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Asela Atapattu
Director, Major Projects and Initiatives Branch
Environment Protection Authority
4 Parramatta Square
12 Darcy Street,
Parramatta NSW 2150

By email to: majorprojects.initiatives_clr@epa.nsw.gov.au

Dear Mr Atapattu

NSROC draft submission on the NSW EPA's Joint Procurement of Waste Services – Options Paper

Northern Sydney Regional Organisation of Councils (NSROC) appreciates the opportunity to make a submission to the EPA's Joint Procurement of Waste Services – Options Paper. The submission has been prepared with the input and support of our member councils, but should be considered as a draft until it is formally endorsed by the NSROC Board.

The proposed voluntary facilitation service for councils to jointly procure waste services is supported, as is the opportunity for local government to provide input into the design of the service. I trust that the EPA will continue to consult with councils as each option is progressed to better understand the range of needs across local government.

Local government is subject to the impact of a range of government decisions at present which have the capacity to significantly reduce its ability to offer the local services its communities need including the potential joint procurement of waste services. Reforms currently proposed or agreed relating to rate pegging, the proposed waste peg for the Domestic Waste Management Charge, and significant reductions in development infrastructure contributions are felt even more keenly when councils are already facing increased costs and reduced income as a result of the COVID-19 pandemic.

NSROC sees merit in all five options for the facilitation service and would prefer to see all incorporated as part of a holistic service model as opposed to a series of distinct but linked services because we believe this would allow improved economy of scale and help maximise the value of the investment.

Further details are provided in the attached submission. Should you require further information, please do not hesitate to contact NSROC's Regional Waste Management Coordinator, Mr John Carse on (02) 9911 3595 or by email at JCarsen@lanecove.nsw.gov.au in the first instance.

Yours sincerely



Dr Meg Montgomery
Executive Director NSROC

Submission

NSW Environment Protection Authority Joint Procurement of Waste Services – Options Paper

28 February 2022

Prepared by Northern Sydney Regional Organisation of Councils

Member Councils: Hornsby Council
 Hunter’s Hill Council
 Ku-ring-gai Council
 Lane Cove Council
 Mosman Council
 North Sydney Council
 City of Ryde Council
 Willoughby City Council

Contact: John Carse
 Regional Waste Management Coordinator, NSROC
 JCarse@lanecove.nsw.gov.au

INTRODUCTION

The Northern Sydney Regional Organisation of Councils (NSROC) is pleased to make this submission to the NSW Environment Protection Authority (EPA) on the *Joint Procurement of Waste Services – Options Paper*.

NSROC is a voluntary association of eight local government authorities in Sydney. The councils service an area extending from the Hawkesbury River in the north to Sydney Harbour in the south, west to Meadowbank on the Parramatta River, as shown in Map 1.

As local government authorities, our member councils have been delivering waste services for many years and understand the complexity, challenges and opportunities of the sector, and delivering services to our communities. Member councils deliver a diversity of initiatives to support appropriate waste management and resource recovery.

It is in this context that NSROC makes this submission, which represents the view of our member councils, while noting, individual councils may also make an independent submission. The format of this submission provides overarching feedback and then more detailed comments on both the Context and the five options suggested in the paper.

OVERARCHING FEEDBACK

NSROC supports the new initiative to help local councils jointly procure waste services under the NSW Waste and Sustainable Materials Strategy 2041 (WaSM), and its potential contribution towards the transition towards a circular economy. NSROC also strongly agrees with the paper's statement that "NSW waste and resource recovery services and infrastructure must be expanded and modernised if we are to keep pace with growing waste volumes and develop a circular economy. A strong pipeline of innovation and infrastructure investment is needed to ensure we have the capacity to collect, sort, process and dispose of waste safely, so it does not become a problem for future generations."

Recognising the critical role that local government plays in managing and procuring waste services across the state, NSROC also supports the NSW Government's aims to

- attract investment in new waste and resource recovery infrastructure
- deliver better value for ratepayers
- achieve better waste and recycling outcomes for the people of NSW .

The proposed voluntary facilitation service for councils to jointly procure waste services is supported, as is the opportunity for local government to provide input into the design of the service. However, the service will only provide a limited contribution towards achieving the Government's aims.

NSROC councils have used joint procurement for a wide range of services including waste. Two notable examples are the five- council residual waste processing and disposal contract and six councils jointly funding the lease of a site and the operational expenses of a regional CRC.

While the establishment of a facilitation service is welcomed it is only one part of the puzzle and it is not clear from the Options Paper whether the EPA appreciates the scale of the challenge. Joint procurement of waste services is a very complex process with long lead times which needs to account for legislative, market and commercial issues. Councils also need to consider whether and how best to harmonise services which can require extensive community consultation.

The Options Paper is pitched at a high level and hence our councils found it difficult to provide detailed feedback. However the opportunity to do so is appreciated and there a number of points NSROC would like the EPA to consider in delivering the facilitation service. These are:

- NSROC sees merit in all five options and would prefer to see all incorporated as part of a holistic service model as opposed to a series of distinct but linked services which could allow improved economy of scale and help maximise the value of the investment;
- All the options are aimed at councils delivery of services and NSROC strongly encourages the EPA to continue to consult with councils as each option is progressed to better understand the range of needs across local government;
- Local government is facing a range of government decisions at present which have the capacity to significantly reduce its ability to offer the local services its communities need. These include rate pegging, the proposed waste peg for the Domestic Waste Management Charge (DWMC), significant reductions in development contributions for infrastructure and services and statutory planning changes which reduce councils' ability to ensure that new developments properly consider the impacts on local amenity. These significant budgetary pressures are proposed at a time when councils are facing significantly increased costs and reduced income as a result of the COVID-19 pandemic;
- The lack of appropriate waste and circular economy infrastructure serving metropolitan Sydney remains a significant issue and while mentioned as part of the facilitation service options, the continued lack of a detailed strategic plan and implementation strategy severely limit the opportunities available to councils seeking competitive bids for the delivery of waste services;
- Lack of data and the asymmetry of available information in waste management makes it difficult for individual councils to make well informed decisions about waste services at the individual level and this is exacerbated when seeking collective procurement;
- Training and support for council staff tasked with delivering complex waste projects is welcomed and our councils would also recommend such training is offered in a way that allows it to be delivered multiple times rather than just once;
- Similarly rather than the facilitation service develop programs from scratch, NSROC recommends that it is built on existing examples of successful joint procurement and reflects the service offerings of existing procurement agencies;
- The Options paper gives little consideration to the critical component of the governance arrangements between councils seeking to jointly procure services. Previous attempts at such procurements have failed when councils have pulled out of proposals or had a change in priorities as a result of political or administrative changes.
- While joint procurement can have many benefits there are also potential undesirable impacts such as:
 - Reducing competition in future as potential competitors are forced elsewhere;
 - Short term financial gains may be at the expense of market development, such as was experienced with on shore markets for recycling of plastics and paper when cheaper options were taken off-shore; or
 - Councils can become locked into a particular provider or technology for a long term even when it under performs.

COMMENTS ON CONTEXT

Local councils' role in waste management

The paper acknowledges the key role local councils play in delivering waste management services and their critical contribution to the delivery of the WaSM. However it does not seem to appreciate the challenges that face local government in providing these services and the potential impact on the WaSM. Kerbside services and related activities can be funded by the DWMC. But the current definition of the DWMC is not fit for purpose. This definition was developed many years ago and contemporary waste management practices are much more diverse. Also, there have been significant changes in

policy, targets, regulations and expectations from the community. Practices now include a suite of activities including significant education and behaviour change activities. NSROC argued in its 2020 IPART submission on the DWMC discussion paper, that these types of activities should be incorporated into the definition of reasonable costs for the DWMC, given they are diverting waste from the kerbside and meeting State Government requirements and targets. However, the current IPART Report offers no real support to this proposition.

Legislative framework for local government procurement

The Options paper notes that the relevant legislation allows joint tendering and that the Office of Local Government is in the process of reviewing the tendering provisions of the regulation but does not appear to appreciate the complexity and challenges the legislation creates. Nonetheless, the undertaking to work with the Office of Local Government when designing the facilitation service is welcomed. Although the facilitation is a relatively small component of the whole WaSM strategy, the willingness to work with OLG in considering the current legislative framework could create an important opportunity for the EPA to appreciate the regulatory challenges and potentially support legislative changes to broaden the scope of what can be funded from the DWMC.

In the past, councils have faced significant challenges when undertaking joint procurement with the legal requirements of tendering. These requirements do not currently support councils or the Tenderers in managing their risks during the tender process or when seeking to enter into a contract after the tender process. This lack of clarity of legal requirements and Tendering Guidelines for NSW Local Government are highlighted when considering the joint procurement of waste management services, which are one of the largest single value contracts entered into by most Councils.

In most cases of joint procurement within NSW, the legal entity procuring the services is the lead Council itself, unless a separate entity is created for such procurement. The formation of that entity may need Ministerial approval and the Ministerial consent is also required if the entity is to be prescribed to suit the requirements of s55(3)(a) of the Local Government Act.

Historically, in the case of Regional Organisation of Councils (ROCs), regardless of how the procurement process was run, waste contractors and their financiers required legal certainty of contracting with a local government rather than a regional organisation. Even where an entity is created, there can be a lack of interest from tenderers due to the lack of assets on the part of the created entity.

For councils to undertake joint procurement of services or infrastructure, the key elements of legislation that apply are:

- Section 55 of the Local Government Act 1993, which sets the requirements for tendering;
- Section 358 of the Local Government Act 1993 which requires Ministerial approval for the formation of corporations or entities; and
- Part 7 of the Local Government (General) Regulation 2021, which sets out the tendering requirements once Section 55 of the Local Government Act 1993 is applicable.

Councils have used a number of methods to jointly procure services in the past but have different stances in regard to s358. There appears to have been different interpretations by councils' legal advisors about whether Ministerial approval was required of the mechanism they used for the procurement

The existence of prescribed entities is helpful in more general procurement by individual councils, but not necessarily of assistance for combined multi-council tenders. For example, Local Government Procurement (LGP) has been prescribed under Section 55 of the Local Government Act 1993, allowing councils to utilise supply arrangements coordinated by LGP without the need for them to go to tender in their own right. This arrangement works for itemised contracts and supply arrangement of standing order contracts for goods and services. The LGP website states: "LGP has been 'prescribed' by the NSW

State Parliament to carry out group tenders on behalf of NSW local government. ‘Prescribed’ means LGP is named in the Local Government (General) Regulation 2005 (NSW) and as such a council does not need to go through a tender process if that council buys from a contract already set up by LGP.”; However, it is not likely that LGP could readily set up a contract to undertake complex and highly individual procurements required for waste infrastructure and services. It is therefore likely that a group of councils establishing an entity would need to then seek a prescription for that entity.

It is also challenging to find a suitable mechanism which will bind councils to a procurement once a tender is called. In some cases, individual Councils have withdrawn from a joint procurement, and prejudiced the tender which is a key risk to the whole process of combined multiple council tendering. It is also not necessarily clear whether councils undertaking a joint procurement are participating in anti-competitive behaviour which would necessitate authorisation by the ACCC.

Overall, the legal aspects of joint council procurement are not clear and may be subject to different interpretations leaving a burden on Councils and ROCs to satisfy themselves of the path they can take for such procurement. Any clarity the facilitation service could offer on that score would be welcome.

Most councils on their own will have limited scope to procure waste services that require innovative technologies or commitment of large scale service demand to make it viable for the Contractors to establish waste management facilities. Given the challenges and risks, to both councils and prospective tenderers, NSROC’s submission on OLG’s recent review of tendering regulations recommended that the Local Government (General) Regulation 2021 be reviewed to better support joint procurement by councils while providing clear guidelines and legislative support for:

- Councils – how Councils can best undertake effective joint procurement;
- Regional Organisations of Councils (ROCs) – how ROCs and other similar regional groups can conduct and administer the tender process with appropriate level of legal protection; and
- Tenderers – how the Tenderers can be satisfied of the commitment of the group of Councils involved.

Given the importance of joint procurement in the delivery of WaSM, it is recommended that the NSW EPA work closely with OLG to design and deliver that legislative guidance and support. NSROC understands that once the regulation review is undertaken, OLG will undertake a comprehensive review of the existing guidelines for local government procurement in response to a recommendation from the Auditor-General. NSROC recommends that the EPA and OLG liaise closely throughout that review process to ensure that there are no recommended changes that would influence the success of a joint procurement facilitation service

Domestic waste management charges

IPART have published two papers on their considerations about the DWMC since 2020. In the draft report currently on public exhibition, IPART have proposed a benchmark waste peg which need not be mandatory, but councils will be required to justify any proposal to increase the charge above the peg. NSROC and its member councils are currently preparing responses to that proposal.

SSROC councils have identified the following limitations of the waste peg and NSROC is currently working with our members to determine whether these concerns are reflected in our region. The waste peg:

- Incentivises councils to do as little as possible and to prioritise cost over innovation and delivering best-practice services.
- Poses a significant barrier to delivery of council targets and the NSW Waste and Sustainable Materials Strategy (WaSM) targets.

- Increases risk to the successful roll-out of new services such as FOGO, which the EPA has mandated by 2030. SSROC’s 2021 regional FOGO/FO feasibility study indicates that introducing FOGO will cost on average \$15.54 million per council in year 1, or an 8% increase in the cost of providing red-lidded and green-lidded bin services. The EPA’s Organics Collection Grant program offers on average \$0.76 million per council if the total \$65 million available is averaged between all councils that have not yet adopted FOGO. Therefore, introducing FOGO is highly likely to require councils to raise DWM charges well above 1.1%.
- Being named by IPART in an annual report for raising the DWM charge above the peg or applying for a time-consuming special rate variation to avoid this – just to introduce an EPA-mandated service such as FOGO – risks a community and media backlash. This may also undercut establishing social license for a new service, increase planning time, and create delays in service introduction.
- Some councils have reported that the proposed peg has already created internal political pressure to reduce costs while continuing to deliver a high-quality service, thus creating a lose-lose situation.
- The DWM charge peg further entrenches the gap between councils with low DWM charges and councils with unreasonably high DWM charges, allowing the latter to continue charging unreasonably without having to rebalance with general rates.
- As more councils inevitably exceed the voluntary peg, pressure will build on IPART to make the voluntary peg a mandatory peg.

The importance of the contribution the DWMC makes to domestic waste management is made even more critical by the other funding limitations that councils face. Councils’ general rates will be pegged to 0.7% and the NSW Government has also proposed reforms that reduce councils’ ability to seek infrastructure contributions from new developments. Councils are facing significant increased costs due to COVID 19 and lost income during the pandemic. However, the community’s expectations continue to rise and the need for sustainability and better resource usage remains a key driver for domestic waste management.

The NSW government has continued to oppose the allocation of a larger percentage of the waste levy to waste and environmental programs from its current level of 30%. The consequences of that choice are challenging because local government is being prevented from adequately delivering waste services by the current regulatory hurdles.

State-facilitated joint procurement

The state government has a critical role to play in the delivery of waste infrastructure and the facilitation service will make a contribution, but the expectation appears to be that simply aggregating volumes will generate the scale to attract investment in new infrastructure and services for both collections and processing. This is a simplistic assumption that ignores the reality of how difficult it can be to aggregate volumes because of the current differences between the services that councils offer and the variability offered by processors in what can actually be recycled or reused. The WaSM gives limited prominence or support to market “pull” factors that play a critical role in the viability of an investment in processing. Relying only on local government waste procurement also misses the potentially more critical procurement by both industry and all levels of government of products produced from recycled or processed waste/resources.

Councils are already able to procure services jointly, but the relatively limited use of this capability also reflects their concerns about whether it will justify the risk and uncertainty. A similar explanation can be made for the lack of waste infrastructure in the Sydney metropolitan area. Waste companies appear to have decided that the business case does not justify the investment, even in the current environment of

restricted competition. Changing that type of decision will need more persuasive evidence than the aggregation of domestic waste by multiple councils.

While NSROC has demonstrated the value of joint procurement of the processing of municipal solid waste, our councils are not yet convinced that similar improvements can be achieved with collection contracts. Even within this region there would be significant challenges and community education required to harmonise services. Furthermore the economics of waste collections is predominantly affected by number of trucks required and how efficiently they can be used. Detailed investigations would be required on a case by case basis to determine whether benefits would be achieved by jointly procuring the service.

Benefits for local communities

The options paper lists a range of potential benefits for local communities which includes several that are most valuable for regional or remote councils. NSROC acknowledges that such benefits are worthwhile even though they may have limited application in metropolitan Sydney.

However, the paper does propose there is a “benefit” of standardised waste services across multiple councils, which is not a sentiment most of our councils would support. While theoretically desirable, in practice if it means that one council’s community suffers a reduction in a previous level of service the residents can be quick to voice their dissatisfaction. Similar challenges have been encountered in councils which were amalgamated when there were significant differences between the waste service offerings.

FEEDBACK ON OPTIONS

The Options Paper identifies five options for the facilitation service which are not mutually exclusive. NSROC considers that all five options could be included within the facilitation service or that a sixth option could be considered which essentially creates a program containing all the other five elements.

Our member councils would welcome the opportunity to be engaged in these matters and others raised in the following pages.

1. Funding pool to provide financial support to seek out approaches, options, and expertise

NSROC supports the proposed funding pool which could be utilised across all stages of the procurement cycle including research, planning, market analysis, feasibility and training. In some situations the pool could support a skilled extension officer or similar position who could work with groups of councils to deliver more specific needs, such as tender or contract documentation.

2. Information service to allow better access to information to inform decision-making

There is a wide range of ways that information asymmetry affects a council’s ability to make informed decisions. NSROC considers it is important that the facilitation service liaises with councils to better understand which studies or data would best address the knowledge gaps. Waste contracts tend to be for a relatively long term (7-10 years) and staff capabilities may not always reflect the current stage of the contract.

For some aspects of the procurement cycle, there are a limited number of expert consultants, so councils can be disadvantaged in tendering processes. Information such as average collection, processing and disposal cost can be vital for a council to understand whether an offer is worth accepting especially when tendering in a constrained market with limited numbers of suppliers.

With the move towards a circular economy, an understanding of recycling markets and material end uses or material flows can improve decision making, but may not be readily available to operational waste staff at councils. Similarly, a database of service providers at all stages in the supply chain showing materials processed and/or feedstock produced, licensing capacity and potential for domestic or international markets would improve transparency and support better decisions.

3. Training in best-practice procurement to support upskilling of councils in joint procurement

NSROC's member councils see this training as a high priority and very beneficial. Waste procurement can be very complex, even as an individual council, and becomes more so when seeking to obtain better outcomes for multiple councils with different local priorities.

For this option too, the knowledge and skills required will vary across councils, so engagement and liaison with all prospective councils or groups will be helpful to adequately understand the knowledge gaps and needs.

Given staff turnover at councils as well as the relative infrequency of tendering for waste contracts, NSROC would support the development of training modules which can be used multiple times and accessed by council staff when the timing is most useful to them. A similar process is currently used for waste planning training funded by the EPA and arranged by WSROC and SSROC. A consultant presents the training and updates the material as required when development planning requirements change. These courses are offered to a group which provides an opportunity for specific examples and for participants to share their own experiences. However, the procurement training modules could also potentially be made available to individuals.

4. Expert advice service to help address complex and/or specific issues that may arise

NSROC supports the intention of this service but counsels that skilled experts are in short supply and high demand, so the existing consultants already tend to be over committed. Having further detail about this option would also be helpful to properly consider its potential. Expertise can be found in different situations and an academic for example may lack the practical experience required to effectively implement a service, while an industry practitioner may lack the vision to see alternative means to achieve the desired end. Both may lack the ability to appreciate the critical differences between individual councils or appreciate the drivers that are unique to local government.

As a minimum, councils would need to understand the terms of engagement of the experts and what can and can't be expected from them. There could also be situations where the objective of the expert advice service could be best achieved by funding for the group of councils to seek the advice from a trusted local practitioner.

As with the training option, this service should consider whether the advice can be obtained once and used on multiple occasions or adapted to suit specific variations on a relatively similar theme.

5. Strategic infrastructure analysis to help address gaps in the infrastructure base by identifying options to support increased diversion from landfill and address challenges such as distance and contestability

NSROC has consistently argued that a comprehensive and cohesive plan is needed for infrastructure and that the continued unwillingness of the waste industry to commit to the establishment of new waste infrastructure in the metropolitan area requires the intervention of the state government. It is not yet clear what role is envisaged for the state government in waste infrastructure under the WaSM, with planned engagement on the Waste Delivery Plan approach expected in April and beyond.

Victoria's state agencies are arguably more active and effective in planning for and ensuring the delivery of waste infrastructure and could provide useful learnings for NSW.

Other essential services infrastructure such as water, sewer and electricity are subject to long term integrated planning. Similar planning is critical for waste and did occur historically when councils or the state waste authority was responsible for infrastructure. However, with the sale of those assets in metropolitan Sydney, the planning has been left to the waste industry and based on individual economic priorities. Some of the major impediments to the private sector's delivery of waste infrastructure or more innovative approaches to waste and resource management include:

- the lack of regulatory certainty (such as the decision to ban processed waste in agricultural applications or changes to greenwaste mulching requirements);
- the significant differences across state borders in the waste levy;
- the lack of end markets for recovered resources;
- the lack of planning support (eg zoning, buffer reduction, urban encroachment); and
- the lack of cross-jurisdictional support (eg community education, assistance with obtaining a social licence to operate)

The WaSM document: *A guide to future infrastructure needs* is a helpful start, but it does not clearly identify a delivery mechanism. NSROC considers that a metropolitan infrastructure plan is required, mapping locations to communicate where to direct government and industry investment. This could be in the form of activation precincts (similar to manufacturing precincts). The option of co-investment with industry would share the risk resulting in infrastructure sooner and in locations more beneficial to councils. The Infrastructure Guide notes that transfer stations (250ktpa throughput) and 14 composting facilities are required. One of our councils would need to increase the fleet collecting organics from 6 to 15 vehicles to deliver to Badgery's Creek.

The lack of a clear process to establish appropriately sized and located waste infrastructure will potentially risk the failure of the whole Waste and Sustainable Materials Strategy 2041.

The intention of this option appears to be primarily "helping councils to identify, understand and act on needs and opportunities for waste and resource recovery infrastructure." This may be more appropriate in the regional areas of the state where councils more commonly own and often operate waste facilities. In the metropolitan area, virtually all councils procure waste services and even the establishment of a jointly owned transfer station would involve significant risks requiring careful management.

The potential community benefits of publically owned infrastructure such as creating jobs, supporting industry and onshore processing to create more valuable resources are much broader than the sphere and responsibilities of local government. The state and even federal governments have a significant role to play in delivering that infrastructure. Any analysis proposed as part of the facilitation service must complement the EPA's existing infrastructure studies and contribute to the development of the comprehensive plan.

CONCLUSION

NSROC supports the proposed facilitation service and considers that a holistic program incorporating all five options would be of benefit. The EPA's willingness to consult on its development is welcomed and NSROC recommends that such consultation continue as the service is developed to ensure that the knowledge, skills and experience of councils can contribute to the outcome.

- ENDS -