

## ITEM NUMBER: 18.3

### CONFIDENTIAL REPORT

#### WASTE CONTRACT (Report No: 345/20)

*Pursuant to Section 90(2) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that the Council will receive, discuss or consider:*

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.

**Recommendation – Exclusion of the Public – Section 90(3)(b) Order**

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* the Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 345/20 - Waste Contract in confidence.
- 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* the Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 345/20 - Waste Contract on the following grounds:
  - b.** pursuant to Section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business and the disclosure of the information could prejudice Council's commercial position.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

Item No: **18.3**

Subject: **WASTE CONTRACT**

Date: 27 October 2020

Written By: General Manager City Assets and Services

General Manager: City Assets and Services, Mr H Lacy

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## SUMMARY

Council has a current contract with Solo Resource Recovery (Solo) for the collection and processing of residual waste, dry recycles and green organic recycling for the city. Solo is primarily a waste collection business and so relies on sub-contract relationships with Southern Region Waste Resource Authority (SRWRA) to dispose of collected residual waste, Visy Recycling to process dry recycles and a 3<sup>rd</sup> party processor to process green organics recycling. The existing waste contract also requires Solo to collect residual waste from street litter bins and undertake ad-hoc bin collection as directed by Council. A separate contract has been awarded to Solo to collect, recycle and dispose of residual waste from on-demand kerbside hard rubbish collections.

Solo's head contract expires on 31 March 2021 and administration has been examining options to provide Council's waste and recycling collections, processing and disposal. Options examined include:

- Option 1: Commercial offer from Solo to extend the contract for a further 5 years.
- Option 2: Call open tenders for waste collection and processing services.

SRWRA has committed to build a new Materials Recycling Facility (MRF) at its Seaford Heights facility and Council has resolved that Council will have its dry recycles processed by SRWRA. The new MRF is expected to be commissioned by April 2021.

Administration sought independent advice from consultant BRM Advisory on the risks associated with extending the contract without going to open tender and on the commerciality of the proposed 5 year contract extension offered by Solo drawing on BRM Advisory knowledge of current waste contract prices. A report was subsequently submitted to the Audit Committee seeking their views on a proposed recommendation to extend the contract.

Copies of the report submitted to the Audit Committee inclusive of Solo's 5 year extension offer and BRM Advisory's Letter of Advice are presented for Council's information. A copy of the Audit Committee's recommendation and Solo's subsequent offer for a 1 year extension are also presented.

This report seeks Council's approval to award Solo Resource Recovery a 1 year extension to their waste collection contract under revised terms as outlined and to enable Administration to

commence negotiations with SRWRA for commercial processing of Council's collected dry recyclables.

Administration will then proceed to prepare tender documentation for an open tender process for waste collection and disposal services to be in place post 31 March 2022.

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## **RECOMMENDATION**

### **1. That Council:**

- a) note the Report No 312/20 presented to the Audit Committee at their meeting on 7 October 2020;
- b) note the recommendation from the Audit Committee in relation to extending the Waste Services contract with Solo Resource Recovery from their meeting held 7 October 2020;
- c) having regard to the recommendation from the Audit committee at their meeting of 7 October 2020, authorise the extension of the existing waste services contract with Solo Resource Recovery Solo based on revised pricing as submitted in their letter dated 16 October 2020 for a period of 1 year from 1 April 2021 until 31 March 2021; and
- d) note that Administration will prepare tender documentation for an open tender process to provide Council's waste collection and disposal services commencing from 1 April 2022.

### **RETAIN IN CONFIDENCE - Section 91(7) Order**

- 2. That having considered Agenda Item 18.3 Report No: 345/20 - Waste Contract in confidence under Section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council, pursuant to Section 91(7) of that Act orders that the report, discussion and minutes relevant to this item be retained in confidence for a period of 18 months and the Chief Executive Officer be authorised to release of the documents thereafter.
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**COMMUNITY PLAN**

A community connected to our natural environment.

**COUNCIL POLICY**

Procurement Policy

**STATUTORY PROVISIONS**

Local Government Act 1999

**BACKGROUND****Waste Contract – History**

Council entered into a contract with Solo Resource Recovery (Solo) on 31 March 2006 for the collection and processing of residual waste, dry recyclables and green organics recycling for the city. The original contract period was for 8 years, with the option to extend for a further 3 year period.

The original contract was a part of an open tender process undertaken jointly with the Cities of West Torrens and Marion – both of whom engaged Solo under similar terms to that used by City of Holdfast Bay (CHB).

The contract is subject to quarterly rise and fall adjustments which have been duly applied over time by the contractor. The contract was awarded to Solo and under the arrangements, they provided the collection services using their own vehicles and staff, and sub-contracted the processing services for dry recyclables to Visy and the green organics to Jefferies. These sub-contracts continue today. Garbage disposal occurs at the Southern Region Waste Recovery Authority landfill at Seaford Heights, of which the City of Holdfast Bay is a shareholder.

In 2010, CHB extended the contract until 31 March 2017. The extension was subject to Council receiving a “rebate” or discount off the total cost of the services, but unit rates were not adjusted. It is likely that Solo funded this rebate partly by reductions in collection costs due to improved efficiency in their operations, partly by expiry of the financing charges for supply of the bin fleet and partly through reductions in depreciation charges for their truck fleet. In any case, Council was not provided with details of how the rebate was determined – just the amount to be applied. The first (1<sup>st</sup>) contract extension was for a further maximum period of 3 years.

Towards the end of 2014, Council was offered further rebates, due to the change in cost structure for recyclables processing where gate processing fees shifted from a cost to a net revenue. Again the make-up of the rebate was not disclosed but a further contract extension (2<sup>nd</sup> extension) was awarded taking the contract end date to 31 March 2019.

In 2017, further rebates were offered and Solo was awarded a 3<sup>rd</sup> contract extension taking the overall contract end date to 31 March 2021.

One key implication for Council and its contractual relationship with Solo, is that although Council has enjoyed significant discounts at each contract extension, the contract has not been market tested since 2006 - ie for 15 years at the current contract end date of March 2021 – will all contract extensions directly negotiated with Solo.

### **Recycles Processing - Impact of China Sword**

In July 2018, China introduced strict standards for the import of foreign derived recyclables as a result of their China Sword policy.

Solo wrote to CHB as well as their other client Councils (being Cities of West Torrens and Marion) to advise that Visy was increasing their gate fees for processing recyclables at their Wingfield plant from -\$10 net revenue to \$60 per tonne net cost – a turnaround of \$70/t. The increased costs were to apply from 1 June 2018.

The three (3) councils commenced negotiation with Solo and in part with Visy (recognising that the sub-contract was between Solo and Visy – not Councils) and sought various information about Visy's pricing being concerned that pricing was not cost reflective and to confirm that Solo was not overcharging their client councils. The three (3) councils also sought legal advice on their commercial position under the contract – particularly in relation to whether a force majeure event had arisen which would allow Solo to recoup Visy's higher costs under the contract.

Sitting in the background was of course the failure of recycling company SKM and their subsequent withdrawal from the market – something that none of the council's wanted to see happen as this reduced competition and placed Visy and the recently opened NAWMA in a dominant market position.

The three Solo client Councils did not pay Solo any additional recyclable processing fees for a period of time as we were still technically in dispute with Solo under the terms of our contract. Marion obtained legal advice which indicated that this was not a Force Majeure event under the contract and on this basis we all held off paying any additional processing fees.

Information gathering and debate continued, however in late 2019 each of the three Solo client Councils decided to act in their own right.

Marion opted to be part of the Council Solutions group contract which was awarded in late 2019 to Cleanaway. Marion therefore ended their Solo contract in March 2020 when it expired. Marion has also arranged their own recyclables processing, partnering with other Council Solutions councils to seek a directly negotiated contract – presumably with Visy as we understand that NAWMA was full.

West Torrens (whose contract with Solo also expired in March 2020) opted to direct negotiate with Solo for a further 5 year extension with recyclables processing sub-contracted through Solo to Visy as part of that extension, but only until March 2021. After that, West Torrens can seek alternative MRF services – most likely at the proposed new SRWRA MRF or the new CAWRA MRF.

In their negotiations with Solo over collection costs, West Torrens was able to negotiate waste collection costs at around \$0.90/lift with processing of recycling at \$60/t (up until 31 March 2021 – similar to CHB pricing). The extension for the collection contract was for 5 years. Solo also agreed to refurbish all their trucks and install advanced GPS tracking and truck management systems within 1 year of the extension commencing.

From Holdfast Bay's viewpoint, our negotiations with Solo resulted in the recycles processing fee being varied to:

- From 1 October 2018 - \$10/t revenue for recycling was deleted;
- From 1 October 2018 to 30 June 2019 – gate fee for Visy recycling services increased to \$45/t (plus GST); and
- From 1 July 2019 to 31 March 2021 – gate fee for Visy recycling services increased to \$60/t (plus GST).

### **Waste Service Contract Options**

Given that the other two (2) Solo client councils had entered into revised agreements for their existing contracts, and following an approach by Solo, Administration initiated a review of Council's waste contract options. Two (2) options were considered:

- Option 1: Renegotiate and extend the existing Solo contract for 5 years; and
- Option 2: Call open tenders for waste collection and processing services.

### **Audit Committee Report**

A detailed report (Audit Committee Report No: 312/20) was prepared and submitted to Audit Committee for consideration of the two (2) options. This report is presented in Attachment 4.

*Refer Attachment 4*

The report included:

- Option 1 – 5 year Waste Service Contract Extension
  - details of Solo's revised offer for a 5 year contract extension
  - proposed changes to commercial terms including method of payment, treatment of recyclables contamination and changes to recyclables processing
  - assessment of financial benefits of a 5 year contract extension
  - assessment of advantages, disadvantages and risks of the option
- Option 2 – Open Tender
  - aims of the option
  - assessment of risks, advantages and disadvantages of this option
- BRM Advisory letter
  - independent advice from BRM Advisory, a leading consultant on waste management contracts regarding the commerciality and probity of each option.

### **Audit Committee Recommendation**

The Audit Committee spent considerable time discussing the detailed report, cost analysis and independent advice. The discussion included commerciality of the revised offer and rates submitted by Solo and the potential probity and reputation risks to Council of not conducting an open tender process.

The Audit Committee also discussed the risks to Council's current FOGO trial which commenced in September 2020 and runs until September 2021 for which Solo is providing additional green organics kerbside collection and processing services.

The Audit Committee were concerned that transitioning an existing collection service to a new service provider (which may occur if Solo did not win the open tender) may jeopardise the success of the FOGO trial.

After due consideration, the Audit Committee moved the following resolution, which is presented in Attachment 5 and reproduced below:

*Refer Attachment 5*

#### *Motion*

*That the Audit Committee:*

- 1. support the proposal to extend the existing waste services contract with Solo Resource Recovery for one year until March 2022 to allow completion of the FOGO trial;*
- 2. recommend the submission of the proposed contract extension to Council for consideration and for an Open Tender process be completed prior to March 2022; and*

#### *RETAIN IN CONFIDENCE - Section 91(7) Order*

- 3. that having considered Agenda Item 9.1 Waste Contract – Report No 312/20 in confidence under section 90(2) and (3)(b) of the Local Government Act 1999, this order is subject to Section 91(7) of the Act orders that the report, attachments and minutes be retained in confidence for a period of 18 months and the Chief Executive Officer is authorised to release the documents when the purchase order is issued to the successful tenderer.*

*Moved Councillor Snewin, Seconded Ms Davies*

*Carried*

On this basis, Administration sought a further offer from Solo for a 1 year contract extension. Details of the offer, and an unsolicited offer for a 3 year extension, are presented below.



## REPORT

### Option 3 – Revised Solo Offer for 1 Year Contract Extension

On the basis of the Audit Committee recommendation, Solo were asked to submit pricing for a 1 year contract extension. Their revised offer is detailed in Solo's letter dated 16 October 2020 as presented in Attachment 6.

*Refer Attachment 6*

Solo's offer for a 1 year extension is identical to their 5 year extension offer outlined in detail in Audit Committee Report No: 312/20 (refer Attachment 4) except for:

- Contract extended for 1 year from 1 April 2021 to 31 March 2022
- No refurbishment of collection vehicles under the 1 year extension offer.
- No installation of vehicle tracking and bin lift data systems

Solo's revised offer for a 1 year extension can therefore be summarised as follows:

- Extend contract for 1 year from 1 April 2021 to 31 March 2022
- Revise charging methodology for the kerbside recyclables and organics collection services to a bin lift rate based on service entitled properties
- proposed new bin lift rates per service entitled property (excl GST):

	<b>New Rate (1)</b>	<b>Old Rate – est (2)</b>
○ Garbage	\$0.82/lift	\$0.8828/lift
○ Recyclables	\$0.83/lift	\$1.0367/lift
○ Greenwaste	\$0.83/lift	\$0.8450/lift

(1) Quoted rates are subject to Rise and Fall adjustment from 2 April 2020 to end of proposed contract extension

(2) Old rates for recyclables and organics services were defined as a per fortnight fixed charge. For this report, fortnightly fixed charge converted to equivalent bin lift rate. Includes proportional element of \$420,000 rebate.

- Billing for garbage, recyclables and organics to be based on a bin lift rate multiplied by the number of service entitled properties
- Rise and fall applicable on proposed rates and to apply as per contract from 2 April 2020 to end of proposed contract extension
- Recyclables processing to be undertaken at new SRWRA MRF from April 2021
- Council to directly contract recyclables processing with SRWRA
- Council responsible for the costs and handling of recyclables contamination
- Separate charge for transport of collected recyclables to SRWRA
- Solo to manage repairs and maintenance of recyclable and green bins
- Council to pay for supply of new and replacement recycling and organics bins
- Collection vehicles will not be refurbished
- Vehicle tracking and performance tracking systems will not be installed.

- Current rebates have been absorbed into the new rates
- All other conditions of contract remain unchanged

#### Option 3 – Comparative Costs

As Solo's revised offer for a 1 year contract extension (Option 3) is based on similar rates to the 5 year extension option (Option1), the cost impact is identical to that presented in Attachment 2, but only applicable for a 1 year period. The cost of the waste collection and processing service contract will be revised from 1 April 2022 based on the results of the Open Tender process planned prior to that date.

It should be noted that SRWRA is yet to publish their specific charges for recycles processing and that the cost comparison is based on best information at this time. Similarly, landfill disposal charges are based on current rates as no increases in gate fees and/or EPA levies are known at this stage.

#### Option 3 - Advantages

The advantages of extending the current Solo contract for 1 year, with proposed changes, include:

- Collection service and processing services extended to cover the period of the FOGO trial, ensuring continuity of services during that important trial period.
- Rates proposed by Solo are considered to be close to best value in marketplace by independent advisor, who, whilst acknowledging that some further savings may be possible if the contract is subject to tender, believes that any differential is likely to be small and not material compared to the upside of retaining a stable contractor during the FOGO trial.
- Allows for processing of recyclables at proposed new SRWRA MRF, although Council will need to negotiate a separate processing contract with SRWRA.
- Allows time for the development of tender documentation, tender process, final negotiations and transition planning during the next 17 months to 31 March 2022.

#### Option 3 - Disadvantages

The disadvantages of this option are:

- The contract has not been market tested since originally signed in March 2006 so there is a probity risk that Council may be unable to justify why it has extended this contract through direct negotiation on a number of occasions and has not proceeded to public tender. Other suppliers may consider this to be unfair and/or restrictive.
- The Solo proposal shifts additional risks to Council (ie contamination risk). However the costs of managing those risks have been accounted in the proposal.
- The revised 1 year contract extension offer does not include refurbishment of trucks, nor the installation of new GPS tracking and monitoring equipment. However this can be included in the open tender from 1 April 2022 and is not considered a significant impact on current operations.

This offer is considered a good fit between benefits of retaining a stable contractor during FOGO trial, competitive rates and risk. This option is therefore recommended to Council for approval.

#### **Option 4 – Unsolicited Solo Offer - Extend Current Contract by 3 years**

Solo have provided a further unsolicited option to extend the contract for a further 3 years with an option (exercisable by mutual agreement) to extend for a further 2 years on same terms as their 5 year extension offer. This would include same pricing, cost methodology, rise and fall, bin maintenance and refurbishment and would be inclusive of truck refurbishment and installation of GPS and operational monitoring systems.

The option to extend for years 4 and 5 would be exercisable by mutual agreement between Solo and Council.

The downside of this offer is that Council's risk exposure for not referring the contract to open tender would be increased due to the initial 3 year term.

On this basis, and taking account of the views expressed by Audit Committee, this option is not recommended.

#### **Open Tender Process**

If the 1 year Solo contract extension is approved by Council, it is proposed to use the 17 months from November 2020 to 31 March 2022 to develop tender documentation, undertake the tender process, finalise negotiations and undertake transition planning.

If Solo were to retain the contract, this would simplify the transition plans, but sufficient time will be allowed in the tender process to ensure that transition planning can be undertaken well before any change of contractor should that be the outcome from 1 April 2022.

Were the contractor to change in April 2022, it is expected that there would be a settling in period for any new contractor where complaints (including missed bins) would increase whilst the contractor's staff become familiar with collection routes and residence specific arrangements.

#### **BUDGET**

The estimated cost of the 1 year Solo contract extension is forecast at the same value as the 5 year extension model – being \$2.048m pa compared to the estimated current cost of \$2.156m for the existing contract (excl GST and costs for bin maintenance and street tidy services), representing a savings opportunity of around \$107,800 pa. Details are presented in Attachment 2.

*Refer Attachment 2*

The forecast cost of recyclables processing and landfill disposal is estimated to increase to \$1.544m from current estimate of \$1.440m, representing an increase of some \$103,890 pa in costs.

Overall, the total spend on waste services for the 1 year extension, inclusive of processing and disposal costs (excl GST and costs for bin maintenance and street tidy services) is estimated at \$3.591m versus \$3.595m currently, a forecast saving of around \$3,900 pa.

Whilst this sounds a poor result overall, the forecast savings in the Solo contract will offset steep increases in recyclables processing costs and result in a cost neutral position through to 31 March 2021.

### **LIFE CYCLE COSTS**

The costs for these services are included in Council's annual operating budget. There are no life cycle cost issues apart from the ever increasing costs of these services which will impact future budgets.