



# Draft Determination and interim authorisation

Application for authorisation AA1000651

lodged by

Southern Sydney Regional Organisation of Councils

in respect of

joint procurement for commingled recycling processing services

Authorisation number: AA1000651

14 December 2023

Commissioners: Keogh  
Lowe  
Brakey

## Summary

The ACCC proposes to grant authorisation to Southern Sydney Regional Organisation of Councils and its 12 member councils, to jointly tender and enter into and give effect to contracts with each preferred provider for the processing of commingled recycling in yellow-lidded kerbside bins and disposal of residuals.

The ACCC proposes to grant authorisation for 11 years.

The ACCC has granted interim authorisation to enable the participating councils to collectively invite tenders, evaluate responses and negotiate contracts, but not to enter into or give effect to any contracts, while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination by 12 January 2024 before making its final decision.

### 1. The application for authorisation

- 1.1. On 24 October 2023, Southern Sydney Regional Organisation of Councils (**SSROC**) lodged application for authorisation AA1000651 with the Australian Competition and Consumer Commission (the **ACCC**).<sup>1</sup> SSROC is seeking authorisation on behalf of itself and its 12 member councils to engage in the joint procurement for processing services of commingled recycling in yellow-lidded kerbside bins and disposal of residuals and to enter into and give effect to relevant contracts that may be executed as an outcome of the procurement conduct. SSROC seeks authorisation for 11 years.
- 1.2. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.3. SSROC also requested interim authorisation to enable it to collectively invite tenders, evaluate responses and negotiate contracts, but not to enter into or give effect to any contracts, while the ACCC is considering the substantive application. On 14 December 2023 the ACCC granted interim authorisation in accordance with subsection 91(2) of the Act. The request for interim authorisation is discussed in section 5.

### The Participating Councils

- 1.4. SSROC is an incorporated association of 12 local government councils, acting on behalf of itself and the below 12 councils (see also Figure 1 below):<sup>2</sup>

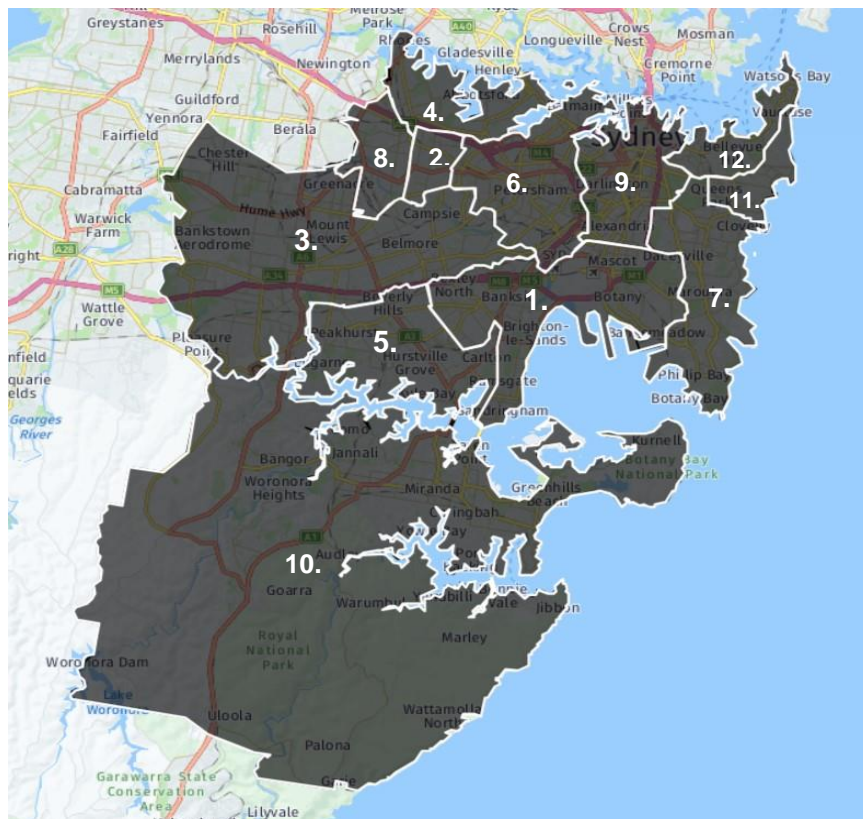
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<sup>1</sup> Following lodgement of its application, SSROC clarified the conduct for which it is seeking urgent interim authorisation and substantive authorisation via correspondence on [31 October 2023](#) and [28 November 2023](#).

<sup>2</sup> In 2019, the ACCC granted authorisation AA1000431 to SSROC for 7 councils to invite tenders for the processing of hard waste (otherwise known as clean up materials or kerbside clean up) until 8 March 2033. [Authorisation AA1000431](#) was on behalf Bayside Council, Burwood Council, Georges River Council, Inner West Council, Strathfield Council, Waverley Council, and Woollahra Council.

1. Bayside Council;
  2. Burwood Council;
  3. Canterbury-Bankstown Council;
  4. City of Canada Bay Council;
  5. Georges River Council;
  6. Inner West Council;
  7. Randwick City Council;
  8. Strathfield Council;
  9. City of Sydney Council;
  10. Sutherland Shire Council;
  11. Waverley Council; and
  12. Woollahra Municipal Council.
- 1.5. Together, SSROC and the councils listed above are referred to as the **Participating Councils**.

**Figure 1: Map of SSROC's local government areas<sup>3</sup>**



<sup>3</sup> [Southern Sydney Regional Organisation of Councils Community Profile](#), accessed 8 November 2023.

- 1.6. SSROC's estimated resident population for 2022 is 1,771,070 people, which covers approximately 22% of the population of New South Wales, and roughly a third of Greater Sydney.<sup>4</sup>

## The Proposed Conduct

- 1.7. SSROC is seeking authorisation to enable SSROC, on behalf of the Participating Councils, to:
- collectively invite tenders, evaluate responses, negotiate contracts for the processing of commingled recycling from yellow-lidded kerbside bins and disposal of residuals, and
  - enter into and give effect to contracts with each preferred supplier through a Standing Offer Deed and Contract for Services.

(the **Proposed Conduct**).

- 1.8. The Proposed Conduct is for processing only, not the collection of these materials.
- 1.9. The name of the tender process is 'CRESS' (Commingled Recycling Sustainability Solutions) and it involves one tender, but two tendering processes, constituting both the Standing Offer Deed process and the Contract for Services process. All successful tenderers would be bound to SSROC through a Standing Offer Deed, and the Participating Councils will contract with one or more of the successful service providers through a Contract for Services, subject to the terms and conditions contained within the Standing Offer Deed.
- 1.10. The Proposed Conduct consists of CRESS 1 in the short term, which will address 4 councils with nearing expiration dates of current contracts; and CRESS 2, which is designed to signal a market demand for more recycling processing capacity needed in Sydney.
- 1.11. Tenderers may tender their services to one or more Participating Councils; they will not be required to tender services for all Participating Councils. Participating Councils will contract separately with their selected contractor; however each engagement will be governed by the same contractual documents, albeit with potentially slight changes to suit each specific arrangement.

## 2. Consultation

- 2.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 2.2. The ACCC received submissions from 2 interested parties in relation to the application for authorisation, from Northern Beaches Council and Woollahra Council.
- 2.3. Northern Beaches Council's is not one of the Participating Councils. It submits that it supports the rationale to improve the way the commingled kerbside recycling stream is processed and potentially promoting new processing capacity through planned or newly built facilities in Sydney. However, it expressed caution that authorisation should not lead to an increase in market power for any existing provider of materials recycling facilities, noting that there are very few operators of materials recycling facilities servicing Sydney. Therefore, the proposed procurement process must not enable the existing operators of materials recycling facilities to misuse any increase in market

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<sup>4</sup> [Southern Sydney Regional Organisation of Councils Community Profile](#), accessed 8 November 2023.

power to the detriment of councils within, and outside of, the CRESS project (e.g., by raising prices).

- 2.4. Woollahra Council is one of the Participating Councils and it supports the joint tender process as it is hoped it will provide increased efficiencies, economies of scale, and improved diversion benefits for each of the Participating Councils.

### 3. ACCC assessment

- 3.1. SSROC sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 or section 46 of the Act.
- 3.2. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 3.3. The ACCC considers that the likely future without the Proposed Conduct would involve each Participating Council carrying out its own separate tender process for the acquisition of commingled recycling processing services.
- 3.4. The ACCC considers the relevant areas of competition likely to be affected by the Proposed Conduct are likely to be the supply and acquisition of services for the processing of commingled recyclable waste within the Greater Sydney area.

### Public benefits

- 3.5. SSROC submits that the Proposed Conduct would result in the following public benefits:
  - increased competition
  - economic benefits through reduced transaction costs
  - environmental benefits.
- 3.6. The ACCC has considered these under the below headings.

### **Increased competition between providers of commingled recycling processing services**

- 3.7. SSROC submits that the Proposed Conduct increases competition through encouraging new entrants for the provision of commingled recycling processing services and encouraging tenderers to provide more competitive tenders, given the aggregation of demand across the Participating Councils.
- 3.8. SSROC submits that it conducted an Expression of Interest prior to preparing the tender specifications and in response 5 credible tenders were received, with 4 proposing new processing capacity through planned or newly built materials recycling facilities in Sydney. SSROC submits that access to a large volume of recyclable waste encouraged the service providers to commit to planning approvals and construction of new materials recycling facilities. It submits that without aggregation, some recyclers may delay building their MRF, or postpone operationalisation until secure, optimum tonnages are contracted. SSROC submits that having more materials recycling facilities available stimulates competition between service providers.
- 3.9. SSROC submits that the length of authorisation sought, being 11 years, is intended to encourage service providers to provide competitive strategies and invest and build

infrastructure (i.e. materials recycling facilities) to increase competition in the current Sydney market.

- 3.10. The ACCC considers that the Proposed Conduct is likely to result in a public benefit from increased competition for the tender among new and existing service providers. By aggregating the volume of commingled recycling waste available for processing, economies of scale can arise relative to a situation where each Participating Council conducts its own tender and contracts with different service providers, and they can enable new service providers to enter at a profitable scale. Existing service providers who already operate a MRF will face increased competition from potential new entrants into the market.

### **Transaction cost savings**

- 3.11. SSROC submits that there are efficiencies from reduced transaction costs. For example, Participating Councils and service providers would incur fewer administrative, legal, preparation (and for Participating Councils, evaluation costs) by undertaking a joint tender process and managing contracts collectively, relative to Participating Councils conducting individual tender processes. SSROC further submits that it is seeking alignment of the contracts to reduce the administrative burden and cost of tendering in the future. SSROC submits that it estimates that each council could save between \$15,000 to \$40,000 by conducting the procurement jointly rather than on their own.
- 3.12. The ACCC accepts that the Proposed Conduct is likely to result in the public benefit of transaction cost savings for both Participating Councils and potential service providers, including by reducing the administrative and legal costs associated with conducting or responding to separate tender processes. However, the ACCC recognises that Participating Councils will be partially offset by the additional costs they may incur in the coordination and administration of their service agreements, such as attending joint meetings and ongoing administration fees payable to SSROC.

### **Environmental Benefits**

- 3.13. SSROC submits there are environmental benefits from increasing the recovery of resources from commingled recyclables and therefore decreasing the amount of waste disposed in landfill.
- 3.14. SSROC submits that it has sustainable procurement standards and practices, such as carbon credit accounting, emissions reduction measures, circularity of outputs, reduced water and energy use, and productivity and efficiency measures and that the CRESS tendering process will demand service providers comply with these sustainable requirements. Conversely, a single council tendering alone would be unlikely to have the power to enforce such compliance. SSROC submits that this will result in less landfill, more processed waste, and continuous improvement and a healthier environment for all.
- 3.15. The ACCC considers that the responses to the Expression of Interest (see paragraph 3.8) indicate that without the Proposed Conduct, it is less likely that new materials recycling facilities will be built in the short to medium term.
- 3.16. Therefore, the ACCC considers that the Proposed Conduct is likely to result in environmental benefits through an increase in recycling processing capacity which reduces reliance on landfill, and from increased compliance by service providers with environmental standards. Regarding the latter, the ACCC considers that the enforcement of environmental standards and practices is likely to occur with oversight by SSROC in the future with the Proposed Conduct. However, it is unclear whether equivalent standards and practices would exist in the future without the Proposed

Conduct and to what level of compliance these would be enforced, and as such, the ACCC has weighted this benefit accordingly.

## Public detriments

- 3.17. SSROC submits that the Proposed Conduct will not result in any public detriment which is reasonably foreseeable.
- 3.18. Generally, the ACCC considers that public detriments may arise from joint procurement processes where a group of councils (which would otherwise compete independently to acquire the relevant services) comprises a substantial portion of the market and the joint procurement reduces competition for service providers. The ACCC notes that the Proposed Conduct potentially forecloses competition in the processing of kerbside commingled recyclables, in the Participating Council areas for 11-years.
- 3.19. This is relevant to the general concern noted by Northern Beaches Council, which expressed caution that the Proposed Conduct does not lead to an increase in market power for any existing provider of materials recycling facilities, noting there are currently very few operators of materials recycling facilities servicing Sydney. The ACCC considers that factors listed in paragraph 3.20 below mitigate the concerns raised by Northern Beaches Council.
- 3.20. However, the ACCC considers that the Proposed Conduct is likely to result in limited, if any, public detriment, because:
- The 12 Participating Councils represent only a portion of recyclable waste collected in Greater Sydney from the total of 33 local government areas. SSROC covers roughly only a third of the population of Greater Sydney.<sup>5</sup> It can be assumed that existing service providers would still be able to service other councils in this region where they are city-wide and would therefore not be foreclosed from the market.
  - Participation is voluntary for each Participating Council, and they will not be required to contract with any particular service provider.
  - Service providers are able to tender to supply services to one, or multiple, Participating Councils.
  - No collective boycott is proposed.
  - Where limited detriment from a loss of competition may occur for the relevant services, it is likely to be mitigated by an increase in potential competition because the aggregated volumes may facilitate new service providers to enter at profitable scale, and therefore mean that existing service providers face increased competition from new entrants. Additionally, service providers are able to tender for only one or more of the Participating Councils.

## Balance of public benefit and detriment

- 3.21. For the reasons outlined in this draft determination, and based on the information currently available, the ACCC is satisfied that the Proposed Conduct is likely to result

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<sup>5</sup> As of 30 June 2022, the population estimate for SSROC region was 1,771,070, see [Southern Sydney Regional Organisation of Councils Community Profile, id Demographic Resources](#), accessed 21 November 2023. As of 30 June 2022, the population estimate for Greater Sydney was 5,302,736, see [Greater Sydney Profile, id Demographic Resources](#), accessed 21 November 2023



in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct, including any lessening of competition.

## 4. Draft determination

### The application

- 4.1. For the reasons outlined in this draft determination, the ACCC considers that the authorisation test is met. Accordingly, the ACCC proposes to grant authorisation AA1000651 in relation to Division 1 of Part IV of the CCA, and section 45 of the CCA, to enable the Participating Councils to engage in the Proposed Conduct (as defined at paragraph 1.7).
- 4.2. The ACCC proposes to grant authorisation for 11 years.
- 4.3. This draft determination is made on 14 December 2023.

## 5. Interim authorisation

- 5.1. On 24 October 2023, SSROC requested interim authorisation. SSROC seeks interim authorisation to enable SSROC, on behalf of the Participating Councils, to collectively invite tenders, evaluate responses and negotiate contracts for the processing of commingled recycling from yellow-lidded kerbside bins and disposal of materials, but not to enter into and give effect to any contracts (the **Interim Conduct**).<sup>6</sup>
- 5.2. SSROC requested urgent interim because a number of Participating Councils' recycling contracts will expire in 2024 and 2025. The tender process will involve tendering for both a short-term solution for those contracts (CRESS 1) and the longer-term contract where it is envisaged that contract end dates will be aligned (CRESS 2).<sup>7</sup>
- 5.3. The ACCC has decided to grant interim authorisation to SSROC and the Participating Councils for the Interim Conduct. The ACCC considers that because no contracts will be entered into or given effect to, interim authorisation is unlikely to permanently alter the competitive dynamics of the market and the market will be able to return to substantially its current state if final authorisation is later denied. The ACCC also recognises that if interim authorisation is denied, this could result in the Participating Councils not having sufficient time to secure new contracts prior to their current contracts expiring.
- 5.4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for authorisation is withdrawn.

## 6. Next steps

The ACCC now invites submissions in response to this draft determination by 12 January 2024. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

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<sup>6</sup> SSROC, [Clarification of Conduct](#), 28 November 2023.

<sup>7</sup> SSROC, [Application for Urgent Interim Authorisation](#), 25 October 2023.