



22 August 2019

General Manager, Adjudication Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

**General Counsel** Dan Pearce  
**Direct Line** (03) 9321 9841  
**Email** dan.pearce@holdingredlich.com  
**Our Ref** 19480069

**By email** [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Sirs

**Metropolitan Waste and Resource Recovery Group – Application for Authorisation for Recycling Sorting Services**

We act on behalf of Metropolitan Waste and Resource Recovery Group (**MWRRG**), a Victorian state statutory body established under section 50 of the *Environment Protection Act 1970* (Vic).

MWRRG is responsible for coordinating and facilitating the delivery of waste management and resource recovery across metropolitan Melbourne. In this capacity, MWRRG works with 31 councils across metropolitan Melbourne to minimise waste, maximise resource recovery and reduce litter.

MWRRG is working with 30 of these councils to collaboratively investigate and potentially procure the provision of sorting services for commingled recyclable material which is collected from residents' kerbsides.

On behalf of itself and the councils listed in the Application, MWRRG is applying for authorisation under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (**Act**) in respect of conduct which may otherwise attract the provisions of the Act relating to:

- (a) cartel conduct (Division 1 of Part IV of the Act);
- (b) contracts, arrangements or understanding that restrict dealings or affect competition (section 45(1)(a) and (b) of the Act); and
- (c) concerted practices (section 45(1)(c) of the Act).

In support of this application, we enclose and refer you to:

1. public and confidential versions of MWRRG's Application for Authorisation (**the Application**);
2. a signed declaration on behalf of MWRRG (included in the Application);
3. confirmation of the electronic funds transfer made on 21 August 2019 for payment of the application fee, being an amount reduced to \$2,500 in accordance with the approval from the ACCC dated 16 August 2019 (copy attached).

### **Request to exclude confidential information from the public register**

We request the details of the possible arrangements at 4.4 of the Application be excluded from the public register, as this contains commercially sensitive information that may detrimentally impact competition between potential suppliers in the market and hinder the procurement process.

We request the details at Annexure A be excluded from the public register, as the tonnage details may influence responses to the tender process and detrimentally impact the competition throughout the procurement process.

We request the details of proposed bidders (at Annexure B) to be excluded from the public register. We make this request on the basis that as the information is commercially sensitive, it may adversely affect the position of both the potential bidders and the Applicant in the market. This information is also considered to be commercially strategic and its interrelationship with the procurement process may have detrimental impact on present and future commercial dealings with potential suppliers.

We request that the form of the Management Deed (at Annexure C) be excluded from the public register as it contains confidential information, some of which is not directly related to the Application and all of which is commercially sensitive.

In accordance with the 'Guide for Excluding Confidential Information from the Public Register for Authorisation (Merger and Non-Merger) and Notification Processes', the words 'Restriction of Publication of Part Claimed' appear in red at the top of the pages over which a restriction of publication is requested. The confidential sections have been highlighted on these pages.

### **Interim Authorisation**

MWRRG seeks Interim Authorisation in order to approach the market place and seek Outline Solutions as the first step of the tender process, with a view to then seeking more detailed responses and commencing the process of preparing contractual documentation. It is requested that the decision on this request be provided within 28 days of lodgement, in accordance with the Commission's Guidelines for Authorisation of Conduct (non-merger), March 2019.

This request is made given the time that is likely to be required to progress the overall tender process; MWRRG considers it necessary to commence the procurement process as soon as possible. Delay to the commencement of this process may compromise the procurement being undertaken in a timely manner. In particular, a number of councils' existing recycling sorting contracts are due to expire within the coming 8 to 24 months, and it is important that the Request for Outline Solutions is released to the marketplace to allow time to proceed to subsequent stages and not disrupt the continuous provision of waste services to councils' residents.

No supplier will be selected, or contract entered into, until a formal determination is provided by the Commission, and the request for Interim Authorisation is only to allow the first stage to be undertaken in accordance with the planned timeframes for the overall project.

If you require further information with respect to this application, please contact Dan Pearce or Stephen Natoli on (03) 9321 9841.

Yours faithfully



**Holding Redlich**



23 Marcus Clarke Street  
Canberra ACT 2601

GPO Box 3131  
Canberra ACT 2601

tel: (02) 6243 1111

Contact officer: Connie Wu  
Contact phone: (08) 9325 0637

16/08/2019

adjudication@acc.gov.au

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Dan Pearce  
Partner  
Holding Redlich

**By email:** [dan.pearce@holdingredlich.com](mailto:dan.pearce@holdingredlich.com)

Dear Mr Pearce

### **Fee waiver request**

I refer to your letter of 8 August 2019 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Metropolitan Waste and Resource Recovery Group (MWRRG) be waived in whole or in part (reduced to the amount of \$2,500).

In support of your request, among other things, you submitted that:

- (a) MWRRG is a government-funded entity to coordinate and facilitate the delivery of waste management and resource recovery across metropolitan Melbourne, and that any fee paid in respect of the application would divert resources away from MWRRG's public purposes.
- (b) Procurements undertaken by MWRRG are solely on behalf of member councils, and MWRRG delivers value to these councils which would otherwise seek funds through rate payers. A fee waiver, in whole or in part, results in these funds being utilised for other community benefits and functions that would directly benefit rate payers.
- (c) The Commission has previously granted such waivers to MWRRG in relation to applications for authorisation.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by MWRRG has been waived in part. An application fee of \$2500 will apply with respect to the application for authorisation to be lodged by MWRRG.

This decision will remain in force for a period of three months. The three month period will expire on 16 November 2019.

A copy of this letter should accompany the application for authorisation to be lodged by MWRRG. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by MWRRG after 16 November 2019, a full application fee of \$7500 will apply, unless you make, and the ACCC approves, another fee waiver.

Should you have any queries in relation to this matter, please do not hesitate to contact Connie Wu on (08) 9325 0637.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', with a stylized flourish extending from the end.

David Jones  
General Manager  
Adjudication

**PUBLIC VERSION –  
RESTRICTION OF PUBLICATION  
OF PART CLAIMED**

**21 August 2019**

**Metropolitan Waste and Resource Recovery Group  
Application for Authorisation – Recycling Sorting  
Services for Melbourne Metropolitan Region**

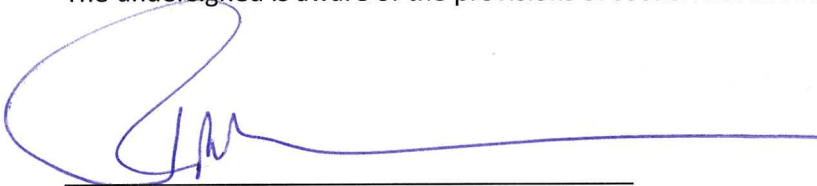
**PUBLIC VERSION**

## Declaration by Applicant

The undersigned declares that, to the best of his knowledge and belief, the information given in this Submission is true, correct and complete, that complete copies of documents required have been supplied, that all estimates are identified as such and are his best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the Australian Competition and Consumer Commission immediately of any material change in circumstances relating to the Application.

The undersigned is aware of the provisions of section 137.1 and 149.1 of the *Criminal Code* (Cth)



**Rob Millard**

**Chief Executive Officer, Metropolitan Waste and Resource Recovery Group**

This 22 day of 8 2019

## 1. Applicant

### 1.1 Name of the Applicant

This application is made by Metropolitan Waste and Resource Recovery Group (ABN 64 480 279 309) (**MWRRG**) on behalf of itself and the following councils:

- (a) **Banyule City Council**  
1 Flintoff Street  
Greensborough VIC 3088
- (b) **City of Bayside**  
76 Royal Avenue  
Sandringham VIC 3191
- (c) **City of Boroondara**  
8 Inglesby Road  
Camberwell VIC 3124
- (d) **Brimbank City Council**  
301 Hampshire Road  
Sunshine VIC 3020
- (e) **Cardinia Shire**  
20 Siding Avenue  
Officer VIC 3809
- (f) **City of Casey**  
Bunjil Place  
2 Patrick Northeast Drive  
Narre Warren VIC 3805
- (g) **Darebin City Council**  
274 Gower Street  
Preston VIC 3072
- (h) **City of Frankston**  
30 Davey Street  
Frankston VIC 3199
- (i) **City of Glen Eira**  
Corner Glen Eira and Hawthorn Roads  
Caulfield VIC 3162
- (j) **City of Greater Dandenong**  
Level 2, 225 Lonsdale Street  
Dandenong VIC 3175
- (k) **Hobsons Bay City Council**  
115 Civic Parade, at the end of Pier Street  
Altona VIC 3018
- (l) **Hume City Council**  
1079 Pascoe Vale Road  
Broadmeadows VIC 3047

- (m) **City of Kingston**  
1230 Nepean Highway  
Cheltenham VIC 3192
- (n) **City of Knox**  
511 Burwood Highway  
Wantirna South VIC 3152
- (o) **City of Manningham**  
699 Doncaster Road  
Doncaster VIC 3108
- (p) **Maribyrnong City Council**  
Council Offices, corner Hyde and Napier Streets  
Footscray VIC 3011
- (q) **City of Maroondah**  
304A Maroondah Highway  
Ringwood VIC 3134
- (r) **City of Melbourne**  
120 Swanston Street  
Melbourne VIC 3000
- (s) **City of Melton**  
232 High Street  
Melton VIC 3337
- (t) **Moreland City Council**  
90 Bell Street  
Coburg VIC 3058
- (u) **City of Monash**  
293 Springvale Road  
Glen Waverly VIC 3150
- (v) **Moonee Valley City Council**  
9 Kellaway Avenue  
Moonee Ponds VIC 3039
- (w) **Mornington Peninsula Shire**  
90 Besgrove Street  
Rosebud VIC 3939
- (x) **Nilumbik Shire Council**  
34 Civic Drive  
Greensborough VIC 3088
- (y) **City of Port Phillip**  
99a Carlisle Street  
St Kilda VIC 3182



- (z) **City of Stonnington**  
311 Glenferrie Road  
Malvern VIC 3144
- (aa) **City of Whitehorse**  
379-397 Whitehorse Road  
Nunawading VIC 3131
- (bb) **City of Whittlesea**  
25 Ferres Boulevard  
South Morang VIC 3752
- (cc) **Yarra City Council**  
Bargoonga Nganjin, North Fitzroy Library  
182 St Georges Road  
North Fitzroy VIC 3068
- (dd) **Shire of Yarra Ranges**  
15 Anderson Street  
Lilydale VIC 3140

(collectively, the **Councils**).

## 1.2 Address of Applicant

Level 4, Tower 4, World Trade Centre  
18-38 Siddeley Street  
Melbourne, Victoria 3005

Attention: Mr Rob Millard  
CEO  
Tel: (03) 8698 9800

## 1.3 Address in Australia for service of documents on the Applicant

Holding Redlich  
Level 8, 555 Bourke Street  
Melbourne, Victoria 3000

Attention: Dan Pearce  
Tel: (03) 9321 9841  
dan.pearce@holdingredlich.com

## 2. Proposed Conduct

### 2.1 Description

It is proposed that MWRRG will investigate and potentially procure the provision of sorting services for recyclable material which is collected from kerbsides (the **Services**).

In particular, authorisation is sought for:

- (a) MWRRG, on behalf of the Councils, to conduct a collaborative competitive tender process for the Services, to evaluate the responses in collaboration with the Councils, and to negotiate on behalf of the Councils the contractual framework;
- (b) The possible establishment of a Special Purpose Vehicle (**SPV**) by the Councils (as detailed in section 4.5) to potentially enter into contract(s) for the Services with the successful supplier(s);
- (c) ongoing administration and management of the resulting contracts in accordance with a Management Deed substantially in the form set out in Annexure C,

(the **Proposed Conduct**).

## 2.2 Relevant provisions of the Act

Authorisation is sought to:

- (a) make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010 (Cth)* (the **Act**);
- (b) give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of the Act;
- (c) make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would or might restrict dealings or affect competition within the meaning of section 45(1)(a) and (b) of the Act;
- (d) give effect to a provision of a contract, arrangement or understanding where the provision would or might restrict dealings or affect competition within the meaning of section 45 of the Act; and
- (e) engage in concerted practices which would or might restrict dealings or affect competition within the meaning of section 45(1)(c) of the Act.

## 2.3 Term of authorisation

MWRRG seeks authorisation for:

- (a) 12 months to complete the tender process, negotiate contracts and execute contracts; and
- (b) 20 years for the provision of the Services for the currently expected term of the proposed contract. This period is based on the information available regarding the term required to support the investment required for the upgrade of existing sorting facilities or the construction of new facilities.

## 3. Confidentiality

The public version of this document excludes information provided to the Australian Competition and Consumer Commission (**ACCC or Commission**) on a confidential basis. Confidential information has been redacted. MWRRG consents to disclosure of confidential information to the ACCC's external advisors on a confidential basis or otherwise in accordance with section 155AAA of the Act.

## 4. Background

This submission is made by MWRRG on behalf of itself and the Councils. The broader context for the proposed approach is discussed in more detail below, but reflects the urgent need to upgrade the approach to the sorting of recyclable waste in light of significant changes to the global market for recyclable materials.

For the 15 years leading up to 2018, the system for the collection of recyclable material has been predicated upon, amongst other things, purchasers (primarily in North Asia and South East Asia) providing demand for lower quality mixed bales of partially sorted paper and plastics. In early 2018, China adopted a new policy which restricted the import of low quality recyclable material, and subsequently customers in other territories have also tightened their regulations. These changes have meant that many existing sorting facilities have become inadequate, or have had to be operated more slowly. The operators of those facilities have consequently faced increased costs, and have also been challenged in their capability to continue paying to councils fees for the waste the councils delivered to those operators.

### 4.1 MWRRG

MWRRG is a Victorian state statutory body established under section 50 of the *Environment Protection Act 1970 (Vic)*.

MWRRG is responsible for the strategic planning of waste management and resource recovery across metropolitan Melbourne. In this capacity, MWRRG works with 31 councils across metropolitan Melbourne to minimise waste, maximise resource recovery and reduce litter.

In this matter, MWRRG proposes to act on behalf of the 30 participating Councils and facilitate the procurement, negotiating and contract process in relation to the Services. It is proposed that MWRRG will approach the market place by a Request for an Outline Solution and then, if it is agreed to proceed, progress subsequent stages (as described in more detail in section 5.1) with a view to selecting a supplier or suppliers of the Services.

### 4.2 The Councils

The Councils are responsible for providing community services and facilities, and making and enforcing local rules and regulations in metropolitan Melbourne.

The Councils have responsibility for management of waste in their respective local government areas, and have a general commitment to maximising recycling of waste and minimising disposal of waste to landfill. Approximately 450,000 tonnes of recyclable materials have been collected annually from Melbourne households in recent years. The Councils wish to explore the Services in order to improve the effectiveness of recycling activities and ultimately benefit their communities.

None of the Councils, if acting individually, would be able to offer a sufficient volume of commingled recyclable material to prompt private investment in the upgrade of existing material recovery facilities (**MRFs**) or in the construction of new sorting facilities. Aggregate quantities of at least 50,000 tonnes of commingled recyclable material will be required to prompt upgrades, and 100,000 tonnes per year to attract new entrants to the market and construction of new facilities.

The table at Annexure A shows the approximate annual volumes of commingled recycling collected by each Council in 2016/2017.

### 4.3 Rationale

The Victorian Government has recognised the challenges faced by the State's recycling sector, and has issued the Recycling Industry Strategic Plan (**Strategic Plan**), which focusses specifically on kerbside recycling, with the aim of:

- (a) stabilising the recycling sector, including by the introduction of new and consistent contractual approaches which are more flexible and resilient to market changes;
- (a) increasing the quality of recycled materials;
- (b) improving the diversity and productivity of the recycling sector so that it is competitive, agile, transparent and has appropriate risk dispersal to respond to market challenges and opportunities; and
- (c) developing markets for recycled materials.

More broadly, the Victorian Government has established a coordinated State-wide strategy for tackling the issue of increasing waste quantities and the need to decrease reliance on landfills, the Statewide Waste and Resource Recovery Infrastructure Plan (the **Statewide Plan**). The purpose of the Statewide Plan is to develop a coordinated approach to waste and resource recovery infrastructure that (among other things):

- (a) manages the expected mix and volumes of waste;
- (b) protects the community and the environment;
- (c) supports a viable resource recovery industry;
- (d) reduces the amount of valuable materials going to landfill; and
- (e) minimises long term costs to households, the industry and the government.

There is also the National Waste Policy (**National Policy**), established in light of these changes and with a focus on:

- (a) waste avoidance, including by encouraging efficient use, re-use and repair of recycled materials; and
- (b) improved material recovery, including by improved collection systems, processes for recycling and the quality of recycled material produced.

More recently, on 9 August 2019, the Council of Australian Governments resolved to establish a timeline to ban the export of recyclables and strengthen Australia's capacity to generate high value recycled commodities. This resolution has as its aims to:

- (a) reduce waste (especially plastics) headed for landfill; and
- (b) maximise the capability in Australian waste management and recycling sectors to collect, recycle, reuse, convert and recover waste.

To facilitate a coordinated approach to waste and resource recovery, MWRRG has been tasked with leading, on behalf of the Councils, the investigation, development and implementation of waste and resource recovery infrastructure within the metropolitan Melbourne region, including in respect of recyclable material.

Collaborative procurement has been an important mechanism used in Victoria and in other jurisdictions to encourage innovation in responding to challenges in the sector and attract private investment. As set out above, the scale of investment likely to be required will necessitate aggregation of commingled recyclable material. When multiple councils aggregate kerbside waste volumes, economies of scale are improved, and avenues for capital investment are opened up.

#### 4.4 The Project

MWRRG and the Councils propose to collaboratively investigate and potentially procure the Services, the provision of which is likely to entail the upgrade of existing sorting facilities or the construction of new facilities (**Project**).

By way of background, the management of household recycling is made up of three principal components:

- ) **collection** of commingled material from households by councils, or contractors on behalf of councils;
- ) **sorting** of the collected commingled recycling at MRFs, followed by dispatch of baled recyclables to reprocessors, with reject materials being sent to landfill; and
- ) **reprocessing** of recyclables into raw materials and consumer goods.

The sorting stage of commingled recyclables aims to use technology to effectively separate different recyclable materials from one another, with certain materials being baled. These baled materials will then be dispatched to reprocessors, while any reject materials will be sent to landfill.

It is therefore crucial that an effective sorting process is established to avoid the direction of otherwise potentially recyclable materials to landfill, and to strengthen the viability of, and public confidence in, the recycling industry in Melbourne.

All metropolitan councils currently collect:

- ) paper and cardboard;
- ) liquid paper board;
- ) steel and aluminium cans;
- ) glass; and
- ) hard plastics.

The Project will seek to establish a resilient recycling industry through a strategic procurement process of service providers for sorting commingled recyclable material.

Although the final form of the Services is still to be determined, it is likely that in any scenario some type of new or upgraded recycling sorting facility or technology would be implemented and operated by private sector service providers. The request of suppliers will leave open to them the choice of new technologies (such as optical scanning) that may be utilised. The contracting framework will instead specify required outcomes, key performance indicators, and require that the supplier satisfies requirements such as:

- (a) producing sorted materials that meet specified quality standards;
- (b) ensuring that its operations and outputs meet all requirements of the Environment Protection Authority (EPA);
- (c) managing the fire risk at any facility, and compliance with building regulations and EPA requirements;
- (d) managing stockpiles of material at any facility in accordance with EPA requirements;
- (e) having detailed and robust continuity plans; and
- (f) having a formal marketing strategy, and demonstrably viable markets for the higher quality outputs produced.

The contract models traditionally used by councils for contracting recycling services, particularly at the level of an individual council, will not be practical to establish new recycling sorting facilities and processes with sufficient scale and attract the upfront investment that is required from the private sector.

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[REDACTED]



#### **4.5 Special Purpose Vehicle**

The Councils are considering potentially procuring this project utilising a new SPV. If such a structure is utilised, the SPV would enter into final contracts with the selected supplier(s). The use of an SPV would allow suppliers to deal with one entity (rather than contract with a multiplicity of councils), and for Councils which decide to participate in the SPV to manage arrangements between themselves pursuant to a separate shareholder agreement. Alternatively, Councils which choose not to be members of the SPV may still participate in the procurement by entering into contacts with the SPV under which they agree to contribute waste from their municipality.

If this procurement structure was adopted, then the SPV would coordinate the requirements of each Council to begin a competitive tender process and negotiate contracts for the supply of the Services. Each Council would retain a discretion, during the early stages of the procurement, to decide whether or not:

- (a) to be a participant in the SPV;
- (b) to enter into a service delivery contract with the SPV; or
- (c) to separately select and contract with alternative suppliers if it wishes.

### **5. Proposed Conduct**

#### **5.1 Tender process**

In order to procure the provision of the Services, the following steps are proposed to be taken by MWRRG on behalf of the Councils:

1. MWRRG will issue a Request for Outline Solution to the marketplace to identify interested potential suppliers to submit an Outline Solution. MWRRG in liaison with the representatives of the Councils will consider the Outline Solutions provided and then may proceed to the second stage.
2. MWRRG may issue a Request for Detailed Solution and select the chosen suppliers having regard to the Detailed Solutions received.

#### **5.2 Parties potentially impacted**

The proposed joint procurement may affect existing providers of sorting of kerbside recyclable materials.

Within the metropolitan region, sorting services for commingled recycling are offered by three providers. A list of the current service providers and the date of contract expiry with the metropolitan councils is set out at Annexure A. Each of these providers will be able to offer to provide the Services, and will have the opportunity to provide improvements to the existing MRFs they operate, or the establishment of new sorting facilities.

Currently, only five of the Councils, Brimbank, Melbourne, Port Phillip, Wyndham and Nillumbik are part of a collective contract for the sorting of commingled recycling: the Central and Western Recycling Processing Contract with SKM. All other Councils contract for sorting services individually.

Initial discussions with the remaining 26 metropolitan councils that have individual contracts with MRF operators have indicated that the majority are potentially interested in being a member of a collective contract for recycling processing.

It is expected that the potential scale of services that will be aggregated through the collective procurement process will attract the interest of national and international service providers.

MWRRG is proposing to establish new collective contracts for the sorting of commingled recycling by July 2020. MWRRG understands that the timing of this procurement project may not align with the expiry of some existing contractual arrangements with councils. The specifications developed as a part of this project will allow for the staggered contract commencement dates for individual councils.

## 6. Market

The relevant market is the market for the **sorting** of recyclable material. This is separate from the market for **collection** services for recyclable material, as well as the market for the **reprocessing** of sorted recyclable materials. In relation to **collection**, this activity is undertaken by companies such as Cleanaway, JJ Richards, Solo, CityWide and Four Seasons, which collect waste from residential kerbside and deliver to MRFs directly or transfer stations (where waste is aggregated before being delivered to MRFs). In terms of **re-processing**, this is generally arranged by the MRFs, according to the different types of waste. Sorted and baled **paper** goes to reprocessors such as Visy and Australian Paper. Sorted and baled **plastics** have typically been sent to overseas customers including Polytrade Malaysia. Sorted **glass** is typically aggregated into particular colour types and reprocessed by customers such as Owens Illinois Glass, Alex Fraser Glass Processing, and Glass Recovery Services.

The relevant type of waste is **household recyclable waste**, and the following separate markets remain unaffected by this procurement:

- (a) the market for **residual municipal waste**;
- (b) the market for **commercial and industrial waste** (the National Waste Report 2018 found that of 37 million tonnes of material recycled in Australia, only 6.3 million tonnes came from households);
- (c) the market for **food and organic waste**.

The quantity of waste available from the councils, if all choose to participate in the Project, is likely to be such that the Project would be of interest at a national, and indeed international, level. Accordingly, participants in any tender undertaken are likely to include the businesses set out in Annexure B.

Finally, the current market for sorting of recyclable materials is a failing market. The arrangements of the last 15 years have been predicated on established customers for the various outputs of the sorting process, and those customers have changed their requirements dramatically in the last 18 months, requiring significant changes to the sorting process and materially affecting the value of outputs generated. It is no longer feasible for MRF operators to pay councils the same proportion of income received from the sale of baled, sorted material, given the market for the material has changed significantly. At the same time, the existing operators face increased costs to improve their facilities or from slowing the processing of existing facilities. The challenges facing one operator, SKM, have received considerable public

commentary in recent weeks, and highlight the need for changes to the arrangement in the sorting market.

To seek to address the significant challenges facing the recycling industry in Australia, the Council of Australian Governments resolved in August 2019 to establish a timeline to implement a ban on all exports of recyclable materials and to build Australia's capacity to produce high value recycled commodities. The more detailed elements of this initiative are still to be resolved, and so it is difficult to analyse clearly the likely effect on the market for the sorting of recyclable materials. It seems fair to expect, though, that any such government policies will provide further support for participants in the recycling sector in the longer term.

## 7. Counterfactual

If Authorisation of the Proposed Conduct is not provided, it is likely that more innovative approaches to the sorting of commingled recycling will not be viable. In turn, this would be likely to mean that a greater volume of recyclable material is not the subject of subsequent processing, and would need to be dealt with in some other way. There have been recent instances in Victoria of such material being sent to landfill, which is one of the least preferable outcomes for such materials, and inconsistent with community expectations and the Strategic Plan, the Statewide Plan, and the National Policy.

As demonstrated above, it is beyond the capacity of any one council to provide the minimum quantities of aggregate commingled recyclable material necessary to attract investment in innovative sorting methods. Accordingly, council by council procurement of the Services will necessarily not engender responses which extend to such a solution.

## 8. Public Benefit

Carrying out the Proposed Conduct is expected to allow for an enhanced procurement, and the provision of more innovative and effective solutions to sorting commingled recyclables. The resulting public benefits should include the following.

### 8.1 Procurement process benefits

- (a) **Long-term certainty for the Councils with respect to services to manage sorting of commingled recyclables** – the Councils gain long term certainty of the services to manage recycling and will have a choice in how they manage and recover materials from recycled waste. The alternative, of relying solely on the current service providers and existing contractual model (whereby councils contract with service providers individually), will face increasing challenges given the (well-publicised) operational and financial difficulties being faced by existing operators of MRFs. In Victoria, SKM Recycling has been the subject of various actions by the EPA, and is reported as considering insolvency restructuring. Long-term certainty will also encourage consistency and reliability of the services across the metropolitan area. MWRRG will also be able to effectively manage and ensure workable contingency arrangements with multiple service providers.
- (b) **Cost benefits and increased efficiencies in conducting collaborative procurement** – the costs that would be incurred by each party in the procurement of the relevant services would be reduced significantly by conducting collaborative procurement, as each party would otherwise be solely responsible for the costs associated with the tender process, negotiating contracts and management of the service delivery. Efficiencies across all

councils would also be increased by reducing the replication of work through the alignment of service requirements and streamlining councils' interests through a single tender process. For example, instead of each Council undertaking to prepare their own tender documents, MWRRG will undertake this task on behalf of all participating councils. This will also implement ongoing contract management, enabling and fostering positive relationship management between councils and service providers.

- (c) **Expertise of MWRRG** - the opportunity for MWRRG's involvement allows for its considerable expertise on technical issues associated with waste management and procurement of recycling sorting solutions to be enjoyed by each Council, rather than individual Councils seeking such expertise elsewhere.

## 8.2 Community and Environmental benefits

- (a) **A healthier environment and enhanced liveability** – sending less waste to landfill and increasing recycling will reduce the generation and emission of greenhouse gases and odours, be less attractive to vermin, produce less contaminated water and reduce local traffic movements and congestion.
- (b) **Increased efficiencies in waste processing and disposal** – aggregating sorting of commingled recyclables across participating Councils will assist suppliers in maintaining efficient scale. This will also incentivise investment in new recycling technology and facilities, which will lead to further environmental benefits. With respect to waste disposal, increased sorting efficiencies will decrease the amount of waste that may otherwise be sent to landfill throughout participating Councils.
- (c) **Recovery of valuable resources from the waste** – cost effective recovery of the materials from the sorting process include hard recyclables such as plastics, metals, glass, cardboard and paper.
- (d) **Choice of appropriate location** – the opportunity to select an optimal location(s) and site(s) avoids the alternative of existing service providers becoming overwhelmed and ineffectively sorting the commingled materials.
- (e) **Decreased transport of waste** – effective sorting of commingled recycling should decrease the amount of waste that would otherwise have to be transported to other sites.
- (f) **Restore public confidence in recycling** – recent press coverage of the recycling industry has highlighted current inefficiencies and ineffectiveness in the collection, storage and processing of recyclable materials throughout Australia. Implementing an effective means of handling recyclables will assist in rectifying these issues and demonstrate to the community the environmental and economic benefits of recycling. It is expected that a restoration of public confidence in recycling will in turn increase the engagement of the community and lead to better recycling outcomes.

## 8.3 Increase in competition

- (a) **Increased interest** – the innovative nature of the Services and scale of the service provider contract(s) is likely to attract interest from service providers who would not have entered the market previously, and create more competition between potential service providers. A participating Council can only provide smaller waste quantities which would not attract certain suppliers.

- (b) **Multiple service providers will benefit** – the structure of the Project will enable the appointment of more than one service provider, meaning any adverse impact on competition within the market will be minimised.
- (c) **Decoupling Contracts** – where practicable, the Project will ensure that recycling services for commingled materials (collection, sorting, storage and onward management) will be un-bundled. This will ensure transparency in pricing throughout the resource recovery value chain.

#### 8.4 Investment in the State

- (a) **Related investment** - it is expected that improvements to existing MRFs and construction of new facilities will encourage related investment in adjacent businesses. The State Government's overall strategy for waste, together with expected continuing population growth, should provide opportunities for a breadth of innovation and ancillary services and businesses to accumulate around any new facilities.
- (b) **Encourages innovation** – a re-visiting of the currently dysfunctional sorting market will encourage targeted innovation in advancing technological and environmental development in Victoria.

#### 8.5 Achievement of government objectives

- (a) **Decrease export of waste overseas and maximise capabilities of recycling sector** – the Proposed Conduct is expected to assist in the establishment of a viable recycling industry in Melbourne. This will assist in achieving the goals set by the Council of Australian Governments in August 2019 to reduce waste (especially plastics), decrease the amount of waste going to landfill, and maximise the capability of the waste management and recycling sector to collect, recycle, reuse, convert and recover waste.
- (b) **Emissions reduction target** – reduction of greenhouse gases will contribute to the Victorian Government's emissions reduction target.
- (c) **Viable resource recovery industry** – waste avoidance and increased use of resources will assist in achieving the goals set by the State and Federal Governments for a viable resource recovery industry in accordance with the Strategic Plan, Statewide Plan, and the National Policy.

### 9. Public Detriment

It is submitted that there should be no public detriment associated with the Proposed Conduct, and that any potential detriment would nevertheless be outweighed by the benefit to the public set out above.

A potential detriment of the proposed collaborative procurement may be perceived to be a decrease in competition as suppliers which may have offered services to each Council individually may feel restricted to supplying the participating Councils in some aggregated form. In relation to **existing** suppliers, we note that only 3 companies supply sorting services to the Councils under current arrangements, and one of them is facing insolvency, and in any event, all will be able to bid to provide the Services. Moreover, all bidders, whether existing suppliers or proposed new entrants, may offer to provide services to as many councils as they wish. There will be no obligation to supply to all 30 Councils, and indeed the procurement's goals include a resilience of

supply, the achievement of which may well be assisted by having multiple service providers (with some associated capacity for addressing possible outages at one operation) .

Further, the participation of each of the **Councils** is voluntary. Any Council may choose to determine its own arrangements with service providers separately. In any event, no one Council would be able to undertake a procurement of this nature, as a minimum quantity of waste is required to make the required investments viable. Accordingly, the aggregation of council demand should not give rise to any detriment to the public.

The tender process will be competitive and conducted in accordance with best practice probity standards, including transparency and audit requirements. Selected suppliers will not be in any way restricted from offering services to other councils.

The Services only relate to **sorting** services (as opposed to **collection** or **reprocessing** services). The Services only relate to commingled recyclable material (as opposed to other waste streams). The Services only relate to municipal kerbside recyclables and do not extend to commercial and industrial recyclable material (which is a much larger volume). The Services only relate to the Melbourne metropolitan area, and do not extend to regional Victoria or other states. Significant opportunity therefore remains for service providers to participate in the wider waste industry in Victoria and beyond.

## 10. Conclusion

For the reasons set out above, MWRRG submits that the substantial public benefit of the Proposed Conduct significantly outweighs any public detriment, and that its application for authorisation should therefore be granted.

RESTRICTION OF PUBLICATION OF PART CLAIMED

**Annexure A**  
**Existing Service Providers**

<b>Council</b>	<b>Processing Contractor</b>
Banyule City Council	Visy
City of Bayside	Polytrade
City of Boroondara	SKM Recycling
Brimbank City Council	SKM Recycling
Cardinia Shire	SKM Recycling
City of Casey	SKM Recycling
Darebin City Council	SKM Recycling
City of Frankston	Polytrade
City of Glen Eira	SKM Recycling
City of Greater Dandenong	Polytrade
Hobsons Bay City Council	SKM Recycling
Hume City Council	SKM Recycling
City of Kingston	SKM Recycling
City of Knox	SKM Recycling
City of Manningham	Visy
Maribyrnong City Council	Visy

City of Maroondah	Polytrade
City of Melbourne	SKM Recycling
City of Melton	Visy
Moreland City Council	Visy
City of Monash	Visy
Moonee Valley City Council	SKM Recycling
Mornington Peninsula Shire	SKM Recycling
Nillumbik Shire Council	SKM Recycling
City of Port Phillip	SKM Recycling
City of Stonnington	SKM Recycling
City of Whitehorse	Visy
City of Whittlesea	SKM Recycling
Yarra City Council	Visy
Shire of Yarra Ranges	Visy



**Annexure B**  
**Potential Tenderers**

**Annexure C**  
**Management Deed**