

8 October 2024

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Dear Ms Menon and Ms Craig

Application by Coles Group Limited on behalf of itself and participating supermarkets for revocation of authorisation AA1000627 and substitution of AA1000673 - request for information

I refer to your letter dated 26 August 2024 (**Letter**) requesting further information in relation to the application for authorisation lodged with the ACCC on 24 June 2024 (**Application**) by Coles Group Limited (**Coles**) on behalf of itself and its related bodies corporate, Woolworths Group Limited and its related bodies corporate (**Woolworths**) and ALDI Stores (a Limited Partnership) (**ALDI**) (together, the **Participants**).

The Participants' responses to the questions in the Letter are set out in sections 2 – 4 of this letter. The Participants have also provided additional contextual information in section 2 to assist the ACCC in its review.

For the reasons set out in section 3 of this letter, the Participants also seek a variation to the term of reauthorisation for a further 12 months until 31 July 2026.

The Participants would welcome the opportunity to meet with the ACCC to discuss these topics further and any questions the ACCC may have.

1 Executive Summary

- (a) In relation to the stockpiled materials, the overarching determinant of how quickly these volumes can be processed is when additional processing capacity comes online in each state. This is largely driven by when processing companies can receive the necessary equipment to enable operations (some of which is sourced internationally), obtain regulatory and commercial approvals and secure customers and markets for their processed product. These factors are predominantly outside of the Participants' control although ACCC authorisation has enabled the Participants to jointly support processors as much as possible with advice, funding, feedstock for their operations, contracts for their outputs and support for regulatory approvals where appropriate. While the Australian soft plastics recycling industry continues to mature and develop, the Participants consider that the various interim and final authorisations granted by the ACCC since 25 November 2022 have been instrumental in accelerating the development of new soft plastics recycling capacity in Australia compared with the scenario where cooperation among the Participants had not been possible.
- (b) To date, approximately [REDACTED] of the stockpiles have been processed in New South Wales and Victoria where processing capacity has come online gradually between late 2023 and April 2024 (noting that Close the Loop in Victoria has temporarily paused operations). Processing of the New South Wales stockpiles is currently expected to be completed first by approximately the end of 2024

/ early 2025 and Victorian stockpiles by mid July 2025. When processing capacity becomes available in South Australia, these volumes are currently expected to undergo initial processing in that state, with the expected end-users to be construction industry participants in Victoria who are already waiting for offtake product. This is currently expected to occur during 2025.

- (c) The Participants note that these timelines are based on current estimates for when additional processing capacity is expected to come online based on the information provided by third party processors. While the Participants are working to have the stockpiled materials processed as quickly as possible, expected completion dates may change (and potentially be extended) in the event that third party processors come online later than expected or encounter supply chain difficulties (as has occurred with Close the Loop).
- (d) In relation to the scope of the Proposed Conduct, the Participants initially sought re-authorisation of the "Instore Collection Recommencement Steps" which essentially articulates the Participants' overarching plan as at April 2023 for developing a stockpile remediation plan and recommencing an in-store soft plastics collections and processing scheme in Australia. The Participants have continued to implement that same overarching plan since authorisation was granted in June 2023 and it was initially determined that retaining the same scope of Authorised Conduct was therefore desirable, including because it enabled the Participants to continue to report progress against the same plan, supporting clear and transparent information to the public about the Participants' activities. However, in light of ACCC feedback about whether the scope could be narrowed, the Participants have no objection to narrowing the Proposed Conduct so that it reflects only the steps remaining to be completed and a revised definition of Proposed Conduct is provided at **Schedule 1** to this letter.
- (e) The Participants also seek a variation to the application for re-authorisation to be granted until 31 July 2026. While the Participants are working towards a broader product stewardship to underpin industry wide collections and stewardship of soft plastics going forward, recent developments suggest that the scheme may not be fully operational until the second half of 2025. The Participants consider that a longer period of authorisation is critical to ensure a seamless transition and particularly so that stockpile remediation activities and the instore collection pilot can continue without disruption until the broader scheme is in place. Whilst the broader scheme may take carriage of certain matters moving forward, this transition will likely take some time and there will be certain activities for which the Participants will continue to be responsible (in particular, managing the legacy stockpiles).

2 Re-establishment of the post-consumer soft plastics recovery industry in Australia

As the ACCC is aware, the circumstances which led to the suspension of the REDcycle program in November 2022 were complex and multi-faceted. However, key contributing factors were a 95% reduction in demand for REDcycle recovered plastics by REDcycle's manufacturing partners combined with an increase in consumer participation in the scheme of nearly 300% since 2019. The reduction in demand for REDcycle recovered plastics by REDcycle's recycling partners was due to a number of events, including:

- in June 2022, a major fire at Close the Loop, REDcycle's largest offtake partner, which resulted in an extended closure of their facility;
- in respect of another Victorian based partner Replas, pandemic-related downturns in market demand for its recycled plastic products as well as other challenges including the delayed commercialisation of new products; and
- changes in federal government regulations which limited the extent to which recovered plastics could be exported for processing overseas. This change led to an oversupply of recycled plastics in Australia, leading to a number of manufacturing partners switching to

higher quality recovered plastics that were available in the marketplace and reduced demand for REDcycle recovered plastics.

The recent South Australian Inquiry into the Recycling of Soft Plastics and Other Recyclable Materials (*the Inquiry*) acknowledged a number of the complexities with addressing soft plastics waste, including with respect to expanding soft plastics recycling such as:¹

- (a) that expanding soft plastics recycling (in this case in South Australia) requires more mechanical and advanced soft plastics recycling facilities and that feedstocks must be guaranteed;
- (b) that businesses need incentives to use collected soft plastics, processors to process the waste efficiently back into raw materials, and manufacturers to purchase the pelletised plastics to make their products;
- (c) that scaling up soft plastics recycling operations requires investment in end markets, and that "without vibrant, viable end markets, the recycling of soft plastic waste will be stymied"; and
- (d) at a National level, there is still work to be undertaken resulting from the collaboration of the Commonwealth, States and Territories' Environment Ministers.

In these circumstances, the steps taken by the Participants and the Soft Plastics Taskforce to support the re-establishment of the soft plastics supply chain in Australia under ACCC authorisation have also been complex and multi-faceted and there remain a number of factors outside the control of the Participants. In seeking to support new soft plastics processing capacity in Australia, the Soft Plastics Taskforce and the Participants have worked through a range of complex considerations including:

- (a) understanding what recycling outcomes can be achieved with soft plastics and the conditions that need to be in place to make these outcomes possible;
- (b) engaging with key processors who are seeking to operate in the soft plastics recovery industry to understand their ambitions, capacity and requirements for success;
- (c) supporting these processors where possible and appropriate to ensure that they receive the relevant council planning and EPA approvals to construct required infrastructure and receive materials for recycling;
- (d) understanding the potential outputs from recycling and the potential end markets for these outputs and providing support where possible for processors to create demand for product in these end markets;
- (e) in relation to restarting an in-store soft plastics collection scheme, ensuring there are processes in place to adequately receive the materials and transport them to approved facilities and that systems are in place at the collection and/or processing facility to deal with contamination;
- (f) for higher order recycling (eg, chemical recycling), ensuring there is appropriate infrastructure, testing systems and customer acceptance of finished product to ensure a valuable commodity can be manufactured;
- (g) ensuring economic models are in place and appropriate to ensure a sustainable outcome for processors. In some cases, this included assisting processors to obtain government assistance for infrastructure and in some cases funding processor infrastructure; and
- (h) ensuring there is sufficient feedstock to provide manufacturers with confidence to start and also ensuring there are sufficient recyclers in place to ensure there is not single supplier reliance.

For individual soft plastics processors to come online, there are a number of steps which are necessary, many of which are subject to third party approvals and long lead times such as:

¹ See <https://www.parliament.sa.gov.au/en/Committees/Recycling>, see Summary at pages 8 – 9.

- (a) locating suitable sites for the building of a plant, which requires development approvals and EPA approvals, and the construction of the necessary buildings and infrastructure;
- (b) acquiring suitable processing equipment, which often requires sourcing from international suppliers, which includes shipping and set up times;
- (c) testing and commissioning of processing equipment, including undertaking trials with samples of the stockpile material to ensure the equipment is fit for purpose;
- (d) obtaining further EPA approvals and licensing to enable the storage of stockpiled material on site and the processing of that material; and
- (e) securing offtake partners to ensure there is an end market for the outputs of processing .

Since the first interim authorisation was granted in November 2022, substantial work has been undertaken by the Participants to re-establish processing capacity to the fullest extent possible. For each of the nine processing partners identified in **Table 1** below, Woolworths (on behalf of Woolworths and Coles) has entered into commercial in confidence arrangements to support them to establish or expand their activities. The Participants note that many current processing partners would have been unable to operate or expand without the joint support of the Participants which was facilitated by ACCC authorisation. This support has included, but is not limited to:

- (a) provision of advice and information to processors;
- (b) contracting with processors to provide them with sufficient feedstock for processing;
- (c) contracting with processors to procure the outputs made from the production processes;
- (d) assisting processors with obtaining regulatory approvals where possible and appropriate;
- (e) direct investment in plant and equipment;
- (f) facilitating introduction to create partnerships to provide end-to-end markets for manufactured products; and
- (g) agreeing to support infrastructure for all types of recycling outcomes beyond just those relevant to the manufacture of food grade packaging.

While the Australian soft plastics recycling industry continues to mature and develop, the Participants consider that the various interim and final authorisations granted by the ACCC since November 2022 have been instrumental in accelerating the development of new capacity in Australia compared with the scenario where cooperation among the Participants had not been possible. This is because ACCC authorisation enabled the Participants to combine their expertise, resources and focus into a single combined project which aimed to accelerate new soft plastics capacity coming online so as to maximise the volume of stockpiled and collected materials which could be processed. At the time REDcycle collapsed in November 2022, REDcycle had three main manufacturing partners, one of which had been closed for an extended period due to a fire. As at September 2024, the Participants have supported and are working with nine processors across South Australia, Victoria and New South Wales. See section 4 for further detail.

3 Variation request for the length of reauthorisation

As outlined in the Application, the Participants initially requested reauthorisation until 31 July 2025 to ensure they can continue to work together to manage and process stockpiled and collected materials, and further develop the instore collection pilot program prior to the development of a broader industry wide program.

Whilst the establishment of the broader industry wide program is underway, recent developments suggest that the scheme may not be fully operational until at least the second half of 2025. The Participants consider that overlapping coverage in authorisation is critical to ensure a seamless transition and particularly so that stockpile remediation activities and the instore collection pilot can continue without disruption. Whilst the broader scheme may take carriage of certain matters moving forward, this transition will likely take some

time and there will be certain activities for which the Participants will continue to be responsible. For example, the Participants will likely continue to be responsible for managing and completing the processing of legacy stockpiles even after the establishment of the broader industry wide program. The Participants therefore require authorisation to continue, to enable them to collaboratively engage with processors and efficiently manage any changes in circumstance (for example to manage operational issues faced by processors).

For the reasons set out above, the Participants consider that a longer reauthorisation term is necessary. The Participants therefore seek a variation to the term of reauthorisation for a further 12 months until 31 July 2026.

4 Response to ACCC RFI

Stockpile Information

4.1 With regard to the stockpile please provide the following:

a. the starting volumes of stockpiled soft plastics in each State which were present when the Participants took control of the stockpiles in those States

b. the current volumes remaining in each State

c. the current recycling processors and the processing capacity by volume per calendar month in each State

Table 1 below provides an overview of:

- the original volume of stockpiled material, current stockpiled materials in each state and the volume of materials that have processed to date in line with available capacity;
- the processors and processing capacity available or expected to come online in each state; and
- the practical support the Participants have provided to these Suppliers under ACCC authorisation to assist them to expand or operate their facility and therefore accelerate the available processing capacity in Australia.

As noted above, the overarching determinant of how quickly stockpiled volumes can be processed is when additional processing capacity comes online in each state. While the Participants are working to have the stockpiled materials processed as quickly as possible, expected completion dates may change (and potentially be extended) in the event that third party processors come online later than expected or encounter supply chain difficulties (as has been the case for Close the Loop).

Table 1: overview of stockpiles and processing capacity by state

Processor	State	Status	Estimated processing capacity
Victoria <i>Status: The starting volumes of stockpiled material in Victoria were █████ tonnes, which included █ tonnes from Tasmania. Current stockpiles are approx. 2,360 tonnes as at September 2024 and the estimated completion date for processing is July 2025. █████ of █████ tonnes have been processed to date, predominately by CDRC as Close the Loop is currently not in operation.</i>			
Centre for Regenerative Design and Collaboration (CRDC)	Victoria	████████████████████ ████████████████████ ████████████████████ ████████████████████	2,500 tonnes per annum, though this capacity is not exclusively available to the Participants and has come online over time as CRDC's equipment has been tested and commissioned. In

		<p>CDRC commenced processing stockpiles in April 2024.</p> <p>[REDACTED]</p>	<p>addition, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Close the Loop	Victoria	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Close The Loop initially re-opened their facility in late January 2024 and commenced processing stockpiles soon after.</p> <p>Processing paused in early 2024,</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Currently not in operation but expected to be 2,500 tonnes per annum once processing recommences</p>
<p>New South Wales</p> <p><i>Status: The starting volumes of stockpiled materials in New South Wales were approx. [REDACTED] tonnes. Current stockpiles are approx. 3,120 tonnes as at September 2024 and the expected completion date is end of December 2024 / early 2025. [REDACTED] of approx. [REDACTED] tonnes have been processed by Saveboard and IQ Renew to date.</i></p>			
IQ Renew	New South Wales	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>IQ Renew opened their facility in November 2023 and have been processing materials since March 2024 as part of their new site commissioning.</p>	<p>Eventually 10,000 tonnes per annum once regulatory approvals are received for the capacity expansion at their manufacturing facility.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Saveboard	New South Wales	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Saveboard opened in February 2023 and commenced processing stockpiles in late 2023.</p>	<p>Approximately 500 tonnes per annum of post-consumer soft plastics</p>

<p>[REDACTED]</p>	<p>New South Wales</p>	<p>[REDACTED]</p>	<p>Not yet operational. The Participants estimate that, once online, 1,500 tonnes per annum of processing capacity will be available for post-consumer soft plastics</p>
<p>South Australia</p> <p><i>Status: Current stockpiles are approx. 3,953 tonnes as at September 2024. As there are no processing facilities yet online in South Australia, processing has not yet commenced. Once processing commences, it is expected to be completed by approx. mid July 2025 although this could be accelerated if sufficient South Australian processing comes online in the short term so that the volumes can be processed in situ rather than in Victoria.</i></p>			
<p>[REDACTED]</p>	<p>South Australia</p>	<p>[REDACTED]</p>	<p>Not yet operational. The Participants estimate that, once online, 2,500 tonnes per annum of processing capacity will be available for post-consumer soft plastics</p>
<p>Recycling Plastics Australia</p>	<p>South Australia</p>	<p>[REDACTED]</p> <p>Trial work was completed throughout 2023. RPA has recently received a government grant to fund the purchase of processing materials.</p> <p>RPA [REDACTED] anticipates commencing processing in June or July 2025.</p>	<p>Not yet operational. We estimate that, once online, 5,000 tonnes per annum of processing capacity will be available for post-consumer soft plastics</p>
<p>Sustainable Infrastructure Systems</p>	<p>South Australia</p>	<p>[REDACTED]</p> <p>Facility launched in early 2024.</p> <p>[REDACTED]</p>	<p>Not yet operational. We estimate that, once online, 1,000 tonnes per annum of processing capacity will be available for post-consumer soft plastics</p>

Western Australia

Status: Current stockpiles are approx. 170 tonnes as at September 2024. As there are no processing facilities yet online in Western Australia, processing has not yet commenced. Once processing commences, processing is expected to be completed in 2025.

4.2 To the extent not captured above, we note that the progress report dated 22 July 2024 specifies that processing of the stockpile in South Australia has not yet commenced. Please advise when processing is expected to commence in South Australia, expected processing capacity available and expected completion date.

Please see Table 1 above.

4.3 Noting that the Participants state that processing of the Western Australian stockpile is dependent upon progress in Victoria and South Australia, please detail the steps that the Participants intend to take to ensure that the Western Australian stockpile will be processed by 31 July 2025, if authorisation is granted until then.

The Participants will work with local processors as they come online in Western Australia. However, it is currently expected that these volumes will be processed in Victoria or South Australia. The Western Australian volumes will be processed as soon as capacity becomes available.

Scope of the Proposed Conduct

4.4. The Proposed Conduct including the Recommencement Steps, as defined at paragraph 5.2 of the application for authorisation, is substantially the same as the conduct authorised by the ACCC in authorisation AA1000627 on 30 June 2023. The Participants sought authorisation at that time to manage the immediate effects of the collapse of REDcycle's instore soft plastics collection program. Given over 12 months has passed since authorisation AA1000627 was granted and the Participants have stated that authorisation has been sought until 31 July 2025 to allow additional time for the stockpile to be processed and continuation of the instore collection pilot program until the anticipated broader stewardship scheme comes into effect, please consider whether the Proposed Conduct and Instore Recommencement Steps can be narrowed to more accurately reflect the current circumstances and conduct for the period sought.

Please see Schedule 1 to this letter.

The Participants consider that the majority of the Instore Collection Recommencement Steps set out in the authorisation application dated 24 June 2024 remain necessary to implement the Participants' stockpile remediation plan and relaunch an in-store soft plastics collection and processing program in Australia. For example:

- the ongoing uncertainties associated with the availability of processing capacity may necessitate further engagement with additional processors and other third-party recycling and logistics providers; and
- the Participants need to continue exploring cost sharing options for the pilot program (particularly if the program is expanded) given the program will continue to be managed by the Participants prior to the development of the broader product stewardship scheme. They may also need to engage in discussions regarding costs in relation to the stockpile remediation plan in response to changes in available capacity or other changes in circumstances.

However, in light of the ACCC's feedback, the Participants have proposed some amendments to narrow the scope of the Proposed Conduct, including to reflect progress made to date. In particular, the Participants have:

- already developed a stockpile remediation plan and processing is being progressed in NSW, VIC, SA and WA (although as noted above, some further development of the plan may be required in response to changes in available capacity or other changed circumstances);
- completed their initial assessment of local and offshore processing capacity (although further identification of and engagement with new processors may be required over the term of the authorisation); and
- already launched a pilot soft plastics collections program in Victoria and NSW and will be focused on exploring an expansion of that program, subject to processing capacity becoming available.

The Proposed Conduct must occur at, in preparation for, or arise out of meetings of the Soft Plastics Taskforce attended by representatives of the Department of Climate Change, Energy, the Environment and Water which provides supervision and oversight of the activities of the Participants.

4.5. If the Participants consider that each element of the Proposed Conduct including the Instore Collection Recommencement Steps is necessary to facilitate the continuation of the stockpile processing and the instore collection pilot, please provide the rationale behind each of the Instore Collection Recommencement Steps as it relates to the current circumstances.

Please see response to item 4.4 above.

NSW EPA

4.6. Please provide a copy of the Removal Plan provided to the New South Wales EPA on 26 April 2024, as referred to in Variation of Notice of Clean-up Action number 3508936 dated 10 May 2024 or any subsequent version of that document if it has been superseded.

A copy of the Removal Plan provided to the New South Wales EPA on 26 April 2024 is provided at **Attachment 1**.

4.7. We note that the Variation of Notice of Clean-up action number 3508936 issued by the New South Wales EPA on 10 May 2024 requires monthly updates on Coles' and Woolworths compliance with the Removal Plan to be provided on the first Monday of each month commencing 10 June 2024. Please provide a copy of the updates provided to the New South Wales EPA in this regard.

Copies of the monthly updates provided to the New South Wales EPA are provided at **Attachments 2 – 5**.

Please do not hesitate to contact us to discuss.

Yours sincerely



Rosannah Healy
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Allens



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Schedule 1 – Proposed Amendments to the definition of Proposed Conduct

The Participants seek authorisation for the Participants and any Program Partners to discuss, share information, enter into and/or give effect to contracts, arrangements or understandings regarding their stockpile remediation plan and/or in-store collection pilot program and which is consistent with the Soft Plastics Taskforce Plan set out below. The Conduct must occur at, in preparation for, or arise out of, a meeting of the Soft Plastics Taskforce. ~~propose, discuss, enter into, or give effect to any contract, arrangement or understanding between 2 or more of them, or engage in any conduct that:~~

a) both:

- (i) ~~occurs at, in preparation for, or arises out of, a meeting of the Soft Plastics Taskforce; and~~
- (ii) ~~has the purpose of considering, developing or implementing solutions that are consistent with the Instore Collection Recommencement Steps as set out below; or~~

b) ~~constitutes planning or agreeing on communications to customers or to the public in respect of the Instore Collection Recommencement Steps as set out below, including providing recycling directions for soft plastics packaging in respect of any new instore soft plastics collections program;~~

(collectively, the **Conduct**).

Table 1: ~~Instore Collection Recommencement Steps~~ Soft Plastics Taskforce Plan

#	Instore Collection Recommencement Steps Soft Plastics Taskforce Plan
1	Engagement (including site visits) with third-party recycling and logistics providers (including domestic or overseas providers).
2	Ongoing development of a and implementation of a stockpile remediation action plan including processing of stockpiled materials in NSW, VIC, SA and WA and which will include where required undertaking safety risk assessments and identifying safe storage, processing and transport options for stockpiled materials. The stockpile remediation action plan may also include disposal options for certain stockpiled materials but only where landfill cannot reasonably be avoided.
3	Implementation of stockpile remediation action plan developed under point 2 above.
4	Completion of domestic and offshore processing capacity assessment and preparation of a preferred solution shortlist including capacities by geography and expected timeframes.
5 3	Further identification, N egotiation, development and establishment of contract terms with third-party recycling and logistics providers, including establishment of service level agreements and formalised audit process.
6 4	Finalising Ongoing development of collection logistics and end to end management approach in readiness for connection with pilot. Subject to available processing capacity, exploring and implementing the possible expansion of the pilot program for the

	<p>recommencement of Ongoing development of launch strategy for instore soft plastics collections and processing program based on geographic/volume metrics.</p>
7 5	<p>Exploration and development of business models to support cost sharing, including with brands and other retailers for the purposes of implementing or expanding the in-store collection pilot program a new in-store soft plastics collections program.</p>
8	<p>Development and launch of pilot for recommencement of soft plastic collection and processing in specific geographic areas to serve as test for ongoing viability of program.</p>
9	<p>Development and launch of expanded program from original pilot area to additional geographical area/s (subject to sufficient progress in managing stockpiles and available processing capacity).</p>
10 6	<p>Development of membership Terms and Conditions and membership fees for the Participants and Program Partners in respect of the pilot program and/or implementation of the stockpile remediation plan.</p>
7	<p>Developing communications to customers or to the public in respect of the Soft Plastics Taskforce Plan, including providing recycling directions for soft plastics packaging in respect of any new instore soft plastics collections program.</p>