

26 July 2016

Mr Kabita Prasad  
Assistant Director | Merger and Authorisation Review Division  
Australian Competition and Consumer Commission  
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Dear Mr Prasad,

### **A91530 – The St George Region of Councils – Response by Cleanaway Waste Management Ltd to request for further information**

Thank you for your email of 19 July 2016 requesting further information from Cleanaway Waste Management Limited (**Cleanaway**) in relation to its submission on the application for revocation of authorisation A91019 and substitution of authorisation A91530 lodged by Hurstville City Council, Kogarah Municipal Council and Rockdale City Council (the **Applicants**). We have provided responses to each of your further questions below.

This response contains information that is confidential to Cleanaway. We request that the ACCC keeps the information marked as **[CONFIDENTIAL]** strictly confidential, and does not disclose it to any party, other than the ACCC's officers, employees and external advisers, without first obtaining Cleanaway's consent, unless required by law or otherwise permitted under section 155AAA of the *Competition and Consumer Act 2010* (Cth). We can provide the ACCC with a redacted version of this letter if that would be of assistance.

#### **1. In the first dot point on page 5 of the submission, Cleanaway submits:**

***"that the contract for municipal collections in the St George region is substantial and Cleanaway expects that it would attract interest from a number of potential bidders (whether joint or individual tenders were conducted at the expiry of the existing authorisation)."***

#### **Please estimate what percentage of the municipal collections contracts within the Sydney metropolitan area the SGROC contract currently represents.**

As demonstrated in the confidential Table 1 and Table 2 below, Cleanaway estimates that the SGROC contract that is subject to the ACCC authorisation process currently represents approximately [REDACTED] of the total volume of waste management services currently provided by third party contractors to Councils in the Sydney metropolitan area.

Councils provide waste collection services to consumers in one of two ways: (1) they contract with third party waste management companies to provide the services (referred to in the tables below as "Contractors – Available Work"); or (2) they provide the services themselves using what is referred to as "Council day labour". Only services falling within (1) are contestable by third party waste management companies.

Councils in the Sydney metropolitan area currently provide customers with a number of different waste collection services: (1) garbage collection services (often called putrescible waste); (2) recycling collection services; (3) garden waste or "green waste" collection services;

and (4) hard waste or "kerbside collection" services. The total number of tenements receiving each of those services in the region are summarised in **Table 1** below.

[Redacted]

[Redacted]

[Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]

[Redacted]

- 2. On page 7 of the submission, Cleanaway submits:**
- "the collection services acquired by the Applicants represent a material proportion of contestable work available for tender in the Sydney Metropolitan area. Cleanaway estimates that collection services for the St George Region of Councils accounts for approximately 10% of all contestable work in metropolitan Sydney and approximately 85% of the contestable work due to be tendered in 2018; and"*

*In practice, opportunities to bid for municipal collection contracts in the Sydney metropolitan area occur infrequently, partly as a result of the typical duration of the relevant contracts.*

*In these circumstances, permitting a material proportion of the contestable demand for services in the region to "roll over" for a further five years when market participants were expecting – including on the basis of the 2007 Determination – the contracts to come up for tender again constitutes an ongoing substantial lessening of competition in the sector."*

**Please provide:**

- (a) further information (confidential and/or non-confidential) which demonstrates or supports that SGROC collection services represent a material proportion of the contestable work available for tender in the Sydney metropolitan area.**

Please see Table 1 and Table 2 above.

Cleanaway considers that a contract that covers 10% of the contestable work available for tender in the Sydney metropolitan area represents a material proportion of that work.

- (b) the source or data which supports (confidential and/or non-confidential) the submission that SGROC accounts for approximately 10% of all contestable work in metropolitan Sydney and approximately 85% of the contestable work due to be tendered in 2018.**

As anticipated in the Applicants' submission dated 8 July 2016, Cleanaway is well aware of the standard timeframes for Council waste management tenders, which usually involve releasing a tender 12 months before an expected contract start date. This means that a contract for collection services that is due to start in February 2018 would usually be subject to a tender process during 2017.

Cleanaway's comment that the SGROC contracts are "due to be tendered in 2018" was a short-hand reference to the fact that the current waste management contracts are expected to expire in 2018, and that new service arrangements will need to be put in place from that date. Cleanaway confirms that in preparing the calculations described above, it used 2018 as the contract start date for the SGROC contracts, and assumed that the tender for the contracts would be released 12 months in advance of that date.

In relation to the estimates that the SGROC services account for:

- approximately 10% of all contestable work in metropolitan Sydney – please see Table 1 and Table 2 above; and
- approximately 85% of the contestable work pursuant to contracts that will expire in 2018 – please see confidential Table 3 below.

One source of publicly available data that the ACCC may find useful on this issue is the information released by the EPA in the following publication – please see, in particular, Appendix 1:

<http://www.epa.nsw.gov.au/resources/warrlocal/140432-lq-data-1213.pdf>

██

██

██

- (c) **information that supports the submission that market participants were expecting the SGROC contracts to come up for tender in 2018.**

Please see the comments in response to Question 2(b) above.

**An example of such supporting data which can be found on the ACCC's public register in Annexure C: Tender Horizons of the Council Solutions submission made to the ACCC after its draft determination:**

<http://registers.accc.gov.au/content/index.phtml/itemId/1191251/fromItemId/278039/display/submission>

- 3. Does the fact that SGROC is currently the only group of councils which is authorised to jointly tender and contract for the service streams of waste and recycling collection (only) in the Sydney metropolitan area, influence Cleanaway's submission regarding the available contestable work in metropolitan Sydney due to be tendered in 2018?**

Cleanaway's submission regarding available contestable work has taken into account all potential waste collection services that are contestable (ie "Contractors – Available Work") in metropolitan Sydney but, for the avoidance of doubt, Cleanaway has not focused on waste processing services in this analysis.

As shown in Table 1 and Table 2 above, based on Cleanaway's estimates, the SGROC contracts represent approximately [REDACTED] of garbage tenements and approximately [REDACTED] of recycling tenements falling within the "Contractors – Available Work" category in the Sydney metropolitan area.

- 4. Lastly, does Cleanaway know of any publicly available industry reports or other relevant documents which may assist us in our understanding of the waste management services market in the Sydney metropolitan area?**

Please see the EPA report mentioned in response to Question 2(b) above.

We hope this information is of assistance to the ACCC. If you have any further questions, please do not hesitate to contact me.

Yours sincerely,

David Clancy  
NSW General Manager