for local government services, the extent to which tenderers are prepared to offer innovative solutions is a reflection of the perceptions of risk, reward and competitive advantage of the individual tenderers. In a collaborative procurement, such as is proposed under these applications, the profiles for risk, reward and competitive advantage are significantly enhanced for tenderers and the successful contractor, and thus it is reasonable to expect that opportunities for greater innovation in offerings will be enhanced.

In addition, where tenderers are offered the prospect of guaranteed significant forward cashflows that arise through a larger collaborative procurement, there is opportunity for tenderers to offer solutions that might involve additional capital investment which they are comfortable can be amortised within the contract terms, which may not be the case with smaller tendered offerings.

As per Application AA1000419 Processing Service Streams, *Section 11.2.3 Further environmental benefits*, for an existing or new potential supplier to invest in infrastructure, in the form of either upgraded or new facilities, availability and security of feedstock volumes are required to underpin and finance the investment.

Council Solutions submits the Proposed Conduct provides a single point of access to a significant pipeline of aggregated volumes in each Processing Service Stream underpinned by up to a 10-year contract commitment. This provides a level of support for infrastructure investment that would not be provided if the Participating Councils went to market separately.

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- *supporting innovation within the resource recovery sector through economies of scale, including the potential trial and deployment of smart technology in public bins,”*

We have seen considerable market disruption caused in the recycling sector as a result of the rejection of Australian recyclables by international buyers and the subsequent requirement in South Australia for the State Government to provide additional financial support to councils to continue this part of the waste collection process.

As noted in AA1000419, Council Solutions and the Participating Councils acknowledge China's ban on importing contaminated recyclable waste has created challenges in the Australian recyclables market. This has been taken into consideration in the proposed RFT structure for the processing of Recyclables including a shorter initial contract term, supported by extension options to provide greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall).

Council Solutions notes that any future changes in the market will occur irrespective of whether the Councils collaborate or go it alone. Without the Proposed Conduct, the potential suppliers affected by the China ban will still need to find alternatives and upgrade technology. However, without the pipeline of aggregated feedstock volumes provided by, and the coordinated and targeted intervention and education initiatives at the kerbside across all, Participating Councils, this will be more difficult, possibly costlier and may take longer to achieve.

Council Solutions also notes as per the submission dated 6 June 2018 from the Local Government Association of South Australia (LGASA), the peak representative body for Local Government in South Australia:

"In addition to the general financial pressures being experienced by South Australian councils, the impacts of China's National Sword Policy are substantial and have the potential to add millions of dollars to recycling costs for Councils in South Australia.

*...the LGASA's view is that, given the significant transition currently underway in the recycling and waste management industry generally, **collaborative procurement processes may in fact offer a number of public benefits that may help to provide stability during this time of change.***

*In particular, **collaborative procurement processes may help to provide the critical mass necessary to ensure the ongoing viability of smaller waste management entities and/or may help to provide the certainty necessary to secure investment in new technology or infrastructure that can open up local markets for recycled materials.***"

Australian Small Business and Family Enterprise Ombudsman, 18 June 2018

This submission is with regard to both AA1000419 Processing Service Streams and AA1000420 Ancillary Service Streams and is the same for both applications. The submission echoes the views expressed by other parties and offers no new independent thought or justification.

Council Solutions addresses the submission below and confirms the following:

- there are no Small Businesses providing Processing Services (AA1000419); and
- a key objective and opportunity provided under the Proposed Conduct for the Ancillary Service Streams (AA1000420) is to allow small businesses to tender to the Participating Councils as prime contractors instead of being relegated to a subcontract role under a kerbside 3 bin collection contractor. As a subcontractor, small business is a price taker and would likely see margins squeezed to fit within the cost and margin profile of the head contract. In these circumstances the small business operator would be in a less advantageous position than one might reasonably expect if the same small business were the prime contractor for example, for the street litter collection services in their own right.

We remain concerned that bigger centralised tenders make it harder for SMEs to respond successfully.

As outlined in the Applications and subsequent submissions from Council Solutions, in order to maximise the opportunities for small to medium enterprises to participate in the procurement process, under the Proposed Conduct the approach to market separates the service streams into three discrete RFTs to:

- reduce the complexity of the procurement process by simplifying the bidding process for suppliers and the tender evaluation process for the Participating Councils;
- group the waste services to align with the supply market capabilities and specialisations; and
- allow the small to medium enterprises, who deliver the Ancillary Service Streams, the opportunity to more easily participate in the procurement process by releasing a discrete RFT for these services.

The RFTs are:

- RFT 1 for Waste Collection Services is as per the Proposed Conduct outlined in AA1000414.
- RFT 2 for the Processing Service Streams (as per AA1000419) consists of:
 - Receipt and processing of recyclables;
 - Receipt and processing of organics; and
 - Receipt and processing or disposal of residual waste.

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

- RFT 3 for the Ancillary Service Streams (as per AA1000420) consists of:
 - Multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins);
 - Kerbside collection and processing or disposal of Hard Waste; and

- Collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.

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

There are no small businesses providing 3-Bin System Waste Collection Services (as per AA1000414) or the Processing Service Streams (as per AA1000419) to either the Participating Councils or any of the Greater Adelaide Region Councils.

Additionally, any of the potential suppliers who could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region, regardless of size, to confidently enter into a contract for Waste Collection Services (kerbside 3 bin) or a contract for the Processing Service Streams are not small businesses.

The small, medium and large collection suppliers who operate collection services **other than** 3-Bin System collection generally operate either in the Ancillary Service Streams (such as Bulk Bin Collection, Hard Waste Collection and Street Litter Collection), the direct to resident market (such as provision of skip bins to home renovators) or the C&I or C&D source sectors

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

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

As per AA1000420, *Section 11.1.1 Increased Opportunity for competition* the tendering of the Ancillary Service Streams by the Participating Councils under the Proposed Conduct increases the opportunity for competition as it allows potential suppliers who are capable of providing any or all of the Ancillary Service Streams to tender for that Service Stream/s **without** also being required to provide 3-Bin System collection services. This will open up the Ancillary Service Stream opportunities to potential suppliers, large and small, generalist and specialist, to tender.

Maximising competition and the number of tenders received, including from potential suppliers who may not previously have been provided with the opportunity to tender for an Ancillary Service Stream directly to the Councils, will allow the Participating Councils to compare all the service options available and unlock the best possible Value for Money.

Accordingly, tendering the Ancillary Service Streams via a public RFT will maximise competition, providing all potential suppliers in the market with fair and equal opportunity to compete for a contract.

Another issue that we previously commented on was the contract term. While the term has been reduced from 17 to 10 years, we believe this is still too long..

Council Solutions notes a maximum 10-year operating term for Waste Collection Services **including the Ancillary Collection Services**, as it broadly aligns with the optimum economic life of a collection vehicle. This was confirmed during the consultation undertaken by Council Solutions with waste collection service providers. A shorter term would not allow economic depreciation of collection vehicles by suppliers. Indeed one market provider of Ancillary Collection Services made the comment during the small business engagement session that there is a substantial pricing differential that can be made between depreciating over seven-years versus 10.

As per AA1000419, the proposed operating term for each of the Processing Service Streams consists of an initial term and an option/s to extend. The initial term and extension period offered for each Processing Service Stream will vary as outlined in Table 3 of the application.

A total contract term of 10 years is in line with the generally accepted term for processing contracts.

As such, Council Solutions submits a maximum 10-year operating term is appropriate.

Jeffries Group, 14 June 2018

This submission is with regard to AA1000419 Processing Service Streams only.

It is Jeffries submission that there will be no public benefit delivered by the proposed arrangement. Adelaide is currently a highly competitive market, already serviced by a large number of providers and facilities. The proposed joint tender will not result in any efficiencies in transport or processing due to the geographical spread of the participating councils.

Council Solutions submits the Proposed Conduct will result in significant public benefits, including:

- tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;
- environmental benefits from the increased diversion of waste from landfill;
- lower costs for Participating Councils through improved purchasing power;
- maximised competition from the stimulation of the market; and
- infrastructure investment and increased service efficiencies, leading to further environmental benefits

These Public Benefits are clearly explained in Section 11 of the application for authorisation AA1000419 (processing service streams).

Council Solutions also notes the environmental benefits and improved potential for resource recovery under the Proposed Conduct, as per the submission made by the Environmental Protection Agency with regard to AA1000419, dated 22 June 2018.

For the Processing Service Streams (A1000419), transport and geography is not a relevant issue as it is the collection contractor who will transport to the processors.

The joint tender process itself will also not be more efficient, it will add cost and complexity due to the combinations and permutations that must be considered, and the outcome will also produce no administration savings to offset the additional costs being added by the extra layer of bureaucracy that Council Solutions represents.

The tender process cost savings and efficiencies that will be achieved under the Proposed Conduct by reducing the replication of work for both Participating Councils and potential suppliers are clearly explained in the application AA1000419 (processing service streams) and include:

- A single tender will remove the duplication of work required to prepare, present, respond, evaluate and award suppliers for four Councils individually;
- Where a potential supplier tenders for more than one Processing Service Stream, additional duplication of work to prepare, present, respond, evaluate and award suppliers for each Participating Council across each Processing Service Stream will be further reduced;
- A single negotiation process for each Processing Service Stream will reduce the costs for the Participating Councils in procuring the Processing Service Streams;

- Receiving shared technical, legal and probity advice means these costs are shared between the Participating Councils rather than funded by each Participating Council individually; and
- A streamlining of contract management not only provides for a more collaborative and effective relationship between the parties, it also provides efficiency savings to both the Participating Councils and the successful supplier/s.

As noted in the application Council Solutions will perform numerous tasks instead of the Participating Councils, such as document preparation, evaluation of insurances, licenses, accreditations and referees, clarifications, negotiations, price review assessments and KPI collation and reporting. These are all tasks throughout the lifecycle of a procurement that each Council would need to undertake if conducting their own tender process. The benefit of this collaboration is that the cost of procurement is **shared** over four Councils.

Furthermore, refer extract below from the table of contents from the Tender Return Schedules for RFT 2: Processing. This comprises 17 Schedules to be completed and returned as part of the RFT process by potential suppliers.

When preparing a tender response for the joint tender potential suppliers will calculate aspects of pricing/ costing for different volumes. However, the other 16 Tender Return Schedules will need to be completed only once by potential suppliers responding to the joint RFT.

This compares to the equivalent of all 17 Tender Return Schedules needing to be completed four times (68 Tender Response Schedules) for any potential supplier wanting to tender to the 4 Participating Councils if they are required to conduct their own separate RFT process. Council Solutions submits the joint procurement is clearly more efficient both for potential suppliers who tender and for the Participating Councils.

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It is Jeffries further submission that there will be public detriment as a result of the proposed arrangement. As set out above, the proposal will increase costs due to the increased complexity of the tendering process and the extra bureaucratic layer of Council Solutions applying a 1% levy to each contract.

As demonstrated above the joint tender process is more efficient for both potential suppliers who submit tenders and the Participating Councils.

Council Solutions confirms that there is **no** levy to be applied to each contract.

As stated in the application for authorisation AA1000419 (processing service streams) *Section 12 Public Detriment*, Council Solutions submits there will be negligible to no detriment to the public as a result of the Proposed Conduct.

To the extent any negligible detriment may arise, it will be mitigated by the factors listed below:

- a) The RFT will be public and conducted according to Council procurement standards, including the engagement of an independent probity advisor.
- b) The proposed contract term is a maximum of 10 years, in line with the industry standard for Waste Management Services of this type. Whilst each Processing Service Stream will not be contestable for the duration of the contract period, the RFT process will ensure competition for the award of the contracts.
- c) Each Processing Service Stream will have an initial term and options for extension set that reflect the current status of the respective markets.
- d) The Participating Councils remain separate legal identities and are members of the Waste Management Services Project by choice. In deciding to join the Waste Management Services Project and undertake the Proposed Conduct, the Participating Councils see the benefits in collaboration and do not believe there will be any detriments to service or competition.
- e) The RFT is restricted to the four Participating Councils only, and the scope of the RFT is limited to the Processing Service Streams. This provides both certainty and simplicity to the tendering process.
- f) Council Solutions has undertaken stakeholder engagement prior to the finalisation of the waste strategy and will conduct tender briefing sessions to ensure full understanding of the aims and goals and maximum participation.
- g) Potential suppliers will be free to compete for contracts for other Councils and Regional Subsidiaries in the Greater Adelaide Region as well as the substantial volumes available from the C&I and C&D source sectors.
- h) Through the use of a standard RFT process there will be no disincentive or barrier to potential suppliers tendering.
- i) As each Service Stream is separable, potential suppliers are able to tender for any one or more of the Processing Service Streams for which they believe they can make the most compelling value proposition to the Participating Councils.

Most importantly, this application will reduce competition in the Adelaide market. If this application is successful, it will reduce to less than 25% of the Adelaide metropolitan councils that

will be open for individual tenders, and lock around 30% of the total market away for a period of 10 years. This will have a significant detrimental effect on business and result in business closures, adding to the public detriment.

Council Solutions re-affirms the analysis provided in AA1000419, *Section 10.3 Market share* and that the market segment for the potential suppliers who might typically tender for Recyclables or Organics Processing will draw primarily from industry participants which are currently providing Waste Management Services involving Recyclables Processing from MSW, C&I and C&D source sectors or Organics Processing from MSW and C&I source sectors. The Proposed Conduct involves only a small number of councils from the municipal sector who collectively represent only a small fraction of the total market segment.

Claims that market share analysis should only relate to the tonnage of kerbside materials (e.g. only recyclables from municipal sources) are not valid and do not accurately represent the full market share as this considers only an element of one segment of the total market.

The potential suppliers of the Processing Service Streams have access to a significant pipeline of C&I, C&D and other Council opportunities. Aside from the four Participating Councils, there are up to an additional 23 Greater Adelaide Region Councils requiring the Processing Service Streams that periodically procure one or more of the services from the market via public, open tender processes.

When considering market share from a business impact perspective, the analysis would typically consider the market share in terms of both the revenues and the tonnages that individual processors receive from deliveries of materials to be beneficially processed in their facilities. And those revenues and tonnages comprise inputs from materials received from multiple waste generating sources – municipal, commercial and industrial (C&I) and construction and demolition (C&D) sources.

The market share analysis used in the application is based on tonnage data only, because this is the only data reasonably available in the public domain and thus adopted as a surrogate for market share.

It is respectfully suggested that the majority of any perceived benefits that the Participating Councils may derive from the proposed joint process could be achieved by adopting a common tender document and a common contract document, neither of which would require a determination from the ACCC.

Council Solutions submits the Proposed Conduct will result in significant public benefits, including:

- tender process cost savings and efficiencies by reducing the replication of work for both Participating Councils and potential suppliers through alignment of specifications and service standards and the administration of a single tender process;
- environmental benefits from the increased diversion of waste from landfill;
- lower costs for Participating Councils through improved purchasing power;
- maximised competition from the stimulation of the market; and
- infrastructure investment and increased service efficiencies, leading to further environmental benefits

These Public Benefits are clearly explained in Section 11 of the application for authorisation AA1000419 (processing service streams) and will not be achieved in the absence of the Proposed Conduct. No evidence is provided by Jeffries demonstrating why these benefits will not be achieved.

WRISA, 15 June 2018, Re: AA1000419

Council Solutions' notes that the matters raised in this submission dated 15 June 2018 are largely the same as those raised in the previous submission from the WRISA with regard to AA1000414 (collection services), dated 25 April 2018. Council Solutions has addressed these matters in our submission AA1000414 Response to submissions from interested parties dated 17 May 2018. Accordingly, Council Solutions responds below to selected elements of WRISA's submission to AA1000419 and AA1000420, dated 15 June 2018.

AA1000419: Response to overarching comments

The potential for environmental benefits and alignment with SA waste policy settings are also overstated. Waste, recyclables and organics processing alone are not likely to be a conduit for greater waste diversion and reduced dependence on landfill unless such outcomes are a stated tender requirement, which is not the case.

Council Solutions rejects this position and has detailed the benefits of adopting a holistic approach to waste management under the Proposed Conduct in:

- Section 11 of the application for authorisation AA1000419 (processing service streams), specifically Sections 11.1.2 Environmental Benefits and 11.2.3 Further environmental benefits; and
- the Council Solutions AA1000414 Response to submissions from interested parties dated 17 My 2018, response to WRISA paragraph 4.5.1.

Council Solutions also provides the following from the submission made by the Environmental Protection Agency with regard to AA1000419, dated 22 June 2018:

"The Council Solutions' application offers significant environmental benefits that align with South Australia's Strategic Plan target of a 35% reduction of waste to landfill by 2020...In particular the application has the potential to result in improved resource recovery by:

- *reduced waste production and less contamination of recyclable, organic and residual waste streams, by better informed ratepayers due to combined education materials and better targeted and managed communication strategies,*
- *better management of collected waste streams driven by secure contracts of larger volumes that should support greater investment in processing of recyclables, organics and residuals, and*
- *supporting innovation within the resource recovery sector through economies of scale.*

...The application also supports the waste management objective of the Environment Protection (Waste to Resources) Policy 2010 to achieve sustainable, best practice and accountable waste management by:

- *having effective recording, monitoring and reporting systems for waste transport, resource recovery and waste disposal, and*
- *within the community promoting environmental responsibility and involvement in waste*

avoidance, waste minimisation and waste management.”

A tender of this size will significantly limit future competition and exclude market players who would likely bid for processing services from Participating Councils if offered through individual tenders. Given these contracts are highly capital intensive and require significant upfront investment, the business risk alone will further exclude potential contractors from the process.

“A tender of this size will significantly limit future competition and exclude market players who would likely bid for processing services from Participating Councils if offered through individual tenders.”

Council Solutions rejects this assertion. Firstly, future market competition will not be limited, and it is highly unlikely that any providers will exit the market as a result of the Proposed Conduct. Secondly, there is no sound evidence that any providers would be excluded either from this process or processes conducted by councils individually.

“Given these contracts are highly capital intensive and require significant upfront investment, the business risk alone will further exclude potential contractors from the process.”

Under the Proposed Conduct offering a larger amount of material for beneficial processing under a single combined tender is more likely to encourage new capital investment than would be the case with tenders run by individual councils. Nor is capital investment envisaged only in the circumstance where there is the entry of a new provider. Indeed, the surety of strong and significant future cashflows could be what a current provider needs to justify process improvements, productivity improvements and/or resource recovery improvements, which would otherwise not be financially viable if the councils were to put to the market separate tenders.

Council Solutions re-affirms that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Processing Service Streams to compete and submit tenders when the RFT is called

Council Solutions does not accept the requirement to service all Participating Councils will prevent potential suppliers from participating in the RFT who could demonstrate the experience and financial capacity that would convince any Council in the Greater Adelaide Region to confidently enter into an up to 10-year contract for any of the Processing Services. Rather, it is expected that the collaboration of the Participating Councils will entice more potential suppliers to respond to the RFT than an individual Council may attract on its own.

As evidenced below, within each of the Processing Streams, there is currently a single supplier who provides the service to all bar one of the Participating Councils who require each service. This distribution has arisen without the Proposed Conduct.

Recyclables Processing

- One supplier currently provides this service to 3 out of the 4 Participating Councils.
- Under the Proposed Conduct, the Participating Councils reserve the right to appoint up to two suppliers.

Organics Processing

- One supplier currently provides this service 3 out of the 4 Participating Councils.
- Under the Proposed Conduct, the Participating Councils reserve the right to appoint up to two suppliers.

Residual Processing:

- One supplier provides this service 2 out of the 3 Participating Councils.
- Under the Proposed Conduct, a sole supplier will be awarded a contract to service all Participating Councils requiring this service.

Each Participating Council’s requirements and current contractor are as outlined in the Table below.

| Processing Service Streams | | | | | | |
|-------------------------------|------------------------|----------------------|-----------------------|------------------|-----------------------|------------------------|
| Council | Recyclables Processing | | Organics Processing | | Residual Processing | |
| | Stream Required (Y/N) | Current Supplier | Stream Required (Y/N) | Current Supplier | Stream Required (Y/N) | Current Supplier |
| City of Adelaide | Y | SKM Recycling | Y | Jefferies | Y | Transpacific Cleanaway |
| City of Charles Sturt | Y | Visy | Y | Jefferies | Y | TPI (Transpacific) |
| City of Marion | Y | Visy (via Solo) | Y | Peats (via Solo) | N [#] | SRWRA. |
| City of Port Adelaide Enfield | Y | Visy (via Cleanaway) | Y [*] | Jefferies | Y [*] | IWS |

[#] The City of Marion does not require Residual Processing as this is provided by SRWRA.
^{*} These services will not be required by the City of Port Adelaide Enfield until existing arrangements have ended in 2024 at which time the City of Port Adelaide Enfield will confirm its requirements.

Without the stimulation of competition through the Proposed Conduct, the same scenario regarding the current or any future division of the respective markets may arise. If the Participating Councils each undertake their own separate RFT processes, they may still all appoint the same supplier or suppliers, as the case may be, that could be appointed under the Proposed Conduct. However, fragmented and inconsistent approaches would not provide the same public benefits that will occur due to the Proposed Conduct.

AA1000419: Response to specific comments

Clause 4.3.3 Centroid locations for delivery of waste

We recognise the intent of what has been done here, however it will be difficult for the market to price appropriately with the actual tonnage being variable (for example, potential infrastructure investment etc).

The use of centroids as locations for nominal facilities for delivery of wastes is not uncommon and the market is familiar with the approach. For processing tenderers (the subject of this application)

there is no ambiguity on either receival facility locations or the tonnages on which tenders are sought.

For the collection tenderers to price with clarity and certainty, tender documents must set out the quantities of wastes that will be delivered to the nominated centroids, and this has been done in the tender specification for collections.

For the processing tenderers, tendering with certainty is guaranteed because the tenderer nominates the facility they intend to use as their receival location for the waste streams they are tendering to process. Tenderers for processing assume full responsibility for tendered waste streams from the location they nominate in their tender. The tender documents clearly indicate that contracts will be awarded either for (a) all of a specified waste stream from all of the Participating Councils, or (b) all of the specified waste stream from nominated Participating Councils. There is no intention of splitting a waste stream from any individual Participating Council.

The tender documents clearly set out the tonnages of each waste stream generated by each Participating Council, and invite tenderers to submit tendered prices to receive and process wastes in specific tonnage bands from their nominated facility location. The bands allow tenderers to confidently estimate their tendered price for each tonnage band from their nominated facility. The tonnage bands have been structured to ensure that all of a particular waste stream from any one or more of the Participating Councils can be delivered to either of the centroid locations and fall within one of the tonnage bands.

Clause 6.1 Policy context

Please refer response provided above in “Response to overarching comments” with regard to the environmental benefits to be achieved under the Proposed Conduct and the submission from the Environmental Protection Agency (SA EPA) with regard to AA1000419, dated 22 June 2018

Clause 10.3 Market Share

Council Solutions re-affirms the analysis provided in AA1000419, *Section 10.3 Market share* and that the market segment for the potential suppliers who might typically tender for Recyclables or Organics Processing will draw primarily from industry participants which are currently providing Waste Management Services involving Recyclables Processing from MSW, C&I and C&D source sectors or Organics Processing from MSW and C&I source sectors. The Proposed Conduct involves only a small number of councils from the municipal sector who collectively represent only a small fraction of the total market segment.

Claims that market share analysis should only relate to the tonnage of kerbside materials (e.g. only recyclables from municipal sources) are not valid and do not accurately represent the full market share as this considers only an element of one segment of the total market.

The potential suppliers of the Processing Service Streams have access to a significant pipeline of C&I, C&D and other Council opportunities. Aside from the four Participating Councils, there are up to an additional 23 Greater Adelaide Region Councils requiring the Processing Service Streams that periodically procure one or more of the services from the market via public, open tender processes.

When considering market share from a business impact perspective, the analysis would typically consider the market share in terms of both the revenues and the tonnages that individual processors

receive from deliveries of materials to be beneficially processed in their facilities. And those revenues and tonnages comprise inputs from materials received from multiple waste generating sources – municipal, commercial and industrial (C&I) and construction and demolition (C&D) sources.

The market share analysis used in the application is based on tonnage data only, because this is the only data reasonably available in the public domain and thus adopted as a surrogate for market share.

Clause 10.4.3 Countervailing Power of Customers and / or Suppliers

Council Solutions maintains the statements made in section 10.4.3 of AA1000419 and that there is an imbalance of power in the market in the favour of the potential suppliers.

Clause 11.1.1 Tender process cost savings and efficiencies

Council Solutions maintains the tender process cost savings and efficiencies outlined in section 11.1.1 of AA1000419 will occur and comments on WRISA's concerns as follows:

The tender process cost savings and efficiencies that will be achieved under the Proposed Conduct by reducing the replication of work for both Participating Councils and potential suppliers are clearly explained in the application for authorisation AA1000419 (processing service streams) and include:

- A single tender will remove the duplication of work required to prepare, present, respond, evaluate and award suppliers for four Councils individually;
- Where a potential supplier tenders for more than one Processing Service Stream, additional duplication of work to prepare, present, respond, evaluate and award suppliers for each Participating Council across each Processing Service Stream will be further reduced;
- A single negotiation process for each Processing Service Stream will reduce the costs for the Participating Councils in procuring the Processing Service Streams;
- Receiving shared technical, legal and probity advice means these costs are shared between the Participating Councils rather than funded by each Participating Council individually; and
- A streamlining of contract management not only provides for a more collaborative and effective relationship between the parties, it also provides efficiency savings to both the Participating Councils and the successful supplier/s.

As noted in the application Council Solutions will perform numerous tasks instead of the Participating Councils, such as document preparation, evaluation of insurances, licenses, accreditations and referees, clarifications, negotiations, price review assessments and KPI collation and reporting. These are all tasks throughout the lifecycle of a procurement that each Council would need to undertake if conducting their own tender process. The benefit of this collaboration is that the cost of procurement is **shared** over four Councils.

Furthermore, refer extract below from the table of contents from the Tender Return Schedules for RFT 2: Processing. This comprises 17 Schedules to be completed and returned as part of the RFT process by potential suppliers.

When preparing a tender response for the joint tender potential suppliers will calculate aspects of pricing/ costing that differ between the Participating Councils. However, the other 16 Tender Return Schedules will need to be completed only once by potential suppliers responding to the joint RFT.

This compares to the equivalent of all 17 Tender Return Schedules needing to be completed four times (68 Tender Response Schedules) for any potential supplier wanting to tender to the 4 Participating Councils if they are required to conduct their own separate RFT process. Council Solutions submits the joint procurement is clearly more efficient both for potential suppliers who tender and for the Participating Councils.

SCHEDULE 1: TENDER FORM - FORMAL OFFER
SCHEDULE 2: STATEMENT OF CONFORMITY
SCHEDULE 3: COLLUSIVE TENDERING - STATUTORY DECLARATION
SCHEDULE 4: SERVICES TENDERING FOR
SCHEDULE 5: INFORMATION AND DETAILS ON PROPOSED SERVICE DELIVERY COMMITMENTS
SCHEDULE 6: VEHICLES, PLANT AND EQUIPMENT
SCHEDULE 7: ADDITIONAL INFORMATION & INNOVATION / IMPROVEMENT
SCHEDULE 8: MANAGEMENT, STAFF, RESOURCES AND SUBCONTRACTORS
SCHEDULE 9: EXPERIENCE, COMMITMENTS, BUSINESS CONTINUITY PLAN
SCHEDULE 10: CONTRACT PROGRAM
SCHEDULE 11: ENVIRONMENTAL MANAGEMENT SYSTEM
SCHEDULE 12: FINANCIAL DETAILS AND CAPACITY
SCHEDULE 13: INSURANCES AND LICENCES
SCHEDULE 14: QUALITY SYSTEMS
SCHEDULE 15: WORK HEALTH AND SAFETY
SCHEDULE 16: INDUSTRIAL RELATIONS & WORKFORCE PLAN
SCHEDULE 17: TENDER PRICING

Clause 11.1.2 Environmental benefits

Council Solutions re-affirms the impact consistent messaging can have in helping to reduce contamination and increasing diversion of waste as outlined in Section 11.1.2 of AA1000419, the application and also acknowledges the role of state wide organisations in this area.

WRISA acknowledges a consistent message “could be achieved through other joint initiatives ... for example, groups of councils commonly work together to develop and deliver shared waste education resources for the community.” Council Solutions notes the effectiveness of these initiatives is compromised when the Councils working together do not have consistent data to feed into and then assess the success of these education resources.

Council Solutions also refers to the response provided above in “Response to overarching comments” with regard to the environmental benefits to be achieved under the Proposed Conduct and the submission from the Environmental Protection Agency (SA EPA) with regard to AA1000419, dated 22 June 2018.

Clause 11.2.1 Lower costs through improved purchasing power

Council Solutions re-affirms that the Applicants expect to achieve lower costs through improved purchasing power as outlined in Section 11.1.2 of AA1000419

WRISA acknowledges that collaborative procurement opportunities such as standardised approach, multi-year contracts and assurance of business are desirable for a commercial contract, yet also claim they are made available by Councils through individual tender processes. Council Solutions does not agree that the same level of benefits are available to Councils when conducting individual tender processes compared to the Proposed Conduct. Additionally, it is hard to see standardisation

occurring in separate tenders and any assurance of business is watered down to an individual Council's volume.

Finally, WRISA's comments and views are not consistent with:

- the advice provided by our expert waste industry advisor (Wright Corporate Strategy), who have participated in numerous successful collaborative waste services procurements and advised that the Participating Councils will achieve significant benefits that would not occur without the Proposed Conduct;
- the views of the Participating Councils who currently procure Processing Services from the market and have chosen to participate in the Proposed Conduct because of the benefits they will achieve (as outlined in the submissions made by the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield); and
- the public benefits previously acknowledged by the ACCC for similar procurement activities as identified in the numerous references provided in AA1000419. The Applicants see no reason why comparable benefits will not be achieved under the Proposed Conduct.

Clause 11.2.2 Maximised competition

Please refer response provided above to "Overarching Comments" regarding "A tender of this size will significantly limit future competition and exclude market players who would likely bid for processing services from Participating Councils if offered through individual tenders..."

Clause 11.2.3 Increased Resource Recovery Rates

We note the comments regarding China's ban on importing contaminated recyclable waste, and the challenges it presents the Australian recyclables market. Nevertheless, we contend that increased volumes of material available under a single contract will not necessarily encourage investment in upgraded or alternative technologies to address the impacts of China's National Policy.

Such investment is part of a "package" of measures that include public education, risk sharing between local government and industry, and establishment of end use markets for recovered resources.

As noted in AA1000419, Council Solutions and the Participating Councils acknowledge China's ban on importing contaminated recyclable waste has created challenges in the Australian recyclables market. This has been taken into consideration in the proposed RFT structure for the processing of Recyclables including a shorter initial contract term, supported by extension options to provide greater flexibility, along with appropriate risk sharing mechanisms (e.g. rise and fall).

Council Solutions notes that any future changes in the market will occur irrespective of whether the Councils collaborate or go it alone. Without the Proposed Conduct, the potential suppliers affected by the China ban will still need to find alternatives and upgrade technology. However, without the pipeline of aggregated feedstock volumes provided by, and the coordinated and targeted intervention and education initiatives at the kerbside across all, Participating Councils, this will be more difficult, possibly costlier and may take longer to achieve.

Council Solutions also notes as per the submission dated 6 June 2018 from the Local Government Association of South Australia (LGASA), the peak representative body for Local Government in South Australia:

“In addition to the general financial pressures being experienced by South Australian councils, the impacts of China’s National Sword Policy are substantial and have the potential to add millions of dollars to recycling costs for Councils in South Australia.

...the LGASA’s view is that, given the significant transition currently underway in the recycling and waste management industry generally, collaborative procurement processes may in fact offer a number of public benefits that may help to provide stability during this time of change.

In particular, collaborative procurement processes may help to provide the critical mass necessary to ensure the ongoing viability of smaller waste management entities and/or may help to provide the certainty necessary to secure investment in new technology or infrastructure that can open up local markets for recycled materials.”

WRISA, 15 June 2018, Re: AA1000420

Council Solutions' notes that the matters raised in this submission dated 15 June 2018 are largely the same as those raised in the previous submission from the Waste & Recycling Industry Association of South Australia (WRISA) with regard to AA1000414 (collection services), dated 25 April 2018 and also the WRISA submission for AA1000419 dated 25 June 2018.

Council Solutions has addressed these matters in our submissions:

- *AA1000414 Response to submissions from interested parties* dated 17 May 2018; and
- *AA1000419 Response to submissions from interested parties* dated 12 July 2018 (*i.e. This submission - contained above*).

Accordingly, Council Solutions responds below to selected elements of WRISA's submission to AA1000420.

AA1000420: Response to overarching comments

This is a tender of significant size, greater than the market share quoted by the Applicants which does not take into account the share of the market that is not available through public tender.

In AA1000420, *Section 10 Market Information and Concentration* and specifically sections *10.3.1 Bulk Bin Collection*, *10.3.2 Hard Waste Collection* and *10.3.3 Street Litter Collection*, the market analysis takes into account where Council Ancillary Service requirements are outsourced and therefore available to private sector service providers via tender processes and where the services are delivered inhouse (either directly by a Council or via a waste subsidiary).

A tender of this size will significantly limit competition and exclude a number of market players who would likely bid for waste from Participating Councils if offered through individual tenders. Given these contracts are highly capital intensive and require significant upfront investment, the business risk alone will further exclude potential contractors from the process.

This application (A1000420) is for the provision of ancillary services – collection of bulk bins, collection of street litter bins and collection of hard waste. The statement above is addressed below, both generally for all three service streams and specifically for each service stream.

In response to the claim *generally* (*i.e. relating to all three service streams*) the following should be noted. It is regrettable, and therefore misleading, that this claim has been repeated with wording unchanged from that submitted by WRISA in respect of both applications A1000414 and A1000419. In the first instance, the Ancillary Service Streams have been specifically separated out from the more mainstream kerbside 3 bin collection tender for the specific purpose of opening up the tender opportunity to a wider number of potential tenderers, in particular small businesses. Many small and medium sized waste service providers are excluded from tendering for these services because in traditional tenders these service streams are bundled with kerbside collections, which are out of reach of the smaller industry participants. In addition, with the bulk bin and hard waste service

streams, the separated tender opportunities will open the market to a number of service providers which would otherwise not participate in local government waste collection services tenders.

In the second instance, the claim relating to capital intensity is factually incorrect and misleading. The service streams relevant to this application (A1000420 Ancillary Services) are in no way as capital intensive as those associated with the other two applications and capital investment capacity does not present a barrier to entry for interested potential tenderers – as is the case with kerbside collections and waste processing.

In response to the claim relating to **collection of bulk bins** the following should be noted. In the Adelaide market there are multiple service providers of varying size and financial capacity that will be interested to tender for this service stream – including the largest of the service providers in the Adelaide market. The vast majority of those parties are not sufficiently resourced or experienced to participate if the tenders were bundled into a comprehensive collection suite, as is commonly the case for many local council tenders. On this basis, this approach to offering un-bundled tenders will increase competition and increase the number of parties interested in tendering – quite the reverse of the stated claim. It is also worth noting that with bulk bin services capital is not a barrier to entry and the quantum of services being offered for tender in this instance is relatively small when compared with the wider market for bulk bin services. In addition, with the quantum of the services being small at commencement and growing over the term, this tender affords a unique opportunity for small to medium suppliers to participate and grow their capacity at a pace which is neither capital nor resource intensive.

In response to the claim relating to **collection of street litter** the following should be noted. Under traditional tendering arrangements street litter collection is bundled with kerbside collections and therefore out of reach of a number of smaller service providers that are capable of, and suitably resourced to, provide these services. As is the case with bulk bins and hard waste, this arrangement for tendering these services opens the market to competition and ensures more participants can tender that is usually the case.

In response to the claim relating to collection of **hard waste** the following should be noted. Whilst the same arguments refuting the claim in respect of hard waste collection can be made as for both bulk bins and street litter, the hard waste market is seeing changes that could well be lost if tendering along traditional lines were followed. In separating out hard waste from the other collection services one aim is to seek opportunities and proposals for higher levels of diversion from landfill than is currently achieved. There is a small number of small business specialist service providers already in this market, and there is opportunity for more to emerge – both from existing small and medium sized providers and from possible new entrants into the market.

For existing service providers, the offer of an aggregated amount of hard waste from all Participating Councils is likely to be sufficient to encourage investment in new collection vehicles which are better suited to separating collected materials along the collection route, increasing the potential for greater diversion from landfill than is currently achieved.

For the new entrant, there is opportunity that dedicated facilities producing manufactured fuels might seek to secure supplies of hard waste if the size of the waste stream on offer is sufficient to warrant attention. There is already one successful fuel manufacturer in the Adelaide market, which has recently entered the Sydney market specifically targeting suitable waste streams including hard waste; and there is potential that other providers may consider entering the Adelaide market as energy policies change and alternative sources of energy become financially attractive.

Council Solutions re-affirms that the opportunity presented by the Participating Councils under the Proposed Conduct will encourage all potential suppliers capable of providing any or all of the Ancillary Services to compete and submit tenders when the RFT is called

The tendering of the Ancillary Service Streams by the Participating Councils under the Proposed Conduct increases the opportunity for competition as it allows potential suppliers who are capable of providing any or all of the Ancillary Service Streams to tender for that Service Stream/s **without also being required to provide 3-Bin System collection services**. This will open up the Ancillary Service Stream opportunities to potential suppliers, large and small, generalist and specialist, to tender.

Reduced competition in the market would likely increase commercial and industrial waste service provision as contractors not awarded a municipal contract may retreat entirely from the area.

The intent of the above statement is unclear, and it is hypothesized that WRISA actually mean to claim that “reduced competition in the market would likely **reduce** commercial and industrial waste service provision.....”. Notwithstanding this lack of clarity of intent, the claim has no relevance to either of the applications that are the subject of this submission – A1000419 Processing Services and A1000420 Ancillary Services. There is no evidence, nor indeed any claim, that the activity proposed would have any impact on the number of participants in the market for these services.

Indeed, the claim appears to be a “cut and paste” from the WRISA’s submission regarding application A1000414 Collection Services, and it appears WRISA has failed to thoroughly vet their claims for relevance before submission to ACCC for consideration.

Service efficiency through an increased number of Councils is likely to be minimal as collection routes are dependent on the number of locations being serviced which is a fixed parameter. In addition, cross border efficiencies cannot be realised where the Participating Councils do not share a border.

The Ancillary Services RFT comprises three elements and the claim above makes no differentiation in its objection between those three services. In the case of Bulk Bins, shared boundaries are unlikely to be a key factor. In the C&I bulk bin market notional geographical boundaries, such as LGA boundaries, do not feature in the planning and scheduling of collection runs. Using sophisticated software systems, service providers juggle location, waste type, collection days and fleet dynamics to arrive at the most efficient collection run at the time – with no consideration of who the owner (council or business enterprise) might be.

In the case of Street Litter and Hard Waste, shared boundaries is only one of a number of benefit areas associated with service efficiency – the others include shared overheads, shared maintenance, shared garaging, shared management and supervision, shared customer service – all of which contribute to service efficiency and will be available to all Participating Councils (including the City of Marion).

Whilst Marion does not have shared boundaries with the other Participating Councils, it is acknowledged that route-related service efficiencies for Street Litter and Hard Waste may not be achieved in respect of Ancillary Services delivered to Marion. However, the other Participating Councils do have shared boundaries and route-related service efficiencies will be realised in respect of the Street Litter and Hard Waste services delivered to those Councils

In respect of bulk bins, street litter and hard waste collection, lower costs for Participating Councils through improved purchasing power and improved service efficiency are outcomes that will be maximised under the Proposed Conduct where the market is afforded the opportunity to tender and

secure a greater volume of work that is consolidated and assured under a combined Council contract for an attractive period, compared to the fragmentation that occurs currently.

A key stated objective in offering *street litter* and *hard waste collection* services to the market as separable and standalone service is to foster the participation of small business. And through bundling the services from all Participating Councils, to provide a level of surety of cash flows to small businesses that would encourage those businesses to invest in appropriate fleet infrastructure.

Traditionally local government contracts out street litter services as part of the kerbside collection package, which means small businesses are excluded from tendering as the prime contractor and relegated to a subcontract role, if such a role is offered by the prime contractor. As a subcontractor, small business would be a price taker and would likely see margins squeezed to fit within the cost and margin profile of the head contract. In these circumstances the small business operator would be in a less advantageous position than one might reasonably expect if the same small business were the prime contractor for the street litter services in their own right.

Claims regarding improved purchasing power are overstated as the economies of scale that apply to the waste services are already realised by large Councils.

As WRISA recognises, there is no doubt that in the case of larger councils economies of scale can and are being achieved. However, recognising that such economies of scale exist for large single councils does not preclude that further economies of scale can arise when multiple councils collaborate to procure waste services. However, again it is felt that this claim is another example where WRISA has cut and pasted a claim regarding an earlier application and failed to thoroughly consider the relevance of the claim for the applications that are the subject of these applications. In respect of Processing Services (A1000419) the scale of the proposed tenders is such that there will certainly be economies of scale that exceed that which might be achieved by councils individually and that this will lead to community benefit through keener pricing. In respect of the Ancillary Services (A1000420) the larger scale of the tender offerings is considered such that not only will new service providers be encouraged to submit tenders, but also a successful small to medium business would be afforded opportunity to grow their capacity over the term of the contract. In these instances, the economies of scale have potential to benefit both the service providers and the Participating Councils.

AA1000420: Response to specific comments

Clause 4.3.3 Processing and Disposal Options

This tender calls for processing and disposal in each of the service activities yet retains the right for Participating Councils to separate collection and use alternative Processing and Disposal Contracts. This will require multiple pricing alternatives for an unknown outcome.

The approach to pricing for tenderers is not complicated and will be as follows:

- Hard Waste: \$ per collection + \$ per tonne for processing and disposal
- Street Litter: \$ per lift for collection + \$ per lift for processing and disposal
- Bulk Bins: \$ per lift for collection + \$ per lift for processing and disposal

It is expected that the Ancillary Service provider(s) will be contracted for both collection and processing and disposal of each service stream. In the event that an Ancillary Service provider was not contracted to provide processing and disposal for a service stream then only the “\$ per lift for collection” would apply.

Clause 6.1 Policy context and Clause 11.1.3 Environmental benefits

Council solutions maintains that the environmental benefits outlined in AA1000420 will be achieved and also notes the submission dated 22 June 2018 from the Environmental Protection Agency with regard to AA1000420, stating the “Council Solutions application offers significant environmental benefits...”.

Peats, 14 June 2018

The submission from Peats is in support of WRISA's submission AA1000419 and has been addressed above in the responses provided to WRISA's submission.

Cleanaway, 18 June 2018

The submission from Cleanaway, dated 18 June 2018 is in support of WRISA's submissions AA1000419 and AA1000420 and has been addressed above in the responses provided to WRISA's submission.

Trident, 4 June 2018

Council Solutions' notes that a number of the matters raised in this submission dated 4 June 2018 for AA1000420 are similar to those raised in the previous submission from Trident dated 18 April 2018 with regard to AA1000414 (Collection Services). Council Solutions has addressed these matters in our submission *AA1000414 Response to submissions from interested parties*, dated 17 May 2018.

The supplier(s) chosen for the provision of any bulk or street litter bins and the term of any such bin supply arrangement will be the responsibility and at the discretion of the Ancillary Collection Service provider(s).

As per AA1000420 the Participating Councils currently have a total of 424 Bulk Bins. Council Solutions can also confirm that there is no mass roll out planned by the Participating Councils for the replacement of street litter bins. Council Solutions sees no reason why a company such as Trident would be unable to meet the capacity requirements for any bins required by an Ancillary Collection Service provider.

Business SA, dated 15 June 2018

The submission is for both AA1000419 Processing Service Streams and AA1000420 Ancillary Service Streams.

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

Council Solutions’ notes that a number of matters raised in this submission dated June 2018 are similar to those raised in the previous submission from the Business SA for AA1000414 (Collection Services) dated April 2018. Council Solutions has addressed these matters in our submission *AA1000414 Response to submissions from interested parties*, dated 17 May 2018. Accordingly, Council Solutions responds below to selected elements of Business SA’s June 2018 submission.

Factors against the Processing Streams Application

Market share concerns

Council Solutions re-affirms the analysis provided in AA1000419, *Section 10.3 Market share* and that the market segment for the potential suppliers who might typically tender for Recyclables or Organics Processing will draw primarily from industry participants which are currently providing Waste Management Services involving Recyclables Processing from MSW, C&I and C&D source sectors or Organics Processing from MSW and C&I source sectors. The Proposed Conduct involves only a small number of councils from the municipal sector who collectively represent only a small fraction of the total market segment.

Claims that market share analysis should only relate to the tonnage of kerbside materials (e.g. only recyclables from municipal sources) are not valid and do not accurately represent the full market share as this considers only an element of one segment of the total market.

The potential suppliers of the Processing Service Streams have access to a significant pipeline of C&I, C&D and other Council opportunities. Aside from the four Participating Councils, there are up to an additional 23 Greater Adelaide Region Councils requiring the Processing Service Streams that periodically procure one or more of the services from the market via public, open tender processes.

When considering market share from a business impact perspective, the analysis would typically consider the market share in terms of both the revenues and the tonnages that individual processors receive from deliveries of materials to be beneficially processed in their facilities. And those revenues and tonnages comprise inputs from materials received from multiple waste generating sources – municipal, commercial and industrial (C&I) and construction and demolition (C&D) sources.

The market share analysis used in the application is based on tonnage data only, because this is the only data reasonably available in the public domain and thus adopted as a surrogate for market share.

State of the recyclables market

In the current circumstances it could be argued that a sustainable solution to processing and the market for recyclables is a far more critical public issue than maintenance of competition and/or the allocation of market share. If a sustainable solution cannot be found there is a real possibility that local recycling efforts may collapse. This will undoubtedly lead to a significant adverse impact on community confidence in government efforts for waste reduction and diversion of waste from landfill. As evidence of the potential for this adverse community impact, governments in a number of Australian jurisdictions have implemented significant interim emergency financial support measures to allow municipal recycling activities to continue in the short term while alternative solutions are explored.

Cognisant of these circumstances, Council Solutions is proposing an initial short term for the recyclables processing contract and inviting proposals from tenderers on equitable measures that might help share and mitigate risk for all parties – processors and councils alike. This coordinated and collaborative approach to the recycling market is more likely to elicit the basis of a solution that is sustainable than what might be achieved if the tendering effort were fragmented on a council-by-council basis and structured in line with the historical approach to tendering out recyclables processing.

Without the Proposed Conduct the Participating Councils will be forced to go it alone and release their own individual RFTs to for each of the Processing Streams.

Factor against the Ancillary Streams Application

Importance of shared boundaries

34. The Ancillary Streams Application asserts that the Proposed Conduct will improve service efficiency and enable optimised collection routes; predicated largely on ‘removal’ of council boundaries between the Participating Councils.²⁵ Similar assertions were made in the Waste Collection Application. In our response to the Waste Collection Application we made clear our concern that the City of Marion’s inclusion as a Participating Council will limit the extent to which any such benefits will be achieved.²⁶ We reiterate those submissions in relation to the Ancillary Streams Application.

The Ancillary Services RFT comprises three elements and the claim above makes no differentiation in its objection between those three services. In the case of Bulk Bins, shared boundaries are unlikely to be a key factor. In the C&I bulk bin market notional geographical boundaries, such as LGA boundaries, do not feature in the planning and scheduling of collection runs. Using sophisticated software systems, service providers juggle location, waste type, collection days and fleet dynamics to arrive at the most efficient collection run at the time – with no consideration of who the owner (council or business enterprise) might be.

In the case of Street Litter and Hard Waste, shared boundaries is only one of a number of benefit areas associated with service efficiency – the others include shared overheads, shared maintenance, shared garaging, shared management and supervision, shared customer service – all of which contribute to service efficiency and will be available to all Participating Councils (including City of Marion).

Whilst Marion does not have shared boundaries with the other Participating Councils, it is acknowledged that route-related service efficiencies for Street Litter and Hard Waste may not be achieved in respect of Ancillary Services delivered to Marion. However, the other Participating Councils do have shared boundaries and route-related service efficiencies will be realised in respect of the Street Litter and Hard Waste services delivered to those Councils.