



Hunter Resource Recovery

21 June 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 are responding on behalf of the Hunter Resource Recovery (“HRR”) Member Councils, being Cessnock, Lake Macquarie, Maitland City Councils and Singleton Council.

We refer to your email dated 12 June 2024 providing a copy of the submission from iQ Renew and requesting a response to that submission as well as five specific questions.

For ease of reference, we will re-state those questions below and then respond to each in turn:

1. *Please outline the Applicants’ obligations pursuant to section 55 of the Local Government Act (NSW) (LGA), (but for any authorisation granted), including whether this section of the LGA is applicable to the Applicants’ proposed contract for recyclate collection, processing and distribution with Solo Resource Recovery, the subject of the current application for authorisation (**the Contract**).*
 - a. *If so, please explain how the proposed conduct accords with obligations to go out to tender under section 55 of the LGA.*
2. *Please outline whether contracts between the individual Member Councils and a service provider for recyclate collection and processing would (but for any authorisation granted) be subject to section 55 of the LGA.*
3. *Please outline whether the Applicants have considered running a competitive tender process before June 2025, for a short-term contract for recyclate services, similar to that considered under the proposed conduct.*
 - a. *If so, please indicate the reasons that the Applicants wish to proceed with the proposed Contract, and/or any costs or harm to the Applicants from undertaking a competitive tender process.*

4. *Please indicate any competitors to Solo that could supply the recycle services that are the subject of the proposed Contract.*
 - a. *If applicable, please include whether they have processing facilities, and the locations of their [current or future] processing facilities which could service HRR's member councils.*
 - b. *If applicable, please indicate what public benefits the Applicants foresee by contracting with Solo until June 2028 under the proposed conduct, rather than another service provider (through competitive tender).*
5. *Please indicate which terms of the current contract with Solo will be subject to further negotiation (pursuant to authorisation) to form the proposed short-term Contract.*
6. *Please describe what the likely future strategy would be for HRR and its member councils to acquire recycle services until June 2028 in the event that authorisation was not granted by the ACCC for the proposed conduct.*

Question 1

We have closely considered the application of section 55 of the LGA and determined that section 55 does not apply to the proposed contract due to the exemption in clause 55(3)(i) which says “[section 55] does not apply to the following contracts... a contract where, because of extenuating circumstances ... a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

The extenuating circumstances are as outlined in the report annexed to our application to the ACCC, and further information is outlined below.

In light of these extenuating circumstances, all Member Councils, via a formal Council meeting, unanimously resolved to enter into a short-term contract for collection and processing with Solo Resource Recovery for a maximum period of 3 years, until 30 June 2028, subject to ACCC consent, due to extenuating circumstances.

Question 2

For the same reasons as outlined in the response to question 1, a decision has been reached that the contracts between the individual Member Councils and a service provider for recycle collection and processing would not (but for any authorisation granted) be subject to section 55 of the LGA.

Question 3

The Applicants have considered running a competitive tender process before June 2025, for a long-term contract for recycle services, similar to that considered under the proposed conduct, and this is addressed in our original applications (AA1000647 and AA1000648). HRR on behalf of its Member Councils have spent the past two years producing a Tender Package (including Contract) with such document in final, draft form and ready to call Tenders should the ACCC not consent to the short-term contract anticipated by this current application.

Notwithstanding this, a Working Group consisting of Council Representatives has carefully analysed the current state of the Australian Recycling Industry and has concluded that the benefits of gaining approval for a short-term contract far outweigh the risks of tendering in an unstable market.

Since 2016, ratepayers have been forced to fund the ongoing issues faced by processors via significant increases to gate rates with gate rates in some cases having doubled. In these harsh economic times, the Working Group concluded that it is unreasonable and unsustainable to expose residents to higher risk and cost in order to line the pockets of processors.

Question 4

The only competitor to Solo who could supply the recycle services that are the subject of the proposed Contract are iQ Renew, however they would still need to subcontract for collection services. iQ Renew's processing facilities are located on the NSW Central Coast well outside HRR's collection areas.

Gateshead's sudden closure in 2020 was the result of iQ Renew removing essential infrastructure from Gateshead where they provided a processing service via a sub-contract relationship through Polytrade to Solo Resource Recovery. A dispute arose between the parties regarding quality of end product that iQ Renew produced which resulted in financial penalties. Without any notice to Councils the facility was shut down overnight by iQ Renew. This resulted in product needing to be shipped to Sydney for processing at considerable cost to rate payers and the main contractor. There is currently no Materials Recovery Facilities located within the catchment of the Member Councils. The problems with this are outlined in our current application as well as the documents supporting authorisations AA1000647 and AA1000648.

With this in mind, and as a tradeoff for the proposed short-term contract, Solo will reestablish local processing within the collection catchment for the Member Councils and have acquired premises and equipment to do so.

[REDACTED]

[REDACTED]

[REDACTED]

We foresee there being significant public benefits by contracting with Solo until June 2028 under the proposed conduct rather than another service provider (through competitive tender).

The residents within each Member Council's area shall see a significant fall in the domestic recycling charge with immediate effect. Subject to HRR receiving the ACCC's consent, HRR has calculated that based on current tenements, there would be a minimum saving of \$10 per tenement and over \$60 per tenement over 5 years.

Solo Resource Recovery has recently invested [REDACTED] in local facilities and equipment and, as a result, 70 plus new local jobs will be created to support Councils' recycling service. Market ready product will be produced and it is likely that, in time, a local circular economy will be developed with local manufacturers establishing sites in the Hunter Region thus creating more job opportunities and reducing transport costs.

As mentioned above, there is only one competitor within the Region: iQ Renew. A tender at this time (prior to Solo's facility re-establishment) leaves Member Councils open to a monopoly and Council having to establish material transfer facilities at their cost to deliver product outside of the catchment zones. Secondary handling and transfer will add an additional \$10 per tenement to rate payers' charges as well as adding dozens of weekly truck movements between our Councils and the Central Coast, resulting in a negative environmental impact.

Question 5

There are no significant amendments intended in relation to the terms and conditions between the present contract and a new short-term contract. The proposed short-term contract is essentially the same as the current contract whereby Solo Resource Recovery shall be responsible for collections and processing. This is in contrast to the new tender which is for two individual contracts. Solo is not a processor and they will seek out a joint venture partner to undertake primary processing and secondary processing on a sub-contract basis. This leaves an opportunity for others to make competitive representations to Solo Resource Recovery and thereby reduce processing costs.

The main term that is subject to change is with respect to the service fee that is payable as that will reflect the current market compared to the market when the previous contract was entered into. This service fee will cover both collections and processing, is all inclusive and capped to only increase in accordance with CPI.

Question 6

As mentioned above, if the short-term contract is not authorised, there are only two main options for HRR to pursue:

- (a) HRR and each the Councils would need to explore whether each of the four Member Councils could and would individually contract with Solo:
 - This is not the preferred option particularly in light of the fact that a proposal would need to go to each of the four Member Councils to be considered and approved by their respective councilors. This could prove problematic this year because the Councils will shortly be entering caretaker mode in light of the Local Government elections in September 2024. This may prevent HRR's larger Member Councils, such as Macquarie and Maitland, from making a determination due to the value of the contracts resulting in each Council (and their ratepayers) continuing to pay higher gate fees;
 - A separate plan would also need to be determined by each Member Council regarding who would administer the four individual contracts. That is the role that HRR currently has, underpinned by the Declaration of Trust between the four Member Councils. The most cost-effective way (to minimise expenses for the ratepayers) would be for HRR to take on the administration of the four contracts, however, further enquiries would need to be made to determine whether the Declaration of Trust even permits HRR overseeing the administration of such contracts. If the administration of these contracts had to be undertaken by a third party, or by each individual Council, costs would naturally increase because they would lose the benefit of years of the systems developed through the current model.
 - The Member Councils are fully aware of the reasons for delaying a full tender process and have accepted the report developed jointly by councils, I strongly believe that they would opt for 4 separate contracts without going to market rather than face possible exploitation through excessive gate fees should the status quo be maintained.
- (b) HRR to tender for the conduct anticipated by authorisations AA1000647 and AA1000648:
 - The problem with this strategy is that it will expose HRR to the market and HRR will be forced to accept the risks associated with that, something Councils are extremely reluctant to do considering the cost to rate payers. However, this process will not

commence until January 2025 at the earliest and completed by June 2025. Should the Tender be awarded to a Company who is not yet locally established, it will take a further two years to obtain all approvals and licenses to establish a facility. As a result, it will most likely be June 2028 before we are able to commence processing. In the interim, product will still be being collected and will then require processing and disposal. It makes perfect sense to continue as is and obtain the financial and operational benefits from a short-term contract via our current contract. As previously disclosed, we are unable to tender for collections until a final destination (sorting facility site) is known as the collection contractor shall base their costs on location and the means to ship product to this site in an economic and sustainable manner.

Further comments

HRR's Member Councils have a strong desire to provide the most advanced, effective, affordable service with long term sustainability.

The weightings to be applied via the tender assessment process for the 23-year sorting contract are such that they give stronger weight to local processing and secondary sorting to produce high grade product that is market ready in the hope of creating a local, circular economy.

Industry estimates suggest that there are approximately 1.5 million tonnes of surplus stockpiled recyclables in Australia, with supply far outweighing demand. This stockpile shall continue to grow until we create secondary use for product at a competitive rate compared to imported recyclate. Last month, Australia's only producer of recycled HDPE (milk bottles) pellets closed its business as it could not compete financially with imported pellets. This has resulted in the stockpiling of HDPE containers with little likelihood of them being recycled unless new initiatives are introduced.

In 2023, HRR called for 'Expressions of Interest' for the processing of our product via a new contract, which resulted in 9 returns. HRR wrote to all respondents in April 2024 and advised each of our intention to defer calling tenders at this time due to the poor state of the Australian Recycling Industry. Several major providers contacted HRR and said that they completely understood and agreed it was the wise decision to defer. iQ Renew received our notification, however they did not respond.

As stated earlier, all Member Councils, via a formal Council meeting, unanimously resolved to enter into a short-term contract for collection and processing with Solo Resource Recovery only until 30 June 2028, subject to ACCC consent, due to extenuating circumstances.

Each of the Member Councils recognised that the Australian Recycling Industry remains at considerable risk and, as a result, residents continue to fund the increasing cost of recycling

processing. Our aim is to stimulate competition across the Region and allow others the opportunity to provide a competitive playing field. We are seeking solutions for end product which currently do not exist, however are in development. We need time to create markets for end product and to seek and obtain a fair and reasonable Federal Government response to banning exports whilst allowing the dumping of cheap imports.

HRR are committed to tender for the long-term processing contract in 2025 and assess returns based upon best practice solutions not price. In fairness, we must allow those contemplating to tender the opportunity to address our contract terms for both primary and secondary processing locally and develop the infrastructure to do so.

HRR has concluded that the only way that this can occur whilst also ensuring continuity of service to the residents of each Member Council's LGA, is for this short-term contract to be entered into.

HRR believes that the proposed short-term contract with Solo is the best outcome in the circumstances for the following reasons:

- Solo committed to re-establishing local facilities in 2022 and have been working towards achieving this in order to meet the terms of our current contract to July 2025.

[REDACTED]

- Whilst reestablishing local processing, Solo have assessed market demand for high quality sorted product and responded via secondary sorting. These are mostly local except for plastics which will operate on the Central Coast, next door to a major buyer of used plastics. In doing so, they are meeting Councils' desires to create a local circular economy and local employment opportunities.
- Solo is highly unlikely to gear up local secondary processing should they not secure the short-term contract due to the financial outlay they would have to make without a return on investment.
- The above will all result in a better result for the Member Councils and their ratepayers, including a reduction in ratepayer costs due to a reduced gate fee and lower transportation costs for product by keeping the processing local.

For the past 8 years, processor companies have looked to Councils to prop up their businesses via excessive processing charges. Unless Councils force the change (through collective bargaining), the processors will not change and processing costs will continue to climb.

Our proposal for the short-term contract requires greater responsibility for end product by the processor and prompts them to rethink their methods of processing.

HRR has spent the past 18 months assessing different options, and, to date, no Company has been prepared to establish a recycling facility or move to establish such a facility with guarantee of supply for HRR's product (currently 28,500 tonnes).

By continuing to utilise Solo on the proposed short-term basis, HRR will be creating competition by ensuring there is no monopoly. For instance, iQ Renew currently has Newcastle, Wyong, Gosford and Northern Suburbs of Sydney being processed via their Central Coast site. Dungog, Muswellbrook, Upper Hunter and Port Stephens Councils all use alternate collection contractors with all but Muswellbrook going to tender within the next 12 months. There is ample market opportunity for other collection and processing companies. With just 28,500 tonnes collected across our 4 Member Councils, it is unlikely that we would see secondary processing established in the Hunter Catchment and these jobs will be deployed elsewhere such as Sydney.

HRR are only seeking a minor delay in our tender process in order for the "industry dust to settle" and adjust to the Federal Government legislation on banning or restricting exports. Gate fees are higher than ever due to falling commodity prices or non-existent prices as there is only one primary taker of used recycle in Australia. HRR has formed the view that encouraging a local circular economy will stimulate the market and increase end product demand and thereby force up commodity prices and lower gate fees, resulting in a greater result for Councils, ratepayers and the community generally.

We respectfully ask that the ACCC consider the longer-term benefits to the residents and our local environment by allowing us (Councils) the time to work through the current risks faced by the Australian Recycling Industry so that we can make the most beneficial decisions that provide the best outcomes for the community and industry alike.

Regards,



R. Lewis
CEO HRR