

AMENDED ITEM



Item No: 3.1
Title: Determination of tenders for the provision of waste management services (CPA/287522)
Department: Assets, Infrastructure and Business

7 August 2017 Extraordinary Council Meeting

MANAGER: Chief Executive Officer

AUTHOR: Group Leader Assets Infrastructure and Business

Report purposes:

- Provide information about the request for tenders (RFT) published by Council for the provision of waste management services to the Council.
- Provide details about the tenders received in response to the RFT and the evaluation of those tenders.
- Recommend the acceptance of one of those tenders, and rejection of all other tenders.

Recommendation

- 1** *That Council resolve to accept "Tender 1", as that tender is identified in the Tender Evaluation Report that is confidential attachment 1 to this report.*
- 2** *That Council request that the Chief Executive Officer issue a public statement identifying the successful tenderer, once the successful tenderer and the unsuccessful tenderers have been informed of the determination of this tender.*
- 3** *That Council note that it has taken in to account whether or not 'existing workers' (within the meaning of cl. 170 of the Local Government (General) Regulation 2005) will be offered employment or engagement on terms and conditions comparable to those applicable to those workers in their employment by the current contractor immediately before the successful tender was submitted, and so has complied with the obligations imposed on Council by cl. 178(1A) of the Local Government (General) Regulation 2005.*
- 4** *That Council resolve, for the purposes of s. 11(3) of the Local Government Act 1993, that the attachments to this report remain confidential, as those attachments include information that would, if disclosed:*
 - a.** *Confer a commercial advantage on a person with whom the Council proposes to conduct business; and*
 - b.** *Prejudice the commercial position of persons who have provided confidential commercial information to Council.*


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Background:

In 2006 the former Gosford Council and the former Wyong Council each resolved to accept a tender from Thiess Services Pty Ltd (Thiess) for the provision of waste collection and recyclable processing services, following a joint tendering process. Each of the contracts created by the acceptance of those tenders has a 10 year term that concludes on 31 January 2018.

In late 2012 Thiess novated its interests in those two contracts to Remondis Australia Pty Ltd (Remondis). Each novation was subject to a Deed of Novation between Thiess, Remondis and the relevant former Council. Since that novation to 12 May 2016 Remondis provided waste collection and processing services to the former Councils. Since 12 May 2016 Remondis has provided those services to the Central Coast Council, and will continue to do so until 31 January 2018.

In 2014 the former Gosford Council engaged MicroMex Research to assess the community satisfaction with its performance. The following table summarises the outcome of that assessment, where the community identified high satisfaction with the domestic waste collection services provided by the former Gosford Council:



LGA Benchmarks

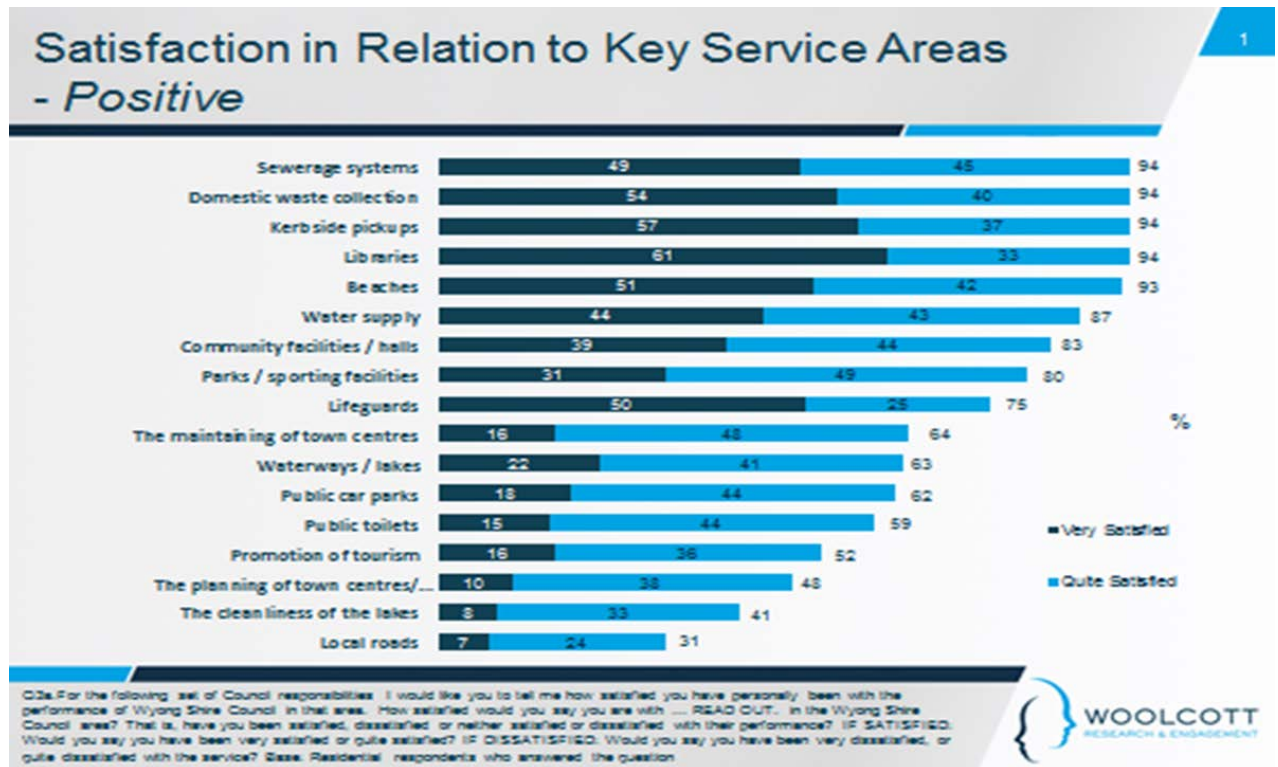
Service/Facility	Gosford City Council Satisfaction Scores	Satisfaction Benchmark
Above the Benchmark		
Domestic garbage collection	4.3	4.1
Below the Benchmark		
Revitalising Town Centres	2.7	3.3
Long term planning for the city	2.6	3.1
Footpaths	2.5	3.0
Community buildings/halls	3.2	3.6
Festival, events and cultural programs	3.5	3.9
Parks and playgrounds	3.4	3.7
Maintaining local roads	2.5	2.7
Support services for people with a disability	3.1	3.4
Local drainage and flood management	3.0	3.2
Availability of car parking	2.8	3.0
Swimming pools	3.5	3.7
Protecting the natural environment	3.4	3.5
Community input into Council decision making	2.8	3.0
Ovals and sportsgrounds	3.5	3.7
Youth programs	3.0	3.1
Support services for seniors	3.4	3.6
Managing local heritage	3.4	3.5
Library services	4.0	4.1
Council provision of information	3.3	3.3
Recycling/waste minimisation	3.8	3.9

Of the 21 measurable services and facilities, 1 ranked higher than the benchmark with the remaining 20 falling below the satisfaction benchmark



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In 2015 the former Wyong Council engaged Woolcott Consulting to undertake a customer satisfaction survey, the results of which are summarised in the graphic below:



In late 2015 the two former Councils commenced a joint procurement initiative for the provision of various waste management services from 1 February 2018. A number of options for waste management services were considered, including in-house provision of those services and different configurations for collection and processing of waste. Each former Council was briefed on a proposal to invite tenders and of different service options.

As part of the consideration of service specifications for the joint procurement of waste management services, the former Councils engaged Micromex Consulting to undertake further community consultation. The consultation was completed in early 2016 and included:

- Randomly selected telephone interviews with 409 residents (206 in the former Gosford local government area and 203 in the former Wyong local government area).
- Four community workshops (focus groups), two in each former local government area (LGA), comprising of community representatives with an interest in waste management based on the telephone survey.
- Telephone Survey hosted on-line, which was promoted through e-panel, Facebook and the websites of the former Councils. This survey and the request for community feedback was promoted via radio and Facebook advertisements.

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- Each former Council also advertised and conducted Waste Services Drop-In Sessions at their respective administration buildings, where the community was invited to attend and provide feedback to that former Council.

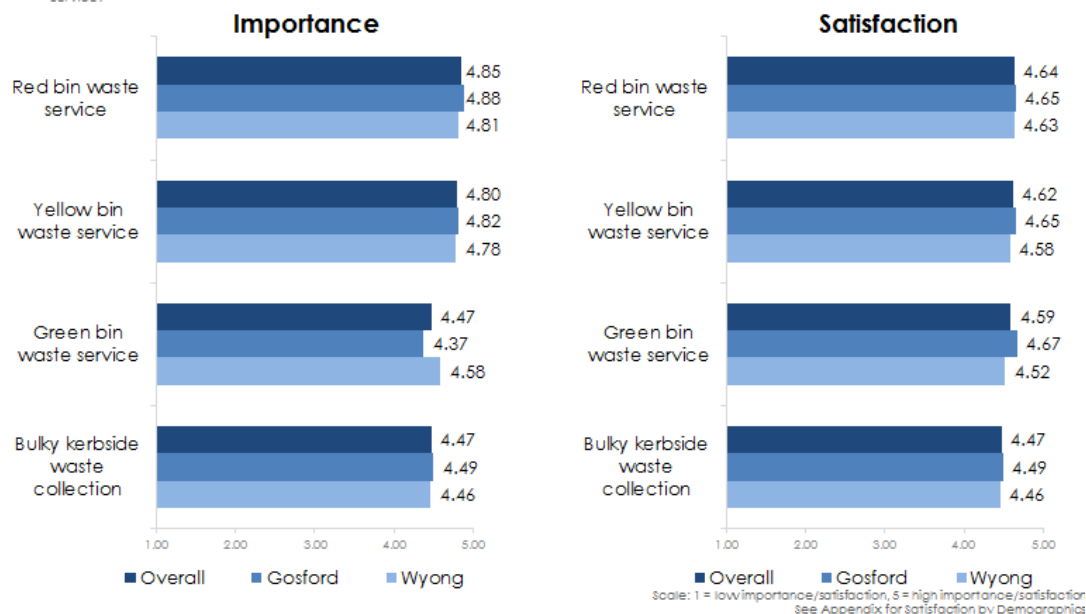
Key findings of that community consultation included:

- The former LGAs were similar in terms of waste attitudes and behaviours.
- At an operational level, residents of each former LGA had high levels of satisfaction with the waste collection, with domestic collection services scoring >4 on a scale of 0-5.
- When presented with various options for kerbside collections (including scheduled vs on-call services, reductions in entitlements, and the use of tip vouchers) the overwhelming preference was to maintain the current approach to kerbside collections.
- Residents supported resource recovery of recyclables and garden organics, with a large proportion of residents reporting that regularly exceed their recyclable and organics capacity most fortnights.
- There was significant interest in being able to place food organics in the garden organics bin for weekly collection, with 44% saying they were 'Very' or 'Extremely' interested, however there were polarised views on whether the 'red' general waste bin moving from weekly to fortnightly collections.

The outcomes of that community consultation are summarised in the graphic below:

Importance of, and Satisfaction with Waste Services

Q2. For each one could you please rate your opinion of the importance of the service/facility to you, and your level of satisfaction with Council's performance/delivery of that service?



In an absolute sense, scores for both Importance and Satisfaction are very high. Based on our regular community surveys, our Satisfaction norm for 'Garbage collection' is 4.1 out of 5 – and 3.89 for 'Recycling'. As such, the above metrics for both Councils appear to be very positive. Differences by LGA and demographics were minimal.

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Amalgamation

On 12 May 2016 the *Local Government (Council Amalgamations) Proclamation 2016* ("the Proclamation") was made. The Proclamation had the following relevant effects:

- Amalgamation of the Gosford and Wyong local government areas to form the Central Coast local government area;
- Dissolution of the Gosford and Wyong Councils, and the constitution of the Central Coast Council ("Council"); and
- Transferring to Council the rights, obligations and liabilities of the two former Councils under the novated contracts with Remondis. Since 12 May 2016 Remondis has delivered waste management services to Council under those two contracts.

Council then completed a review to identify the how the needs of the community were best met. That review concluded that Council should retain the 3 bin waste management service, the public litter bin, and the on-call kerb-side collection services currently being provided by Council via the contract with Remondis, but recommended a number of changes to specifications to provide for a more consistent and improved delivery of service. Those changes included:

- Provision of more flexible servicing options from multi-unit dwellings (small vehicles, walk in walk out service, multiple service times, changes to bin sizing provisions).
- Options for residents to pay for additional waste bins and collection services.
- Consistency in bin sizing across the Central Coast LGA.
- Provision of various bin size options, including 140ltr, 240lt and 360ltr.
- Provision of recycling and green waste bins for business premises on request.
- Provision for residents to have additional kerb-side collections, on a fee for service basis.
- Contractor responsibility for maintenance of public litter bins.
- Improved customer service performance requirements.
- Improved minimum requirements with respect to contamination management and waste education.
- Increased use of technology, including onboard and customer focused systems.
- Requirements to collect dumped waste, including hazardous waste.

The RFT was prepared to in accordance with the outcome of that review. An external law firm, Herbert Smith Freehills, was engaged to review the RFT and provide relevant legal advice prior to the publication of the RFT by Council.

Request for tender - statutory obligations

The *Local Government Act 1993* (the LG Act) requires that Council invite, consider and determine tenders as prescribed by the *Local Government (General) Regulation 2005* (LG Regulation) before

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entering in to a contract for the provision of waste collection management services to Council¹. Council complied with those requirements as follows:

- Council decided to invite tenders by the open tendering method prescribed by cl. 167 of the LG Regulation². Advertisements were published in the Sydney Morning Herald and the Central Coast Advocate newspapers that included prescribed content concerning the RFT³. The RFT was also published on the tenders.nsw.gov.au website, which was used to administer the tender process.
- The RFT included all prescribed content concerning the services to be performed, the criteria on which tenders will be assessed, the name of the person who requests for further information can be made, and whether formal tender documents were required to be submitted⁴. The RFT included other relevant information to clearly identify the services that the Council was seeking, and to enable innovation to be offered where such innovation would add value to the service provided by Council to the Central Coast community.
- As the RFT invited tenders for the collection of domestic and other waste, the RFT was required to specify the information that tenderers were required to submit about the continuity of employment of workers employed by Remondis under the existing contracts⁵ as at the date tenders were submitted to Council. The RFT published by Council meet those requirements. Further, the RFT included an additional requirement that conforming tenders include acceptance and acknowledgement of, and be priced on the basis of, each of the following conditions:
 - All relevant employees must be made an offer of employment by the successful tenderer, with continuity of service recognised from the date on which they commenced employment with Remondis or Thiess.
 - Relevant employees who accept those offers of employment will not be subject to any probationary period and no offers of employment will contain any reference to a probationary period;
 - Accrued but unused statutory entitlements (being annual leave, long service leave and sick leave) of those relevant employees who accept those offers will be recognised as at the date of commencement of employment with the successful tenderer; and
 - The wage rate to be paid to relevant employees will be no less than \$27.00 per hour or part thereof with any wage rate to be increased by not less than 2.5% on every 12-month anniversary of the commencement of employment with the successful tenderer.

¹ s. 55(1) of the LG Act

² Cl. 166 of the LG Regulation.

³ Cl. 164 & 167 of the LG Regulation.

⁴ Cl. 170(1)(a) – 170(1)(d) inclusive of the LG Regulation.

⁵ Cl. 170(1)(e) & 170(1A) of the LG Regulation.

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- The RFT required that tenders be submitted by 2.00 pm on Tuesday 13 June 2017. That date was extended twice, with the end result of those extensions being that tenders were required to be submitted by 2.00 pm on Tuesday 4 July 2017. Those extensions were compliant⁶.
- Two pre-tender meetings were held at Council's Buttonderry Waste Management Facility Building on 4 May 2017 and 7 June 2017. Those meetings were attended by relevant Council staff (including General Counsel), potential tenderers and Mr Bill Rock (the appointed independent probity advisor for this tender).
- Council received a number of submissions from prospective tenderers during the period from the publication of the RFT on 24 April 2017 to the closing date for submissions of tenders of 4 July 2017. Sixteen addenda were issued by Council via the tenders.nsw.gov.au portal during that period, in compliance with the LG Regulation⁷.
- Tenders were submitted to Council via the tenders.nsw.gov.au website, which is a prescribed method of submitting tenders that complied with the terms of the RFT⁸. The following entities submitted the following tenders:
 - **Cleanway Pty Ltd** – one purported conforming tender and one non-conforming tender;
 - **Remondis Australia Pty Ltd** – one purported conforming tender and seven non-conforming tenders;
 - **Suez Recycling and Recovery Pty Ltd** – two purported conforming tenders and five non-conforming tenders; and
 - **URM Environmental Services Pty Limited** – one purported complying tender.
- Tenders were kept in safe custody, and opened, as prescribed⁹. A list of the tenderers was displayed in the Gosford and Wyong Administration Buildings of the Council, as prescribed¹⁰.
- The tenders were considered by an Evaluation Panel, in accordance with a 'Tender Evaluation Plan' (TEP) and a Probity Plan, both of which were created for this specific tender. The Evaluation Panel was chaired by the Section Manager, Contract Management and comprised of the following:
 - Group Leader, Assets Infrastructure and Business.
 - Chief Financial Officer
 - Unit Manager, Waste Services and Business Development
 - Team Leader Waste Services

⁶ Cl. 172 of the LG Regulation.

⁷ Cl. 170(2) of the LG Regulation.

⁸ Cl. 173 of the LG Regulation.

⁹ Cl. 174 & 175 of the LG Regulation.

¹⁰ Cl. 175(3)(b) & 175(4) of the LG Regulation.

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The Tender Evaluation Report prepared by the Evaluation Panel is confidential attachment 1 to this report. In that report, the Evaluation Panel recommends that the Council resolve to accept the tender identified as "Tender 1".

Sub-clauses 178(1) and 178(1A) of the LG Regulation state:

- (1) *After considering the tenders submitted for a proposed contract, the council must either:*
- (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
 - (b) *decline to accept any of the tenders.*
- (1A) *Without limiting subclause (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of clause 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted*

The Evaluation Panel took in to account the matter set out in cl. 178(1A) of the LG Regulation when that Panel considered all tenders, including the tender identified as 'Tender 1' in the attached Tender Evaluation Report and that the Panel recommends be accepted. The Council can be satisfied that by resolving this tender in accordance with the Tender Evaluation Report that it has taken in to consideration the matter prescribed by cl. 178(1A) of the LG Regulation.

If the Council resolves as proposed on page 1 of this report, waste collection services will be provided by the successful tenderer for a 10 year period commencing on 1 February 2018. This will provide continuity of service to the Central Coast Community, and provide services that are consistent with and in some respects better than those currently provided to the community at less cost.

Additional measures

In addition to meeting and exceeding the obligations imposed by the LG Act and LG Regulation, Council implemented a number of additional measures to manage a tender process that it considered to be high risk. The key risks and mitigation measures employed by Council included engaging the following external providers, who undertook the following roles:

- Herbert Smith Freehills (external Legal firm), which advised on the RTF documents, the tender process and related industrial relations matters; and

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- Mr Bill Rock of Risk Reward Pty Ltd, who was the external probity advisor to oversee the probity of the tender process. Mr Rock has provided a Probity Report, which is confidential attachment 2 to this report to Council. That Probity Report concludes:

- (a) The procedures adopted for the evaluation processes are fair and equitable and the probity of the processes have been independently validated;*
- (b) The evaluation processes adhered to the TEP and Probity Plan;*
- (c) We are not aware of any unresolved probity issues.*

Financial

There is sufficient budget in the adopted Operational Plan for the 2017-18 to provide for the costs that will be incurred if Council resolves as proposed on page 1 of this report.

Consultation:

There is no requirement for public consultation.

Critical Dates:

The existing contracts with Remondis terminate on 31 January 2018. It is essential that the Council determine this tender promptly, to allow the successful tenderer to have sufficient time to purchase vehicles and attend to other matters necessary for that successful tenderer to be able to commence the delivery of waste management services (collection) on 1 February 2018.

Recommendation

It is recommended that Council make the resolutions on page 1 of this report.

Attachments

- 1** Confidential Tender Evaluation Report - D12783227
- 2** Confidential Probity Report - D12783229