

21 December 2023

Lyn Camilleri
General Manager – Competition and Exemptions
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Application for Authorisation - Joint Procurement of Waste Collection Services

Dear Ms Camilleri

Shellharbour City Council and Wollongong City Council (the Councils) are seeking the Australian Competition and Consumer Commission's (ACCC) authorisation to conduct a joint procurement process for waste collection services. The term of Authorisation being sought by the Councils is a 17-year period.

The Councils have given their consent to apply for authorisation, and make this application on the basis that the public benefit of this proposed conduct will far outweigh anticompetitive detriment that might be associated with joint tendering.

Included with this letter are the following documents that comprise the Councils' application:

- Letter from Wollongong City Council;
- ACCC fee waiver letter – 13 November 2023; and
- Application for Authorisation.

Interim Authorisation

In order to provide sufficient time for the successful Tenderer to prepare for the start of the new services by July 2026, including the purchase of collection vehicles that currently have an approximately 18-month lead-time, the Councils intend to invite Tenders before March 2024.

The Councils request an Interim Authorisation to:

- Allow the Councils to prepare tender documentation and invite Tenders from interested parties;
- Evaluate Tender submissions;
- Prepare Tender recommendations to the Councils' executives;
- For the Council's executives to endorse the recommendations of the Tender Evaluation Panel; and
- Seek to enter into contractual arrangements, pending the final determination of the ACCC.

The request for Interim Authorisation is made on the basis that:

- No contracts will be entered into until the final ACCC determination is made; and
- Such an Interim Authorisation will not prevent the market being able to return to substantially its pre-interim authorisation state, as no binding agreements will be entered into by the councils to parties submitting tenders.

Lodgement Fee

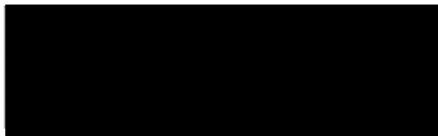
In regards to the lodgement fee for this application, the Councils reference the correspondence issued by the ACCC on 13 November 2023, advising that the fee has been reduced to \$2,500 for an application lodged prior to 13 February 2024.

Declaration

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

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Wayde Peterson
Executive Director Business Enterprises
This 21st day of December 2023

Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Our Ref:
Date:

24772757
20 December 2023

Dear Sir/Madam

APPLICATION FOR AUTHORISATION OF A JOINT PROCUREMENT

Wollongong City Council (WCC) and Shellharbour City Council (SCC) are seeking the Australian Competition and Consumer Commission's (ACCC) authorisation to conduct a joint tender process relating to Domestic Waste Collection Services.

Both WCC and SCC have given their consent to apply for authorisation and make this application on the basis that the public benefit of this proposed conduct will far outweigh anticompetitive detriment that might be associated with joint tendering.

As an authorised delegate of Wollongong City Council, I endorse the attached Application for Authorisation of a Joint Procurement.

The councils are seeking Interim Authorisation, given the requirement for interested parties to be afforded sufficient time to prepare their tender submissions, and for the successful tenderer(s) to have sufficient lead time to prepare for the commencement of operations associated with the contracts.

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

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).


This letter is authorised by



Paul Tracey

Director of Infrastructure & Works, Connectivity Assets & Liveable City (Acting)

Wollongong City Council

Telephone 

**Application for Authorisation for Proposed
Conduct - Australian Competition and
Consumer Commission**

Joint Waste Collection Services Procurement

**Shellharbour City Council and
Wollongong City Council**

December 2023

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Introduction

Shellharbour City Council and Wollongong City Council (the Councils) are requesting an authorisation to undertake joint procurement for waste collection services for their respective communities.

The tender is planned to be advertised in early 2024, however the final awarding of the contract will not occur until the end of 2024. It is unlikely that this application will alter the waste industry in a significant manner. As demonstrated in **Table 1** below, the Councils population is 3.51% of the NSW population, generating 2.29% of general waste, 2.71% of recycling and 5.76% food organics and garden organics (FOGO) streams. While the service is significant to both Local Government Areas, the collections are a small part of the total amount of collections across NSW.

As part of this application, the Councils would like to request an interim authorisation due to the extensive time period required from tendering to start of the contract. The nature of the tender requires a long lead-time for the successful tenderer to arrange the sourcing and fit-out of specialised waste collection vehicles. The current lead-time estimate for these vehicles is 18 months. The Councils current waste collection services contracts will expire on 30 June 2026. This timeline offers little space in the current program for delay.

If the interim authorisation request is denied there is the possibility that the procurement process; including delivery of vehicles would not be completed prior to the current contract end date, which would compromise the ability of the Councils to supply essential domestic waste services for the residents of both Shellharbour and Wollongong Local Government Areas.

It is requested that the ACCC redact any financial, personal or confidential business information shared as part of this application before it is shared with the public.

1. Parties to the proposed conduct

1.1 Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding

Shellharbour City Council
76 Cygnet Avenue
Shellharbour City Centre NSW 2529
Council@shellharbour.nsw.gov.au
02 4221 6111
ABN: 78 392 627 134

Wollongong City Council
Locked Bag 8821
Wollongong NSW 2500
Council@wollongong.nsw.gov.au
02 4227 7111
ABN: 63 139 525 939

1.2 Description of Business Activities

The Councils are both local government authorities as defined by the *Local Government Act 1993*, which states that “waste removal & disposal” is a service function of councils under the broad responsibility of maintaining the environment.

Wollongong City is situated in the Illawarra Region of New South Wales, approximately 80 kilometres south of the Sydney CBD. The Wollongong Local Government Area (LGA) is bounded by the Pacific Ocean to the east, Sutherland Shire Council and the Royal National Park to the north, Wollondilly and Wingecaribee Shire Councils to the west, and Lake Illawarra and Shellharbour City Council to the south.

Wollongong City is the third largest city in NSW, and includes the suburbs and rural localities of Austinmer, Berkeley, Bulli, Coledale, Dapto, Fernhill, Mount Keira, North Wollongong and Stanwell Park. The narrow tract of inhabited areas of the Wollongong LGA extends from the suburb of Helensburgh in the north to Windang in the south.

Shellharbour City is situated approximately 100km south of Sydney in the Illawarra region of New South Wales. The Shellharbour LGA is bound by Wollongong City to the north (through the Lake Illawarra entrance and Macquarie Rivulet) and the Municipality of Kiama to the south. Shellharbour City is framed between the waters of the Tasman Sea and the Illawarra Escarpment, with Lake Illawarra to the north and the Minnamurra River to the south.

The Shellharbour LGA includes the suburbs and rural localities of Albion Park, Barrack Heights, Barrack Point, Blackbutt, Calderwood, Dunmore, Flinders, Lake Illawarra, Macquarie Pass, Mount Warrigal, North Macquarie, Oak Flats, Shellharbour, Shell Cove, Shellharbour City Centre, Tullimbar, Warilla and Yellow Rock.

Table 1 below summarises key demographic information for both LGAs (ABS, 2021 Census), and includes figures on kerbside waste bin collections for the 2021/22 financial year, based on Waste and Resource Recovery survey returns submitted to the NSW Government. NSW waste data has been collected from NSW Local Government Waste and

Resource Recovery Data Report 2021–22. NSW population is sourced from .idcommunity (<https://profile.id.com.au/australia/population-estimate?WebID=100>)

Table 1: Demographics and Waste Generation

Area	Population	No. of Households	Garbage (tonnes)	Recyclables (tonnes)	FOGO (tonnes)
Wollongong	214 564	89 329	39 512	16 423	38 707
Shellharbour	76 271	29 862	14 072	5 803	15 395
Combined	290 835	119 191	53 584	22 226	54 102
NSW (2021-22)	8 297 000	3 364 777	2 340 000	820 000	940 000
Combined/NSW %	3.51%	3.54%	2.29%	2.71%	5.76%

2. The proposed conduct

2.1 Describe the proposed conduct and any documents that detail the terms of the proposed conduct

It is intended that the Councils will jointly tender and contract for the provision of waste collection services covering their respective LGAs. In carrying out this conduct the Councils will jointly prepare and advertise a Request for Tender to invite for submissions from industry qualified organisations.

The Councils have previously successfully tendered for similar services in 2013 under ACCC authorisation A91361. The previous authorisation is included as **Attachment A**. Due to the success arising from that joint tender process and the benefits experienced by their respective communities over a twelve-year period, the Councils entered into a Joint Procurement Agreement (**Attachment B**) in 2022 to once again collectively and collaboratively engage in the procurement of waste collection services.

Both Councils have voluntarily entered into the joint procurement process. The Joint Procurement Agreement offers either Council the option to exit the tendering process if the outcome of the process does not benefit the community or council.

The Councils will benefit from shared resources throughout the tendering process, including sharing advice from consultants, legal and probity experts, in addition to this application. Notwithstanding, the Councils have a strong preference for a single Tenderer to be appointed to service the Councils in the interest of achieving economies of scale and benefit from synergies that deliver value.

The Councils will jointly advertise a Request for Tender; however, each participating Council will enter into an individual contract with the preferred tenderer following the provision of an independent report to their respective Council. The evaluation of all responses to the Request for Tender will be undertaken by a Tender Evaluation Panel, established with key representatives and leaders from both Councils.

An evaluation report with recommendations will be prepared by the Tender Evaluation Panel, then reviewed and endorsed by the joint procurement steering committee, and referred to their respective Councils for consideration, prior to any appointment and execution of individual contracts.

The Councils are not bound by the recommendations provided by the Tender Evaluation Panel and may choose to request for additional information from the Tenderers, reject all Tenders or accept a Tender. The Request for Tender will require the Tenderer to submit the prices for both participating Councils.

These services in the tender include:

- Garbage Collection Services (residential and commercial properties);
- Recyclables Collection Services (residential and commercial properties);
- Food Organics and Garden Organics (FOGO) Collection Services (residential and commercial properties);
- Bulky Waste Collection Services;
- Public Place Waste and Litter Bins Services (Shellharbour City Council only)
- Mobile Bin Wheel-out Wheel-back Collection Services;
- Supply, Repair and Removal of Mobile Bins;
- Waste Education and Customer Service.

The commercial servicing is a small part of the contract. Under the current contract 604 commercial properties are serviced in the Shellharbour LGA, which has a total 4149 business. 570 commercial properties are serviced in the Wollongong LGA which has a total of 15,162 business. The objective of including a commercial service within the contract is to offer small businesses in each LGA access to affordable, quality and easily accessible waste services.

2.2 Describe relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct Competition Provisions

The Act contains provisions that promote competition in the market and prohibit anti-competitive conduct. For example, section 45 of the Act prohibits contracts, arrangements or understandings between competitors that have the purpose, effect or likely effect of substantially lessening competition in a market.

Section 46 of the Act prohibits a corporation with a substantial degree of market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. This provision may apply if the joint waste collection tender involves companies with a significant degree of market power in the waste collection market.

This application is seeking authorisation under the act:

- cartel conduct (Division 1 of Part IV);
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45).

The Councils consider that there will be a net public benefit and/or no substantial lessening of competition as a result of the proposed conduct.

2.3 The rationale for the proposed conduct

The Councils have entered into a Joint Procurement Agreement (**Attachment B**) by which they will collaborate and agree on the content of the Request for Tender (including the specifications of services and the terms and conditions of contract) and then on consideration of the tenders submitted, leading to selection of the preferred tenderer. The Councils will share the costs of preparing and running the tenders.

Shellharbour City Council will act as procurement lead on behalf of the Councils. When the Councils last jointly tendered the lead Council was Wollongong City Council. It is anticipated that a common supplier will be chosen by the Councils after submissions have been considered. The intended outcome of the tender is that individual contracts will be entered into by each council with a common supplier for waste collection services.

The proposed conduct will provide public benefits from the Councils jointly tendering and procuring waste collection services that may include, but are not limited to:

- optimising fleet productivity;
- transaction cost savings;
- improved efficiencies;
- improved messaging (joint education) across council boundaries;
- increased competition and service quality;
- increased value to the ratepayer;

- improved contingency planning and disaster management options,
- improved contract management and performance outcomes;
- improved social outcomes, and
- improved environmental outcomes.

Notwithstanding, each Council will manage its own operations and services under the terms agreed in the eventual contract.

The Department of Planning, Industry and Environment in its NSW Waste and Sustainable Materials Strategy 2041 (page 24), supports the joint procurement of waste services by local councils by stating the following:

"Facilitating joint procurement of household waste services"

To complement our new strategic planning role for waste and resource recovery infrastructure, we will begin consultation on the design of a new service to facilitate local government joint procurement of waste services such as the collection and processing of waste from household bins.

We want to make it easier for local councils to come together to procure waste services that deliver good value for ratepayers and help to achieve better waste and recycling outcomes. Some councils already choose to procure jointly, but the process can often be cumbersome, costly and time consuming. Councils that tender for waste services individually are often at a disadvantage because of their relatively small purchasing power.

By consolidating local government waste volumes and approaching the market with scale, we can attract investment in new infrastructure and services. This can help remove barriers to entry for new investors, increase competition in the waste services sector and put downward pressure on costs for councils and households.

This approach will allow state and local governments to work collaboratively on steering strategic planning for waste infrastructure and services to meet state and local needs. It can also promote innovation in waste service delivery by providing opportunities to trial and scale up new ideas and provide a forum to test standardisation of services where appropriate. The NSW Government will fund the new joint procurement facilitation service. It will be voluntary for councils to participate and the service will provide access to expert commercial, legal and policy advice.

In its initial phase, the service will target major waste contracts for the Greater Sydney region to align them with critical infrastructure needs. In subsequent phases, the service will be broadened to regional councils.

We will work in partnership with local government to design a facilitation service that meets the needs of councils and helps deliver better waste services and infrastructure for communities. Consultation on the service design will look at options for governance, the role of the service in the tender process, streamlining regulation and tender approvals processes, optimisation of service areas and alignment with infrastructure planning and investment attraction."

The Councils have already realised savings and efficiencies through sharing of consultant resources, which includes research, document preparation, probity review, and legal review.

2.4 Term of authorisation sought and reasons for seeking this period. If a different period is being sought, please specify and explain why

A 17-year period of authorisation is requested from the ACCC. The intention is that the waste collections services contract will be offered for a period of 14 years. The term is in line with common industry practice, to allow contractors sufficient time to depreciate equipment such as collection vehicles.

The term of the authorisation has been sought for the following reasons:

- 1) The domestic waste collection contract is a highly technical and a high value contract for both Councils. The technical nature of the contract derives from the amount of collection required. Each week bins are collected from all 119,191 domestic households in the Shellharbour and Wollongong LGAs. As there are multiple streams of waste from each household – comprised of garbage, recycling and FOGO - this would mean the current contractor conducts over half a million collections per fortnight. Outside of collections the contract will offer the community bin repairs, bulky good collections and education. This level of service requires a large amount of logistical planning, operations management and an intricate knowledge of both LGAs and their requirements. A long-term contract will allow the selected operator to offer stable, reliable and economically reliable services to the community.
- 2) The 14-year contract term has been set to encourage the use of low emission vehicles when they become commercially economical and available, which is expected to occur within the next five-to-ten years. The use of these vehicles will enable the Councils to contribute towards achieving objectives defined within adopted strategies; the Zero Emissions Shellharbour Strategy 2022-2050 and the Net Zero Wollongong Climate Change Mitigation Plan 2023-30. Currently the capital and operational costs and infrastructure requirements for an alternative fuel vehicle (battery electric/hydrogen fuel cell) mean that these vehicles will be prohibitively expensive at the time of tendering. However, the Councils recognise that within the term of the proposed contract that low emission technology could be viable in the waste industry. The 14-year term will allow the adequate return on investment for an initial diesel-power vehicle fleet, but offer options to transition to low emission vehicles within the contract term when they are economically viable.
- 3) The authorisation period has been requested to provide three years in addition to the 14-year contract term to allow for the tender and assessment period prior to the contract commencing, as well as allowing for some time at the end of the contract to conclude business.

2.5 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or deciding in relation to the proposed conduct and any minutes or record of the decision made

Please find attached:

- Previous ACCC authorisation A91361 (**Attachment A**)
- Executed Joint Procurement Agreement (**Attachment B**)
- Shellharbour City Council report regarding the proposed joint procurement with Wollongong City Council, 29 June 2021 (**Attachment C**)
- Shellharbour City Council ordinary council meeting minutes, 29 June 2021 (**Attachment D**)

- Wollongong City Council ordinary council meeting minutes, 7 November 2022
(Attachment E)

2.6 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g., targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted

Provision of waste collection is one of the core services Australian councils provide their communities. While some councils use in house day-labour there is an increasing trend toward contracting specialist private service providers, and a variety of potential service providers are active in the market. Both of the Councils currently contract their kerbside collection services.

Participants can benefit from economies of scale, lower costs, and increased service areas. They may secure better pricing, terms, and quality due to the larger volume of purchases. Participants might need to compromise on specific requirements or preferences to align with the collective procurement strategy. There could be increased administrative complexities in coordinating with other entities.

There are a variety of potential private sector service providers active in the market, including those listed below:

- Cleanaway Waste Management Limited
- Veolia Environmental Services Pty Ltd (Incl SUEZ)
- Remondis Australia Pty Ltd
- Bingo Industries
- JJ Richards & Sons Pty Ltd

3. Market information and concentration

3.1 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g., supplier-customer)

In terms of waste collection, both Wollongong City Council and Shellharbour City Council provide waste collection services to residents within their respective areas. This can include kerbside collection of household waste and recycling, as well as waste disposal services for commercial and industrial clients.

In terms of competition, Wollongong City Council and Shellharbour City Council do not overlap or compete in their waste collection services, as they serve different geographic areas. They may, however, have a vertical relationship with waste disposal facilities, with the councils serving as the suppliers and the disposal facilities serving as the customers.

3.2 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process

Waste collection in NSW is primarily the responsibility of local councils, who provide a range of waste management services, including kerbside collection of household waste, recycling and disposal of household hazardous waste, and the operation of waste transfer stations and landfill sites. Councils work closely with waste management companies and other stakeholders to ensure that waste is collected, processed, and disposed of in an efficient and environmentally responsible manner.

Waste collection in NSW is governed by several regulations and laws, such as the *Protection of the Environment Operations Act 1997*, the *Waste Avoidance and Resource Recovery Act 2001*, and the National Waste Policy. These regulations aim to minimise the amount of waste generated and ensure that waste is handled and disposed of as required.

In addition to council-run waste collection services, there are also private waste collection companies operating in NSW, which provide a range of services to businesses and other organisations, including the collection and disposal of commercial and industrial waste. These companies work closely with council waste management services to ensure that waste is collected, processed, and disposed of in accordance with all relevant regulations and standards.

Overall, the supply chains and the manufacturing process for waste collection in NSW are designed to minimise the environmental impact of waste and to ensure that waste is managed in an efficient, effective, and sustainable manner.

3.3 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

In terms of market share, estimates are readily available for the larger players in the industry, such as Veolia and Cleanaway. These companies are some of the largest waste management companies in Australia, providing a range of services including waste collection, processing, and disposal, as well as recycling and environmental consulting services.

According to a 2022 report by IBISWorld, the largest waste management company in Australia by revenue is Cleanaway, which has an estimated market share of around 20%. Veolia is the second largest waste management company in Australia, with an estimated market share of around 15%. Other large players in the industry include JJ Richards and Remondis, both of which have an estimated market share of around 5%.

It should be noted, however, that market share estimates can vary depending on the specific segment of the industry being considered. For example, some companies may have a higher market share in waste collection, while others may have a higher market share in waste processing or disposal. Additionally, market share estimates may not be readily available for smaller operators or niche service providers, which can also play a significant role in the market.

Overall, the waste management industry in Australia is highly competitive, with a range of companies operating in the market. While estimates of market share are available for the larger players in the industry, the market is also characterised by numerous smaller operators providing niche services or operating in specific geographic regions.

3.4 Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.

- Existing competitors: In the waste collection industry in NSW, there are already established competitors who provide similar services to customers. These competitors can limit the ability of the parties to raise prices or reduce quality or innovation without facing increased competition. If the parties involved in the application for authorisation attempt to engage in anti-competitive conduct, they may face a loss of market share to their competitors who provide similar services.
- Likely entry by new competitors: The waste collection industry in NSW is subject to regulations, such as licensing requirements, which may create barriers to entry for new competitors. However, if new competitors are likely to enter the market in response to any anti-competitive conduct, the parties involved in the application may face increased competition, limiting their ability to engage in anti-competitive conduct.
- Countervailing power of customers and/or suppliers: Customers in the waste collection industry in NSW may have some countervailing power if they have the ability to switch to alternative service providers. Suppliers, such as landfill operators, may also have countervailing power if they have the ability to switch to alternative waste collection providers. This countervailing power may limit the parties' ability to raise prices, reduce quality or choice, or reduce innovation.
- Other relevant factors: The waste collection industry in NSW is subject to competition laws and regulations that aim to promote competition and prevent anti-competitive conduct. Additionally, technological advancements, such as the use of automation in waste collection, may create new opportunities for competition and limit the ability of established players to engage in anti-competitive conduct.

4. Public benefit

4.1 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The Local Government Tendering Regulation Review Discussion Paper (<https://www.olg.nsw.gov.au/wp-content/uploads/2021/09/Discussion-Paper-Tendering-Provisions.pdf>) released in 2021 discusses value for money as:

"Tendering is not just about securing the lowest price. Value for money considers a range of financial and non-financial factors such as quality, cost, capability, capacity and risk. A 2015 report by Deloitte Access Economics (Deloitte Access Economics for Consult Australia Economic benefits of better procurement practices) describes determining the optimal value for money as a balancing act, trading off factors in order to select the supplier that best meets the identified requirements.

"Fair and open competition relies on probity and integrity. It builds trust between councils and suppliers and the community. The NSW Government Procurement Policy Framework describes how transparent, competitive processes drive fair and ethical behaviour, safeguard probity and foster healthy working relationships. In addition, competition can drive cost savings, increase quality and innovation and support market sustainability.

"Ensuring the integrity of procurement through probity, accountability and transparency is also critical to minimising the potential for misuse of public funds.

"The Deloitte report estimated that the total price impact of poor procurement practices is around 5.4% of the total income received by professional services firms in public infrastructure projects."

The Councils have detailed the public benefits in Section 2.3 (proposed conduct) that may include, but are not limited to:

- optimising fleet productivity;
- transaction cost savings;
- improved efficiencies;
- improved messaging (Joint waste education) and customer service; across council boundaries;
- increased competition and service quality;
- increased value to the ratepayer/customer;
- improved contingency planning and disaster management options;
- improved contract management and performance outcomes;
- improved social outcomes, and
- improved environmental outcomes.

ACCC authorisation to progress a joint tendering approach for waste collection services contracts will present the Councils with the ability to explore potentially significant economic, social and environmental benefits for their local communities. Some examples of these benefits include:

- Improved Efficiency: By pooling resources and coordinating efforts, a joint tender for waste collection can lead to more efficient use of resources, such as vehicles and personnel, and reduce the amount of waste that is generated and disposed of. In

practice, the efficiency gained from this process is based in the operations of the contractor. While the number of drivers, trucks and equipment is likely to be similar when procuring contracts separately there are efficiency in combining the operation. These efficiencies include; size of fleet required, maintenance staff, land taken as a depot, and the number of staff in management positions.

- **Economic public benefits:** lower cost to the Councils (and therefore the community) through productive efficiency due to economies of scale, and allocative efficiency that helps avoid duplication of capital expense, land use, infrastructure and administrative resources, such as operation of a joint vehicle depot and a joint customer service centre. In addition, the Councils stand to benefit from a shared procurement process, again by avoiding duplication of cost. The last joint procurement of a waste collection services saved the Councils \$120,000 over the life of the contract.
- **Reduced Environmental Impact:** Joint tenders can help to reduce the environmental impact of waste by reducing the number of waste collection vehicles on the road, reducing emissions and fuel consumption, and minimising the amount of waste that is disposed of in landfills. Remondis launched Australia's first zero-emission, hydrogen-powered waste collection vehicle. This vehicle is being utilised for bin collection across Shellharbour and Wollongong. The size of the current contract has allowed the contractor the market position and purchasing power to invest in this trial vehicle. While one truck is a small step towards reducing emissions from waste vehicles, it allows real world trials, helps develop infrastructure and procedures to increase low emission vehicles across the entire waste industry.
- **Improved Cost Savings:** A joint tender for waste collection can also result in cost savings for participating entities and residents, as economies of scale can be achieved through shared resources and coordinated efforts. Council will share the legal, procurement and technical advice costs of the tendering process. The current estimated cost of the tendering process is \$122 000. This will be equally divided between both Councils; it is likely that the costs would be similar if the Council's undertook this process individually.
- **Enhanced Community Outreach:** Joint tenders can also help to improve community outreach and education about waste management and sustainability, as multiple entities can work together to develop and implement educational programs and initiatives. While Council sometimes needs to tailor education and marketing for their community's needs, both Councils work together under the "Harbour Cities" banner. Utilising this collaboration Council can deliver education messages when appropriate. In the past these messages have included face-to-face engagement at community events such a "Luv the Lake" as well as sharing messaging and costs when advertising changes to collections over holiday periods. Recently both Councils are committed to continuing this collaboration and meet regularly to explore opportunities to work together.

This application is presented on the basis that the public benefit of this proposed conduct will far outweigh anti-competitive detriment that might be associated with joint tendering.

5. Public detriment

5.1 Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

The Councils acknowledge that a public detriment may arise from any joint procurement that involves a portion of the market. Notwithstanding, this joint procurement involves only two of 128 local councils in NSW which would not significantly reduce opportunities for waste providers. The Councils consider that the public benefits significantly outweigh the possible detriments and competition is increased during the tendering process.

Shellharbour City Council and Wollongong City Council are both members of the Illawarra Shoalhaven Joint Organisation. Joint organisations provide a way for local councils and the NSW Government to work together to deliver things that matter the most to regional communities. ISJO represents a commitment to collaborate in the long term to develop and support a shared vision for the region. As part of the tendering process both Councils invited all members of ISJO to join this tender. Due to existing commercial arrangements and operational commitments the other Councils in the ISJO declined the invitation.

Considering the close geographical location and similarities between Wollongong and Shellharbour LGA as well as a successful and long running collaborative relationship between both entities the outcomes of this tender will offer more benefit than detriment to both communities.

There is a fair opportunity for all waste service providers to respond to the Request for Tender and submit a competitive proposal on a level playing field with all other waste service providers.

Possible Detriment	Discussion and Mitigation of Issues
Lack of competition	The respective public tender process will allow the opportunity for all service providers to respond and will promote market competition. The potential efficiencies of servicing two neighbouring councils are expected to be attractive to potential service providers, further increasing market competition.
Inequitable dealing in the market	The tendering process will be undertaken in accordance with the Local Government (General) Regulation 2021 (NSW), Part 7 Tendering and Shellharbour City Council's Procurement Policy. This process will provide opportunity for the maximum number of appropriate service providers to compete for the tenders.

Possible Detriment	Discussion and Mitigation of Issues
Framing of the conduct forecloses competition	The term of the period being requested is in line with common industry terms for collection services, which are required to justify investment in equipment and/ infrastructure. Retendering of services prior to the end of the respective terms will allow competitors in the market to present further competitive bids to the councils.

6. Contact details of relevant market participants

Cleanaway Waste Management Limited:

David Moon - Regional Manager

Phone: [REDACTED]

Website: <https://www.cleanaway.com.au>

Phone: 1300 362 362

Email: info@cleanaway.com.au

Address: Cleanaway Waste Management, Level 5, 41-43 Abercrombie Street, Chippendale, New South Wales, 2008, Australia.

Veolia Environmental Services Pty Ltd:

Website: <https://www.veolia.com.au>

Phone: +61 1300 739 883

Email: info@veolia.com.au

Address: Veolia Environmental Services, Building A, Suite 3, 10-16 South St, Rydalmere NSW 2116, Australia.

Remondis Australia Pty Ltd:

Chris Wade - South Coast Region Manager

Phone: [REDACTED]

Website: <https://www.remondis.com.au>

Phone: 02 9751 0900

Email: info@remondis.com.au

Address: Remondis Australia Pty Ltd, 3-5 Ricketty St, Mascot NSW 2020, Australia.

Bingo Industries:

Website: <https://www.bingoindustries.com.au>

Phone: 1300 424 646

Email: enquiries@bingoindustries.com.au

Address: Bingo Industries, 305 Parramatta Rd, Auburn NSW 2128, Australia.

JJ Richards & Sons Pty Ltd:

Nick Page – General Manager, Tendering and Contracts

Website: <https://www.jjrichards.com.au>

Phone: 02 6280 9200

Email: enquiries@jjswaste.com.au

Address: JJ Richards & Sons Pty Ltd, 3 Grant St, Cleveland QLD 4163, Australia.

Illawarra Shoalhaven Joint Organisation

Yvette Barrs

Regional Program Manager (Environment, Sustainability & Waste)

Phone: [REDACTED]

Email: [REDACTED]

Website: <https://isjo.nsw.gov.au/>



Australian
Competition &
Consumer
Commission

Determination

Application for authorisation

lodged by

Wollongong City Council and Shellharbour City
Council

in respect of

collective tendering for waste collection and
recyclables processing services

Date: 31 July 2013

Authorisation number: A91361

Commissioners: Sims
Schaper
Rickard
Cifuentes
Court
Dimasi
Walker

The ACCC has decided to grant authorisation to enable Wollongong City Council and Shellharbour City Council, to jointly tender and contract for waste collection services (residual garbage, commingled recyclables and organics) and for recyclables processing at a materials recovery facility (MRF).

The ACCC grants authorisation until 30 June 2029.

The application for authorisation

1. On 8 March 2013 Wollongong City Council and Shellharbour City Council (the **Councils**) lodged an application for authorisation (A91361) with the ACCC.
2. The Councils propose to jointly tender and contract for waste collection services (residual garbage, commingled recyclables and organics) and for recyclables processing at a materials recovery facility (**MRF**) (the **Proposed Conduct**).
3. The Councils are seeking authorisation until 30 June 2029 to cover the maximum possible contract term under the Proposed Conduct.¹
4. Upon lodgement of the application, the Councils also requested interim authorisation to:
 - prepare tender documentation and invite tenders from interested parties wishing to provide waste collection and/or recycling processing services;
 - evaluate tender submissions;
 - prepare tender recommendations to the Councils' executives; and
 - endorse the recommendations of the tender panel and commence contractual negotiations, pending determination of the application for authorisation by the ACCC.
5. On 4 April 2013 the ACCC granted interim authorisation on the basis that no contracts will be entered into unless and until the ACCC's final determination is made.²

Background

The Councils

6. Wollongong City Council (**WCC**) is situated in the Illawarra Region of New South Wales, approximately 80 kilometres south of the Sydney CBD. The Local Government Area is bounded by the Pacific Ocean to the east, Sutherland Shire Council and the Royal National Park to the north, Wollondilly and Wingecaribee Shire Councils to the west, and Lake Illawarra and Shellharbour City Council (**SCC**) to the south. Wollongong City is the third largest city in NSW.

¹ Initially the Councils sought authorisation for 15 years. After the ACCC's draft determination the Councils confirmed that the maximum contract is for 15 years and the commencement date is not until 1 July 2014.

² The ACCC's reasons for granting interim authorisation are available on the public register for this matter www.accc.gov.au/authorisationsregister

7. SCC is situated approximately 100km south of Sydney in the Illawarra region of New South Wales. The Local Government Area is bound by the City of Wollongong to the north (through the Lake Illawarra entrance and Macquarie Rivulet) and the Municipality of Kiama to the south. Shellharbour is framed between the waters of the Tasman Sea and the Illawarra Escarpment, with Lake Illawarra to the north and the Minnamurra River to the south.

The Councils' waste management activities

8. The Councils are Local Councils as defined by the *Local Government Act 1993*. One of the service functions required of councils is the provision, management and/or operation of waste removal, transfer, processing and disposal.
9. Key statistics for the Councils are compiled in Table 1.

Table 1: Key statistics for WCC and SCC for the 2011-12 year³

Local Government Area	Population	No. of households	Residual waste (tonnes)	Recyclables (tonnes)	Garden organics (tonnes)
Wollongong	192,418	80,275	40,500	17,932	25,152
Shellharbour	63,605	24,470	13,361	6,578	8,608
Combined	256,023	104,745	53,861	24,510	33,760

Waste Collection

10. Broadly, there are three categories of residential waste material collected by councils: residual waste or landfill, recyclable material, and organics. Each category of waste materials is processed differently.
11. Both Councils are currently served by the same incumbent waste, recycling and garden organics collection service provider, Remondis Australia. The Proposed Conduct relates to the collection of these three waste streams from all domestic and some commercial properties for each Council.

Recyclables Processing

12. Recyclable material generally consists of paper and cardboard products, glass, plastic, ferrous metal, non-ferrous metal, and liquid paper board.
13. Recycling of recyclable material is a three part process:
- Part one - Recyclable material is collected from council residents and delivered to a materials recovery facility (**MRF**). Once deposited at an MRF, the recyclable material becomes the property of the MRF.

³ Information taken from the Councils' application, 8 March 2013.

- Part two - The MRF processes (e.g. screens and sorts) the recyclable material into streams of specific material types (plastics varieties, aluminium, steel, paper and cardboard, etc).
 - Part three - The sorted recyclable material is sold by the MRF to other businesses who use it as an input in their production process. Any material that is not suitable for resale is referred to as “contamination” and is disposed to landfill.
14. Under the Proposed Conduct, the recyclable material collected from residents (along with the collection of landfill and organics) would be covered by the waste collections tender and resulting contract (part one of the recycling process described above). The second part of the recycling process would be covered by the recyclables processing contract. These contracts may be awarded to different contractors or the same contractor. In any case, the Councils will enter into separate contracts with the supplier(s) chosen.
15. Recyclables collected from the Councils have historically been processed at an MRF located at Kembla Grange within the WCC Local Government Area.
16. The Council’s existing contractual arrangements for waste collection and recyclables processing are summarised in Table 2.

Table 2: Current contractual arrangements for Wollongong and Shellharbour councils⁴

Arrangement	Wollongong City Council	Shellharbour City Council
Waste Collection	Contract with Remondis Australia expires June 30 2014	Contract with Remondis Australia expires June 30 2014
Recyclables Processing (MRF)	Included in recycling collection contract with Remondis Australia which expires June 30 2014. Until early 2013 recyclables were processed by Par Recycling at Kembla Grange. Recyclables now transferred to a MRF located 80km away for processing.	Included in waste collection contract with Remondis Australia which expires June 30 2014. Until early 2013 recyclables were processed by Par Recycling at Kembla Grange. Recyclables now transferred to a MRF located 80km away for processing.

Previous authorisations

17. The ACCC has previously considered a number of similar authorisation applications for joint tendering and contracting for waste management services. These applications have generally come from groups of councils in Sydney (such as the Southern Sydney Regional Organisation of Councils, and the Northern Sydney Regional Organisation of Councils), and groups of councils in

⁴ Information taken from the Councils’ application, 8 March 2013.

regional NSW and Queensland. The ACCC has granted authorisation to each of these applications with terms ranging from 7 to 20 years.

18. The ACCC recently concluded its assessment of authorisation application A91352 lodged by Burwood Council, Ashfield Council, Auburn Council, City of Canada Bay Council, Leichhardt Council and Strathfield Council to jointly tender and contract for the processing of residential dry recyclable material. On 19 June 2013, the ACCC granted authorisation for a period of ten years.

Submissions received by the ACCC

19. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
20. The ACCC sought submissions from around 20 interested parties potentially affected by this application, including industry participants, nearby councils, waste management associations and Government agencies.

Prior to the draft determination

21. The ACCC received submissions from J.J Richards & Sons Pty Ltd and Cleanaway (waste management businesses) both supporting the application for authorisation. JJ Richards & Sons indicated that it would be concerned about the application if the waste collection and recycling processing were issued as a single tender. The Councils confirmed that this was not the case.

Following the draft determination

22. No submissions were received following the draft decision.

Area of competition

23. The ACCC does not consider that it is necessary to precisely identify the relevant areas of competition in assessing this application. However, the ACCC considers that the relevant area of competition likely to be affected by the Proposed Conduct are those for:

- **the provision of waste collection services in the Wollongong/Shellharbour region:** the ACCC notes that the collection services must be provided to residents in the boundaries of the WCC and SCC areas.
- **the provision of recyclables processing services in the Wollongong/Shellharbour region:** the ACCC understands that the nearest MRFs, aside from the existing MRF located within the WCC area, are approximately 80 kilometres away. Collection vehicles are designed for short trips and frequent stopping, with a typical range of around 50 kilometres. For the Councils to use a MRF outside their area, separate long-haul bulk transport is likely to be required. Therefore the ACCC considers that the cost of transporting recyclable material means that MRFs located further away from the area covered by the Councils are less likely to be effective substitutes for more proximate MRFs without the use of a transfer station. The application for authorisation

provides for the construction of a transfer facility (to support the transport of recyclable material to an MRF outside the Councils' area) as an alternative to the construction of a MRF within the Councils' area.

ACCC evaluation

24. The ACCC's evaluation of the Proposed Conduct is in accordance with the relevant net public benefit tests⁵ contained in the Competition and Consumer Act 2010 (the **Act**). In broad terms, under the relevant tests the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result.
25. In its evaluation of the effect of the Proposed Conduct, and the public benefits and detriments likely to result, the ACCC has taken into account:
- that no submissions were received opposing the application for authorisation. The two submissions that were received prior to the draft determination were broadly supportive of the Proposed Conduct (see paragraph 21);
 - the likely alternative future without the Proposed Conduct. In particular, the ACCC considers that without the Proposed Conduct the Councils would continue to each tender for waste collection and recyclables processing services independently;
 - information available to the ACCC regarding similar previous matters (see paragraphs 17 – 18);
 - the relevant areas of competition likely to be affected by the Proposed Conduct (see paragraph 23);
 - the maximum fifteen year contract term under the Proposed Conduct.

Public benefit

Councils' submissions

26. The Councils submit that there are numerous public benefits from the Proposed Conduct, including:
- **Promotion of cost savings:** The successful tenderer will have a lower cost of operation because the tenderer will be able to reach a greater scale. This is expected to be reflected in lower costs to each Council than would be achieved if Councils individually tendered for waste collection and recyclables processing services, providing cost savings for both councils' communities.
 - **Regional economic development and investment:** Joint tendering will improve the ability for potential service providers to justify increased investment within the region, given the improved economies of scale associated with servicing both councils simultaneously.

⁵ Subsections 90(5A) and 90(5B), 90(6) and 90(7). The relevant tests are set out in Attachment A.

- **Optimisation of fleet maintenance:** Jointly servicing two Councils will allow the successful collection contractor to develop more efficient fleet maintenance programs (for example, through operation of a joint workshop) than is possible servicing either Council individually.
- **Increased resource recovery:** Incorrect use of the existing bin systems (such as failure to place recoverable items in the correct bin, and placing unrecyclable material (contamination) into the recycling and organics bins) are major barriers to increasing resource recovery and reducing the reliance on landfill disposal. Effective education programs have been shown to reduce the incorrect use of existing systems, and are key to improving resource recovery efficiency. A joint Council arrangement will improve the ability for the service provider to develop and implement effective education programs. The successful contractor(s) will be responsible for developing education material as well as providing resources such as a dedicated Education Officer. Also, economies of scale generally enable larger MRFs to recover more resources from the waste stream than is possible with a less efficient smaller MRF.

ACCC consideration

27. The ACCC considers that the Proposed Conduct is likely to result in some public benefit from:

- **Improved economies of scale and reduced operational risk faced by the waste collections operator and recyclables processor from receiving greater tonnage of material to collect and/or recyclable material to process from both Councils.** A greater number of residents from which to collect waste and recyclable material (that is, from two local government areas) is likely to improve economies of scale and reduce operational risk—and therefore costs—of the service provider(s). These cost savings should be reflected in the prices offered to the Councils in the tenders. An example of this is where the current contractor (servicing both councils) consolidated its vehicle depot to one location. The ACCC considers that the combined volume of recyclable material is more likely to facilitate the capital investment in a purpose built MRF than if the Councils were each to conduct separate tender processes. Although the ACCC anticipates a common provider is likely to be selected by each council (given this is likely to result in lower tendered pricing), if the Councils select different providers this benefit is unlikely to materialise.
- **Transaction costs savings:** The process for tendering for waste management services in NSW is not trivial. A range of governmental and legal documents and assessments must be prepared for the tender. Government supervision, via the NSW Environmental Protection Agency and an independent Probity Auditor, is ongoing throughout the tender. After the tender is concluded, negotiating and contracting with the winning tenderer is also likely to be an administratively complex task. Even though the Councils will enter into individual contracts at the conclusion of the tender process, the ACCC considers that the transaction costs are lower where a single process is employed, relative to a situation where each Council conducts its own individual tender process.
- **Better purchasing power for Councils participating in the collective tender and subsequent contractual negotiations.** The potential to

win one larger contract (rather than having to bid for separate smaller contracts) is likely to induce more favourable tenders from waste collection operators and MRF operators to service the Councils. Similarly, a single negotiation between the Councils and the winning tenderer(s) represents a stronger bargaining position for the councils compared to each negotiating individually.⁶ This may facilitate the Councils receiving a lower cost and/or higher level of service than they would otherwise have been able to obtain on their own. Such benefits may arise in the form of better prices (e.g. there may be a lower price per collection in the waste collection contract) and services (such as the construction of a MRF rather than a transfer station to facilitate transport of recyclable material to a MRF outside the Councils' area).

Public detriment

Councils' submissions

28. The Councils submit that the public benefit resulting from the Proposed Conduct far outweighs any anti-competitive detriment. Further, the Councils claim that any potential detriments are limited. For instance, the Councils submit that the Proposed Conduct may be considered to potentially reduce competition, but that this is mitigated by the respective tender processes that will allow the opportunity for all service providers to respond. The potential efficiencies of servicing two neighbouring councils are expected to be attractive to potential service providers, further increasing competition.
29. The Councils further submit that the form of procurement will be in line with Local Government requirements of conducting a Public Tender under the *Local Government Act 1993* and associated regulations. This process will provide an opportunity for the maximum number of appropriate service providers to compete for the tenders.
30. The Councils submit that it could be argued that the term of the authorisation may foreclose competition. However, the Councils submit that the term sought is in line with common industry terms for collection services (7-10 years) and recycling processing (10-15 years), which are required to justify investment in equipment and/or infrastructure. Retendering of services prior to the end of the respective terms will allow competitors in the market to present further competitive bids to the councils.

ACCC consideration

31. The ACCC considers that the Proposed Conduct is likely to result in limited public detriment for the following reasons:
 - If authorisation is granted the Councils' waste collections and recyclables processing supply will be captured by the successful tenderers for the duration of the relevant contract periods. However, the population covered by the Councils is unlikely to be sufficient to justify the construction of more than one MRF in the area. Further, the proposed

⁶ The ACCC understands that each council will enter into separate contracts for each service, but where the Councils select the same tenderer for the particular service (waste collection or materials recycling) that these contracts will essentially be uniform.

contract terms allow only enough time for investments required under the contracts to be appropriately depreciated over the term of the contract. As noted above, the Councils intend to conduct new competitive tender processes once the initial contract terms expire and the relevant investments in required assets have been depreciated.

- The arrangements are voluntary in nature. The Councils remain separate legal entities and are members of the group by choice. If the collective tenders result in a contract offer that was unfavourable compared to what an individual Council could obtain by contracting individually, that Council would not be prohibited from pursuing an individual contract.

Balance of public benefit and detriment

32. For the reasons outlined in this determination, the ACCC is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and that benefit would outweigh any public detriment constituted by any lessening of competition that would be likely to result.
33. Accordingly, the ACCC is satisfied that the relevant public benefit tests in the Act are met.

Length of authorisation

34. In the draft determination the ACCC proposed to grant authorisation for 15 years as requested by the Councils.
35. The Councils proposed to offer waste collections contracts for a period of 7-10 years, in line with standard industry practice in order to allow contractors sufficient time to depreciate equipment such as collection vehicles. The Councils submitted that a period of 10-15 years is required for the recyclables processing contract. This is because the successful tenderer(s) will be required to build a MRF or transfer station. Accordingly, the contracts will need to allow sufficient time for the winning tenderer(s) to recover their proposed capital investment.
36. Following the draft determination the Councils confirmed that the commencement date for the recyclables processing contracts is 1 July 2014, and will be for an initial term of 12 years with the possibility of a maximum 3 year extension. As such the latest possible end date of a contract under the Proposed Conduct is 30 June 2029.
37. On this basis the ACCC grants authorisation until 30 June 2029.

Determination

38. The Councils lodged an application for authorisation under sections 88(1) and 881A) of the Act to jointly tender and contract for waste collection services (residual garbage, commingled recyclables and organics) and for recyclables processing at a MRF.
39. For the reasons set out in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in benefits to the public that would outweigh any public detriments constituted by any lessening of competition that would be

likely to result.⁷ Accordingly, the ACCC grants authorisation until 30 June 2029 to enable the Councils to jointly tender and negotiate for waste collection services and for recyclables processing services, and enter into contracts that adhere to the terms and conditions resulting from those joint tenders.

40. The interim authorisation granted by the ACCC on 4 April 2013 for the conduct outlined in paragraph 4 of this determination remains in place until the ACCC's final determination comes into force. .
41. This determination is made on 31 July 2013. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 23 August 2013.

⁷ The tests applied by the ACCC can be found in sections 90(5A), 90(5B), 90(6) and 90(7). See also Attachment A to this Determination A91361.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Joint Procurement Agreement

Wollongong City Council
ABN 63 139 525 939

and

Shellharbour City Council
ABN 78 392 627 134

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Joint Procurement Agreement

Date 31/03/2023

Parties

Wollongong City Council ABN 63 139 525 939 of 41 Burelli Street, Wollongong NSW 2500 (WCC)

and

Shellharbour City Council ABN 78 392 627 134 of 76 Cygnet Avenue, Shellharbour City Centre NSW 2529 (SCC)

Background

- A WCC and SCC each wish to call for Tenders for the provision of Collection Services to their local government areas.
- B WCC and SCC have jointly engaged the Consultants to advise and assist WCC and SCC with the procurement of the Services to their local government areas.
- C The parties have agreed to undertake the Joint Procurement Process for the provision of Collection Services on the terms set out in this Agreement.

Operative Provisions

1 Definitions and Interpretation

1.1 In this Agreement, unless expressed or implied to the contrary:

ACCC means the Australian Competition and Consumer Commission of Level 20, 175 Pitt Street, Sydney NSW 2000;

Agreement means this document and includes any schedules and annexures to it;

Collection Services means the services to be provided by the successful Tenderer or Tenderers to WCC and SCC for the collection and disposal of waste within their local government areas which waste may include (without limitation) residual waste, recyclables, food organics and garden organics, hard waste, street litter, public place recycling and bulk municipal services;

Consultants mean each of the Waste Consultant and the Legal Consultant;

Consultants' Documents means the documents prepared or to be prepared by the Consultants on instructions from WCC and SCC in relation to the Joint Procurement Process, including (without limitation):

- (a) the Tender Documentation;
- (b) any application to the ACCC for authorisation to conduct the Joint Procurement Process or to enter or give effect to any contract,

arrangement or understanding in connection with the Joint Procurement Process including this Agreement.

Council means the elected body of councillors in respect of each of the parties;

Directors means the Director of Infrastructure & Works at WCC and the Director of Amenity and Assets at SCC;

Chief Executive Officers means the Chief Executive Officer of SCC and the General Manager of WCC appointed pursuant to section 334 of the Local Government Act;

GST means the tax imposed or assessed by the GST Act and its related legislation and includes any similar or substitute impost introduced in the future and, where used in the context of GST, the phrases "consideration", "input tax credit" and "taxable supply" have the respective meanings given to those terms by the GST Act;

GST Act means the A New Tax (Goods & Services Tax) Act 1999, as amended from time to time;

Joint Procurement Process means the process jointly undertaken by WCC and SCC for the procurement of the Services for their respective local government areas pursuant to this Agreement;

Legal Consultant means the independent legal expert appointed by WCC and SCC to assist WCC and SCC with the Joint Procurement Process ;

Local Government Act means the Local Government Act 1993 and any regulations made pursuant to that Act;

Probity Officer means the independent probity expert appointed by WCC and SCC to assist WCC and SCC with the Joint Procurement Process;

Probity Plan means the Probity Plan (together with the Probity Statement attached to the Probity Plan) adopted by the parties for the purpose of the Joint Procurement Process;

Services means the Collection Services;

Steering Committee means the committee, comprising representatives from each of WCC and SCC, established pursuant to this Agreement to coordinate and progress the Joint Procurement Process;

Tender means a tender submitted by a Tenderer to the parties in response to the Joint Procurement Process;

Tender Assessment Panel means the committee, comprising representatives from each of WCC and SCC, established pursuant to this Agreement to evaluate any Tenders received by the parties for the Joint Procurement Process;

Tender Documentation collectively means:

- (a) the request for tender document;
- (b) the specifications for the Collection Services; and
- (c) contracts to be entered into between WCC and the successful Tenderer and SCC and the successful Tenderer for the supply of Collection Services, issued to the Tenderers by the parties in the course of the Joint Procurement Process;

Tenderer means a person which submits a Tender in response to the Joint Procurement Process; and

Waste Consultant means Impact Environmental Consulting of 45 Lake Road, Port Macquarie NSW 2444 and any other provider of consultancy services which WCC and SCC may choose to engage for the Joint Procurement Process.

1.2 In this Agreement, the following apply in the interpretation of this Agreement, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule attached to this document forms part of it;
- (e) a reference to a party includes its successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by "including", "for example or similar inclusive expressions; and
- (i) a reference to this document means this document and includes any variation or replacement of this document.

2 Governmental Agency Status

2.1 Nothing in this Agreement abrogates or fetters, or is intended to abrogate or fetter, the lawful and proper discharge by WCC and SCC of any of their statutory responsibilities as governmental agencies under any relevant laws.

2.2 In the event of any conflict between the unfettered discretion of WCC and SCC

in the exercise of their statutory powers as governmental agencies and the performance of their obligations under this Agreement, the former prevails.

3 Relationship between the Parties

3.1 Except as expressly provided to the contrary in this Agreement, nothing in this Agreement will constitute the parties as:

- (a) principal and agent;
- (b) employer and employee;
- (c) partners; or
- (d) otherwise liable for the acts and/or omissions of any other party.

A party must not represent to any third party that the parties are principal and agent, employer and employee, partners or that the party is otherwise entitled to incur any liability on behalf of any other party.

4 Effect of Agreement

4.1 The parties agree that this Agreement takes effect upon the execution and exchange by WCC and SCC of this Agreement.

5 The Consultants and their respective work

5.1 The parties acknowledge and agree that WCC and SCC have jointly engaged the Consultants to advise and assist WCC and SCC with the procurement of the Services to their local government areas.

5.2 The parties acknowledge that SCC will be the primary point of contact with the Consultants for the purpose of giving instructions to the Consultants and for receiving advice from the Consultants. SCC must give WCC copies of all instructions given and all advice received from the Consultants.

5.3 Each party agrees to disclose and provide copies of the Consultants' Documents to the other party when it receives the Consultants' Documents so as to facilitate the free flow of information between the parties for the purposes of the Joint Procurement Process.

5.4 Except as otherwise agreed by the parties in writing, the parties agree to share the actual costs of the Consultants equally.

6 Establishment and Role of the Steering Committee

6.1 On the date of this Agreement, the Steering Committee is established and consists of the following persons (and their duly appointed successors):

- (a) Joanne Page and Ben Stewart, Project Sponsors;

- (b) Joanne Page and Ben Stewart, Chairpersons;
- (c) Paul Tracey and Daniel Brilsky, Group Managers
- (d) [TBA], Joint Project Manager
- (e) David Low and Ryan Stirling, Waste & Resource Recovery Managers; and
- (f) Lisa Brownlee and Mitchell Copas – Waste Contracts

6.2 The Steering Committee must meet regularly to:

- (a) approve a probity plan for the Joint Procurement Process;
- (b) approve an application to the ACCC seeking authorisation for the Joint Procurement Process;
- (c) approve and make any further submissions to the ACCC during the course of seeking authorisation for the Joint Procurement Process;
- (d) approve instructions to be given to the Consultants in respect of the Joint Procurement Process; and
- (e) approve and make determinations concerning any other aspect of the Joint Procurement Process which is not the responsibility of the Tender Assessment Panel.

6.3 The parties agree that, subject always to clauses 2 and 6.5, the determinations of the Steering Committee are binding on the parties.

6.4 After the ACCC has granted an authorisation or interim authorisation for the Joint Procurement Process, the Steering Committee must:

- (a) arrange for preparation of the Tender Documentation in conjunction with the Tender Assessment Panel; and
- (b) establish a protocol for communicating with the Tenderers in a consistent manner and in accordance with the probity obligations of each party under clause 9.

6.5 If, at any stage of the Joint Procurement Process, any documentation or any action to be taken by the Steering Committee requires the formal approval of each party by means of:

- (a) a resolution of the Council of each party; or
- (b) the approval of an officer of each party having delegated authority to give such approval,

then the Steering Committee must prepare a report to:

- (c) the Council of each party seeking respective resolutions from each Council; or
- (d) the officer of each party having delegated authority, to approve the relevant documentation prepared by the Steering Committee or the action to be taken

by the Steering Committee.

- 6.6 After finalising the Tender Documentation and after obtaining any required resolutions or approvals from the respective parties, the Tender Assessment Panel must call for Tenders and have responsibility for the oversight of the Joint Procurement Process.
- 6.7 Subject to the terms of this Agreement and in particular this clause 6, the Steering Committee may determine the manner in which it conducts its business, including but not limited to:
- (a) notice of and the manner of calling its meetings and the preparation and dissemination of agendas;
 - (b) the time and place of its meetings;
 - (c) the necessary quorum for a meeting;
 - (d) protocols for the conduct of discussion and decision-making;
 - (e) the making and recording of minutes; and
 - (f) the publication to the respective parties of its determinations.
- 6.8 If, in respect of any determination to be made by the Steering Committee in respect of the Joint Procurement Process, the members of the Steering Committee cannot reach unanimous agreement, the Steering Committee must promptly refer the matter to the Chief Executive Officers for their determination.
- 6.9 The Chief Executive Officers must promptly determine the matter referred to them by the Steering Committee and must notify the Steering Committee in writing of their determination of the matter.
- 6.10 The parties must promptly implement any determination made by the Chief Executive Officers under clause 6.9.
- 6.11 If the Chief Executive Officers cannot agree on a matter referred to them under this clause, either party may terminate this Agreement and the Joint Procurement Process by giving written notice to the other party, such notice to take effect when it is given.

7 Establishment and Role of the Tender Assessment Panel

- 7.1 On the date of this Agreement, the Tender Assessment Panel is established and consists of the following persons (and their duly appointed successors):

Scoring Members of the Tender Assessment Panel:

- (a) Ryan Stirling, Chairperson;
- (b) Mitchell Copas, Waste Contracts;

- (c) Jim Roberts, Procurement;
- (d) David Low, Waste Manager;
- (e) Lisa Brownlee, Waste Contracts; and
- (f) [To be advised], Independent for WCC

Support Members of the Tender Assessment Panel

- (d) Katherine Driscoll, Impact Environmental Consultant
- (e) Josh Oliver, Procurement;
- (f) Probity Consultant; and
- (g) Jeff Reilly, Legal Services WCC

7.2 The Tender Assessment Panel must:

- (a) comply with SCC's Formal Quotation and Tendering Procedures at all times during the Joint Procurement Process;
- (b) arrange for the preparation of the Tender Documentation;
- (c) adopt the selection criteria and weightings attached to the selection criteria for selecting the successful Tenderer who will provide the best outcome for the parties and their respective local government areas; and
- (d) determine, in accordance with the Probity Statement and on advice from the Probity Officer, whether the selection criteria and the weightings attached to the selection criteria should be made available to the Tenderers with the Tender Documentation.

7.3 After the closing date for submission of Tenders, the Tender Assessment Panel must:

- (a) open the physical and electronic tender box through SCC's e-tendering portal and obtain all Tenders submitted by the Tenderers ;
- (b) review all Tenders submitted by the Tenderers;
- (c) score the Tenders by reference to the selection criteria and weightings attached to the selection criteria adopted by the Tender Assessment Panel;
- (d) determine the successful Tenderer; and
- (e) complete the reporting and approval process for the Tenders.

- 7.4 If the members of the Tender Assessment Panel cannot reach unanimous agreement on the determinations or actions required to be taken by the Tender Assessment Panel, the Tender Assessment Panel must promptly refer the matter to the Directors for their determination.
- 7.5 The Directors must promptly determine the matter referred to them by the Tender Assessment Panel and must notify the Tender Assessment Panel in writing of their determination of the matter.
- 7.6 If the Directors cannot reach unanimous agreement on the matter referred to them by the Tender Assessment Panel, the provisions of clauses 6.8, 6.9, 6.10 and 6.11 will apply as if the Directors were the Steering Committee.

8 Selection of Successful Tenderer

- 8.1 After the Tender Assessment Panel has determined the successful Tenderer or Tenderers as the case may be for the supply of the Services, it must notify the Steering Committee in writing of its determination.
- 8.2 After the Tender Assessment Panel has notified the Steering Committee of the successful Tenderer, the Steering Committee must prepare a report to the elected Council of each party recommending respective resolutions from each Council to enter appropriate contracts with the successful Tenderer or Tenderers.

9 Probity

- 9.1 The parties acknowledge and agree that probity is a core value of each party and is integral to the conduct of the Joint Procurement Process.
- 9.2 The parties must comply with the Probity Plan throughout the Joint Procurement Process and must appoint the Probity Officer to advise and assist them to maintain the probity of the Joint Procurement Process as required by the Probity Plan.
- 9.3 The parties must acquaint themselves thoroughly with and comply at all times with the following codes, insofar as they are relevant and apply to this Agreement:
- (a) SCC's Formal Quotation and Tendering Procedures, as published from time to time. These Procedures are available on SCC's website at <https://www.shellharbour.nsw.gov.au>;
 - (b) WCC's Code of Business Ethics, as published from time to time. This Code of Business Ethics is available on WCC's website at <http://www.wollongong.nsw.gov.au>;
 - (c) SCC's Procurement Policy and Procurement Procedures, as published from time to time, and available on SCC's website at <https://www.shellharbour.nsw.gov.au>;
 - (d) SCC's Code of Conduct, as published from time to time. This Code of Conduct is available on SCC's website at <https://www.shellharbour.nsw.gov.au>;
 - (e) SCC's Statement of Business Ethics Policy, as published from time to time. This Statement of Business Ethics Policy is available on SCC's website at

<https://www.shellharbour.nsw.gov.au>; and

- (f) any other codes of conduct and policies for procurement as adopted by each of the parties from time to time.
- 9.4 In performing its obligations under this Agreement, WCC must not have and must not permit to arise any conflict of interest and in particular (but without limiting the generality of the foregoing) must have no conflict with its duties and obligations to any third party and must have no conflict between its own interests and those of SCC.
- 9.5 In performing its obligations under this Agreement, SCC must not have and must not permit to arise any conflict of interest and in particular (but without limiting the generality of the foregoing) must have no conflict with its duties and obligations to any third party and must have no conflict between its own interests and those of WCC.
- 9.6 The parties must not engage in any corrupt conduct when dealing or contracting with any third party in connection with this Agreement or the Joint Procurement.
- 9.7 Except as specifically authorised by the ACCC, the parties must not engage in any collusive or anti-competitive conduct when dealing or contracting with any third party in connection with this Agreement or the Joint Procurement.
- 9.8 If any party breaches any of the provisions of this clause, including any warranty, the other party may, at its option terminate this Agreement, whereupon the Joint Procurement Process will come to an end. The exercise of this right will not prevent the exercise, by that party of any of its other remedies under this Agreement, at law or in equity.

10 GST

- 10.1 All consideration provided for a supply under this Agreement is calculated exclusive of GST unless the contrary is clear. If any such consideration is for the whole or any part of a taxable supply by the supplier, the amount of that consideration will be increased by an additional amount equal to the GST on that taxable supply. The party who has to pay the additional amount must pay it at the same time as the consideration in respect of that taxable supply becomes due or, if the supplier has to pay (or allow credit against) the relevant GST before then, the additional amount must be paid at that earlier time.
- 10.2 If an amount of consideration under this Agreement is calculated as compensation or reimbursement for an expense, loss or liability of a supplier the consideration must be calculated after excluding any amount for which the supplier is entitled to an input tax credit as recipient of the item to which the expense loss or liability relates.
- 10.3 A party shall not be obliged to make any payment for GST unless it is provided with a tax invoice which complies with the GST Act.

11 Termination

- 11.1 This Agreement and the Joint Procurement Process may be terminated in the following circumstances :
 - (a) If at any time either party gives written notice to the other party terminating the Joint Procurement Process and this

Agreement;

- (b) If at any time the parties, by mutual written agreement, terminate the Joint Procurement Process and this Agreement;
- (c) If the parties fail to agree on a matter for determination by the Steering Committee or the Tender Assessment Panel, the Directors and/or the Chief Executive Officers cannot agree on the matter after following the procedures specified in clauses 6 and/or 7 and a party gives written notice to the other party of such termination; and
- (d) If a party breaches this Agreement and fails to rectify the breach within fourteen days of receiving written notice from the other party specifying the breach, the other (non-defaulting) party may terminate the Joint Procurement Process and this Agreement by further written notice to the defaulting party.

11.2 The accrued rights of each party (up to and including the date of termination) do not merge and are not extinguished by the termination of this Agreement.

12 Entire Agreement

This Agreement (and any document incorporated by reference in it) records the agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this Agreement.

13 Further Assurance

Each party must (at its own expense) do all things as any other party asks as may be reasonably required or necessary to give the other party the full benefit of any obligations owed to the other party and expressed in this Agreement.

14 Counterparts

This Agreement and any variation of this Agreement may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

15 Survival

All warranties, releases, exclusions of liability, indemnities, terms with respect to intellectual property and confidential information on the part of a party in this Agreement will remain valid and binding upon that party following expiry or termination of this Agreement. This clause does not prevent the survival of any provision which, in the absence of this clause, would be deemed to survive expiry or termination of this Agreement.

16 No Waiver

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under the agreement recorded in this Agreement does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a

right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the facts specified in the notice.

17 Cumulative Rights

The rights, powers, authorities, discretions and remedies of a party under the agreement recorded in this Agreement do not exclude any other right, power, authority, discretion or remedy.

18 Severability

18.1 If any provision of this Agreement is determined by a court or other competent tribunal or authority to be void, voidable or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) where the offending provision cannot be read down then that provision must be severed from this Agreement in which event, the remaining provisions of this Agreement operate as if the severed provision had not been included,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Agreement.

19 Variation

The agreement recorded in this Agreement can only be amended, supplemented, replaced or novated by another agreement signed by the parties.

20 Remedies

A party's failure or delay to exercise a power, right or remedy pursuant to the agreement recorded in this Agreement does not operate as a waiver of that power, right or remedy. The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

21 Notices

21.1 Any notice or other communication required to be given under this Agreement must be:

- (a) in writing; and
- (b) addressed to the intended recipient at the address shown in clause 21.2 or at the address last notified in writing by the intended recipient to the sender; and
- (c) sent by post to the address in clause 21.2; or

(d) sent by email to the relevant email address in clause 21.2.

21.2 The addresses of the parties for the service of notice under this Agreement are as follows:

(a) Wollongong City Council: Locked Bag 8821,
Wollongong DC NSW 2500(Attention: General
Manager), Email: council@wollongong.nsw.gov.au ; and

(b) Shellharbour City Council: Locked Bag 155 Shellharbour
City Centre NSW 2529 (Attention: Chief Executive
Officer), Email: council@shellharbour.nsw.gov.au.

21.3 Notices are taken to be given and received:

(a) in the case of delivery by post, on the seventh day after the
date of posting; and

(b) in the case of delivery by email, upon confirmation of correct
transmission of email.

21.4 A recipient of a notice given pursuant to this clause 21 must not enquire where
the notice purports to be signed on behalf of a party by its authorised
representative, as to the authority of the representative signing the notice.

22 Governing Law and Jurisdiction

The agreement recorded in this Agreement is governed by the laws of the State of New
South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising
jurisdiction there in connection with all matters concerning the agreement recorded in
this Agreement.

Executed as an Agreement:

Executed for and on behalf of
Wollongong City Council by its
authorised officer:



Signature of Authorised Officer

GREG DOYLE, GENERAL MANAGER

Name and Office of Authorised
Officer 6 APRIL 2023

Executed for and on behalf of
Shellharbour City Council by its
authorised officer:



Signature of Authorised Officer

MICHAEL STEPHEN WEE ARCHER
CHIEF EXECUTIVE OFFICER
SHELLHARBOUR CITY COUNCIL

Name and Office of Authorised
Officer

Subject 10.4.1 Proposed Extension of the 2013/22 Kerbside Collection Services Contract (11683993)

To the Chief Executive Officer

Directorate: **Amenity and Assets**

Group: **Asset Strategy**

Manager: Adam De Clouett – Acting Group Manager Asset Strategy

Author: Ryan Stirling – Waste Contract Manager

Summary

The purpose of this report is to provide information to Council regarding the Contract 2013/22 Waste Collection Services, which has been in place since 1 July 2014, and to seek approval from Council to implement a one-year contract extension following the end of the current contract term on 30 June 2022. Additionally, this report requests that Council delegates the Chief Executive Officer or his delegate to execute a contract extension from 1 July 2023 to 30 June 2024. It is also recommended that Council pursue a joint tender process with Wollongong City Council for the future Waste Collection Services contract.

Background

The 2013/22 Waste Collection Services Contract (Contract) began on 1 July 2014, with a current contract term that will expire on 30 June 2022. The Contract allows for a maximum of three years extension through implementing a one-year contract extension, at the sole discretion of Shellharbour City Council. Council is required to provide Remondis with a notice of intention with respect to a contract extension at least one year from the contract expiration date.

Under the Contract, Remondis provides various waste collection services relating to domestic, commercial, and public places, including:

- Kerbside collection of Food Organics and Garden Organics (FOGO) green lid bins, recycling yellow lid bins, and garbage red lid bins;
- On-call bulky waste collection; and
- Public place bin collection.

Since the start of the Contract, Remondis has undertaken approximately 12.2 million kerbside bin services, 5,425 bulky waste collections, 297,000 public place bin collections, and 27,500 bins have been supplied, repaired or replaced. In addition, the Remondis customer service call centre has received over 61,000 phone calls.

Contractual Performance Measurement

The Contract contains performance management provisions that allow Council to gauge the level of service compliance and departures from the Contract specification. The performance benchmarks include missed services, delivery of new bins, repair of bins, clean-up of spilt material, contamination levels of waste streams, incident responses, reporting, availability of vehicles, customer service call resolution, and complaint rectification. Remondis have consistently achieved a high-performance level since commencement of the Contract.

Community Satisfaction with Kerbside Waste Services

The 2019 community satisfaction survey conducted by IRIS Research identified high satisfaction levels for the kerbside waste collection service which is provided through Remondis. Compared to the previous survey conducted in 2017, the kerbside waste collection service also achieved a slight improvement in community satisfaction level (increased approximately 3%).

Remondis and the Community

In addition to the performance of services specifically required by the Contract, Remondis has provided a variety of additional services and contributions to the Shellharbour area and the greater Illawarra region. Examples of contributions include the provision of donations to local charities, events and community groups, including Rotary, PCYC, i98 Illawarra Convoy, Shellharbour City Sharks, Vinnies CEO Sleepout, Shellharbour Council Sports Assistance Fund, Leukaemia Foundation – Angels at Work, and Relay for Life. Remondis have also provided some services at no charge for valued community events, including the provision of waste services to Shellharbour Carols by Candlelight and Australia Day.

Contract Extension 1 July 2022 to 30 June 2023

At the Ordinary Council Meeting of 7 April 2020, Council resolved to extend the Contract from 1 July 2021 to 30 June 2022. The subject of this report is the optional extension term from 1 July 2022 to 30 June 2023, which Council is required to provide written notice to Remondis by 30 June 2021.

Recommended Option – Provide Remondis with a One-Year Contract Extension

Council may elect to provide Remondis with a one-year contract extension, for the period of 1 July 2022 to 30 June 2023.

Advantages:

- Maintenance of existing service level, which is positively regarded by the community.
- Confidence in financial and other resource requirements for the financial year 2022/2023.
- Would align with intent of the Contract performance measurement clauses, i.e. consistent performance is rewarded appropriately.
- Would delay the requirement of dedicated operational resources and costs in establishing a new and significant tender process.
- Would continue with the year 2014 market leading rate and service offer.

Disadvantages:

- Would not test the current state of the waste collection services market.

Alternative Option – Allow the Contract to Expire on 30 June 2022

Council could elect not to provide an extension and allow the Contract to expire on 30 June 2022. This would require immediate commencement of a tender process for collection services such that a new contract would begin on 1 July 2022.

Advantages:

- Would test the current state of the waste collection services market.

Disadvantages:

- Would require significant internal and external resources for one of the longest and most costly tender processes conducted by a council, due to various factors such as the magnitude of expenditure on the service, and the typical duration of such a contract.
- No assurance that the new contract would provide superior value to the current contractual arrangement.

The current state of the waste collection services market is not considered more competitive to when the 2013/22 tender was carried out. Accordingly, it is not expected that a new tender process would result in a better financial or performance outcome for the community at this time. Given the relatively high performance of Remondis throughout the contract term thus far, and the community's satisfaction with the service provision, it is recommended that Council proceed with the recommended option above and Remondis are provided with an extension of one year, beginning on 1 July 2022.

Further Contract Extension 1 July 2023 to 30 June 2024

Due to the extensive tendering timeline and the need to award of the future Waste Collection Services Contract approximately one year before the current Contract expires, this report is also recommending that Council authorise the Chief Executive Officer under to execute under delegation a contract extension from 1 July 2023 to 30 June 2024, if performance management benchmarks continue to be met in 2021/22. This final one-year contract extension will allow sufficient time for Council to procure the contract and allow the future contractor sufficient time to prepare itself to fulfil the requirements of the contract. Council is aiming to award the new Waste Collection Services Contract no later than 30 June 2023. This final one-year contract extension is allowed for within the conditions of Contract 2013/22.

Future Tender for the Next Collection Services Contract

Discussions are currently being held between Council and Wollongong City Council (WCC) Waste teams regarding the potential joint tendering for the next Collection Services Contract. Joint tendering will also require Australian Competition and Consumer Commission (ACCC) approval. A joint tender, like the 2013/22 Contract tender, will increase purchasing power for both councils, and assist in achieving the most advantageous offers from the market for their respective communities.

Should both councils endorse the joint tender option, the tender process will begin in early 2022 to ensure that all milestones can be met for what may likely be Council's largest tender. The tender process is required to begin approximately two years prior to contract commencement due to:

- The requirement to award the tender up to 12 months prior to contract commencement, i.e. by approximately 1 July 2023, due to the extensive lead-time for sourcing new waste collection vehicles. This process may also be extended due to COVID-19-related supply chain impacts.
- The requirement to seek and secure ACCC approval, which includes a public exhibition period of the proposal.
- The requirement to report to, and seek approval from, two separate councils.
- The expected re-issuing of the *Model Waste and Recycling Collection Contracts* from the NSW Environment Protection Authority in early 2022, which serves as a template for Council's Collection Services Contract.

Financial / Resources Implications

Extension of the Contract would see a continuation of the current contract expenditure, notwithstanding normal quarterly adjustments in accordance with the Contract, and would continue to be funded from the Domestic Waste Management Charge. Additionally, not undertaking a tender process for a new collection services contract will avoid the consumption of significant costs associated with development of a new tender offering.

Legal and Policy implications

Council has the legal ability to extend the Contract duration by up to three individual single year increments. The subject extension is the second available extension period. The ability of Council to extend the contract was established during the tender process to enable continuity of service if the services levels provided were considered suitable.

If Council chooses to extend the current contract to 30 June 2023, the final one-year contract extension would also need to be executed by the Chief Executive Officer, and it is envisaged that the extension would be provided near to the time that the future Collection Services Contract tender would be awarded due to the requirement to provide waste collection companies with nine-to-twelve months' notice prior to contract commencement to allow them sufficient time to procure waste collection vehicles.

Public / Social Impact

Extension of the Contract would provide an additional one-year term for Remondis to continue a service that the community has identified as of high value and high importance.

Link to Community Strategic Plan

This report supports the following objectives and strategies of the Community Strategic Plan:

Objective: 2.2 Practices sustainable living.

Strategy: 2.2.2 Provide effective and sustainable waste operations and services for the City

Consultations

Internal

Procurement

External

Wollongong City Council

Political Donations Disclosure

Not applicable

Recommendation

That Council:

1. authorise the Chief Executive Officer or his delegate to execute a contract extension for 2022/23.
2. authorise a further contract extension from 1 July 2023 to 30 June 2024, if performance management benchmarks continue to be met in 2021/22.
3. support the joint-tender option with Wollongong City Council for the next Collection Services Contract that will be effective from 1 July 2024.

Approved for Council's consideration:



Date of Meeting: 29 June 2021

Attachments

Nil

10.3.2 Proposed Changes to Flood Risk Planning Controls (11684598)

96 RESOLVED: Murray/Moran

That Council submit its interest to the NSW Department of Planning, Industry and Environment to opt-in to the State Environment Planning Policy amendment to have clause 5.22 Special flood considerations, as shown in Attachment 3, included in Shellharbour Local Environmental Plan 2013.

CARRIED UNANIMOUSLY

10.3.3 2020 Youth Summit Evaluation Report (11684801)

97 RESOLVED: Petreski/Moran

That Council receive and note the evaluation report for the 2020 Youth Summit.

CARRIED UNANIMOUSLY

10.4 Amenity and Assets Directorate

10.4.1 Proposed Extension of the 2013/22 Kerbside Collection Services Contract (11683993)

RESOLVED: Murray/Petreski

That Council:

1. authorise the Chief Executive Officer or his delegate to execute a contract extension for 2022/23.
2. authorise a further contract extension from 1 July 2023 to 30 June 2024, if performance management benchmarks continue to be met in 2021/22.
3. support the joint-tender option with Wollongong City Council for the next Collection Services Contract that will be effective from 1 July 2024.

CARRIED UNANIMOUSLY

98 RESOLVED: Saliba/Murray

That the meeting be adjourned for 5 minutes.

CARRIED UNANIMOUSLY

ITEM C1 - DOMESTIC WASTE MANAGEMENT T13/22 COLLECTION SERVICES CONTRACT

760 COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor D Brown seconded Councillor Walters that -

- 1 In accordance with s55(3)(i) of the Local Government Act 1993 and due to extenuating circumstances relating to significant supply chain disruptions impacting waste collection service providers, that will impact on the ability to undertake a successful tender process, Council not invite tenders for Waste Collection Services
- 2 Council delegates authority to the General Manager to negotiate an extension to the current T13/22 contract via Deed of Agreement for a period of up to 2 years (1 year + 1 year)
- 3 Council endorses the proposal to undertake a subsequent joint tender for a waste collection services contract with Shellharbour City Council for the period commencing after the negotiated extension
- 4 Council endorses an application be made to the Australian Competition and Consumer Commission (ACCC) for approval to undertake a joint procurement for Waste collection services with Shellharbour City Council

761 COUNCIL'S RESOLUTION - RESOLVED UNANIMOUSLY on the motion of Councillor Walters seconded Councillor R Martin that the meeting move out of Closed Session and into Open Council.

Council resumed into Open Session at 7:59 pm.

OPEN COUNCIL SESSION

RESOLUTIONS FROM THE CLOSED SESSION OF COUNCIL

The Lord Mayor advised the meeting of the Council's Resolutions whilst in Closed Session (refer Minute Number 760).

THE MEETING CONCLUDED AT 8:00 PM

Confirmed as a correct record of proceedings at the Ordinary Meeting of the Council of the City of Wollongong held on Monday 28 November 2022.

Chairperson