



Hunter Resource Recovery

5 July 2024

Mr David Hatfield & Ms Anna Pound
Competitions Exemptions
Australian Competition and Consumer Commission

Dear Mr Hatfield and Ms Pound,

RE: APPLICATION FOR AUTHORISATION: AA1000670-1

We refer to our submission on 21 June 2024 and your request for further clarity on the EOI process and options available to HRR if consent is not granted. We will outline our response to each point below.

EOI process

As previously outlined, in 2022, the Member Councils of Hunter Resource Recovery (HRR) plus Central Coast Council, Dungog Shire Council, Muswellbrook Shire Council, Port Stephens Council, and Upper Hunter Shire Council, issued a non-binding expression of interest (EOI) for the future provision of sorting and distribution of recycle in two forms:

- a. a possible joint venture involving the above nine councils; or
- b. HRR Member Councils only.

HRR received 10 responses to the EOI. As previously disclosed, HRR recently sent a letter to those responders to update them on the current tender process and timeline and received a response from some of those responders.

For ease of reference, we have prepared the below table to show who the EOI responders were, who was sent an update letter, and who responded to that letter:

Business names	Provided submission to EOI	HRR sent update on tender process	HRR received response to their update on tender process
Cleanaway Waste Management	✓	✓	-
Bioelektra	✓	✓	-
iQ Renew	✓	✓	-
City of Newcastle (Council)	✓	- (no longer pursuing MRF development)	-
Re-Group Pty Ltd	✓	✓	-

Remondis Australia Pty Ltd	✓	✓	-
Solo Resource Recovery	✓	✓	✓
Suez Recycling Recovery Pty Ltd	✓	- (no longer exist)	-
Veolia Environmental Services Australia Pty Ltd	✓	✓	✓
Visy Recycling	✓	✓	✓

Options available to HRR

In our letter to the ACCC dated 21 June 2024, our response to question 6 outlined two options potentially available to HRR should the proposed short-term contract not be approved. We have now been asked to clarify whether one or both of these options are possible, and our response to this is outlined below:

- (a) *Each of the Member Councils individually contract with Solo (ie. four separate contracts)*
- preliminary enquiries with the Member Councils and the HRR Board suggest that this could prove very difficult to achieve and is likely not a viable option.
 - This difficulty is due to a number of factors, including:
 - Since 1997, HRR has provided services to manage the recycling contracts for each of its Member Councils and, as such, those Member Councils are not set up to manage such recycling contracts. In light of this, the only ways to manage the four contracts would be for each Member Council to set up the infrastructure internally to facilitate this (a difficult and costly exercise which would be difficult to justify for potentially only 18 months), or for each Council to separately contract with HRR to provide those services (which is likely not possible due to the fact that HRR was established as a joint venture and could not provide those services to individual councils or risk breaching its constitution and declaration of trust).
 - The short-term contract proposed to be entered into is based on the current contract with Solo of which HRR is the Principal. In light of this, the contract would need to be re-written to cover four individual Principals which would cause delay and see additional expense for each of the Member Councils, which would be borne by their respective ratepayers.
 - Furthermore, it appears unlikely that the Councils would approve this approach as under this current proposal for a short-term contract, and during the initial 18 month term whilst HRR finalises tenders for both processing and collections, HRR has secured a degree of compensation from Solo (via a lower gate fee) in recognition for the past financial support given to them by the Member Councils. We cannot obtain that benefit from another provider and there is no promise that that lower gate fee would be available to each individual Member Council should they individually contract. Again, this could see significant additional cost incurred by each Member Council, making the proposal unviable.
 - This is a local government election year meaning that soon each council will be heading into “caretaker phase” which greatly limits a councils’ powers with respect to decisions that can be made during that period. Following those elections, there would likely be a further delay while the new councillors are onboarded.

(b) *HRR to tender for the conduct anticipated by authorisations AA1000647 and AA100648*

- As previously outlined, HRR and its Member Councils have not made the decision to delay the tendering process until 2025 lightly; however, for the reasons already outlined, the parties have formed the view that they have no choice but to do this. In light of this need to delay, there is a void in the services being provided from the date of conclusion of the current contract (30 June 2025) until the new tenderer is “up and running”.
- As such to tender now for the conduct anticipated by authorisations AA1000647 and AA100648 would be fraught with problems, particularly due to:
 - Businesses having to tender in a very volatile environment, making it extremely difficult for them to accurately cost their services and thus setting up businesses to potentially fail; and
 - (for reasons outlined previously) HRR needs to tender for the processing contract first so that there is clarity on the facility’s location before we go to tender for the collections contract. If the short-term contract is not granted, then both tenders would have to be issued at the same time which does not provide the best tendering opportunities and would result in a compromised outcome.
- Our current contract with Solo is set to end in less than 12 months’ time, on 30 June 2025, meaning that beyond that date there is no contract for either collections or processing in our Member Councils’ local government areas. It would be virtually impossible to finalise and circulate both the collections and processing tenders, have interested parties lodge their tenders, assess the tenders, award the tenders, and contract with the tenderers in that period. Further, that would provide insufficient time for a business to establish a processing facility meaning that the only businesses able to tender would be those who already have all of the facilities up and running now, which doesn’t allow a new business to enter the market. As such, this greatly reduces competition in the market, and with such a monopoly, risks those businesses being able to charge higher rates due to that lack of competition. As previously mentioned, HRR is still intent on tendering next year; however is unable to tender and start a new operator immediately.

As previously outlined, HRR and its Member Councils have not made the decision to delay the tendering process until 2025 lightly; however, for the reasons already outlined, the parties have formed the view that they have no choice but to do this.

HRR notes that this proposed conduct is only with respect to services being provided to the HRR Member Councils and there are still six other local Councils who are open to the market. Current data shows that HRR is only 35% of the Region’s market so there are still significant opportunities available for other providers within the area.

For the reasons outlined in our application and submission, we request the ACCC’s approval for the proposed conduct.

Regards,



R. Lewis
CEO HRR