

CONFIDENTIAL ITEMS 2003 – AUGUST 2025

#	Date	Item Title	Confidential Order Details	Item being kept confidential - Agenda/ Attachment/ Minutes	Reason regarding retention or recommend-action to release	Resolution Regarding Action	Last Review Date	Next Review Date	Date Released
143	4 November 2019	Kerbside Waste Contract Amendments	<u>Pursuant to Section 90(3)(k) and (b)</u> 1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, Acting General Manager Planning and Development, Chief Financial Officer, Risk and Governance Officer and Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Kerbside Waste Contract Amendments. The Council is satisfied that pursuant to: - Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this Agenda item are tenders for: • The provision of services, or • The carrying out of works - Section 90(3)(b) of the Act being information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is: - conducting business; or - would prejudice the commercial position of the Council The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on each of the tenderers as competitive commercial information will be disclosed;	Report and minutes be retained in confidence until the conclusion of the contract and that this order be reviewed every 12 months.	The Council is satisfied that pursuant to:	Retained in confidence until the conclusion of the contract and that this order be reviewed every 12 months.	8 Oct 24	Within 12 months	<i>Report and Minutes released on website 13 October 2025</i>

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			and because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations. <u>Section 91(7) Order</u> <u>Pursuant to Section 91(7)</u> 5. That having considered Agenda Item 18.1 Kerbside Waste Contract Amendments in confidence under 90(2) and 3(k) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report and minutes be retained in confidence until the conclusion of the contract and that this order be reviewed every 12 months.		- conducting business; or - would prejudice the commercial position of the Council				

18. CONFIDENTIAL REPORTS**18.1 REPORT TITLE: CONFIDENTIAL REPORT - KERBSIDE WASTE CONTRACT AMENDMENTS****DATE OF MEETING: 4 NOVEMBER 2019****FILE NUMBER: DOC/19/132581****ATTACHMENTS: NIL****Key Contact** Sarah Barrett, Waste Strategy Co-ordinator**Manager/Sponsor** Phil Burton, General Manager Infrastructure, Infrastructure**Mount Barker 2035 – District Strategic Plan:**

2. The Natural Environment and Sustainable Living

NE2: Ecological footprint and waste management

NE2.5 Promote, practice and enable best practice waste minimisation, waste reduction and recycling systems

NE2.6 Increase recycling rates

Annual Business Plan 2019/2020:

The Natural Environment and Sustainable Living:

Administer the collection contract to best practice standards and ensure performance targets are achieved;

Purpose:

To provide an update on the status of the contract negotiation with Council's kerbside recyclables collection contractor (Solo Resource Recovery) in response to the China National Sword Policy and obtain approval for the CEO to finalise negotiations.

Summary – Key Issues:

1. Council are in receipt of written correspondence from Solo Resource Recovery (Solo) requesting urgent attention by Council to accept a "Recyclables Processing" charge and loss of the current recycling rebate.
2. Discussions with Solo have been ongoing since mid-2018 in response to China's ban on contaminated recycling imports (China Sword Policy) which has had a severe impact on the recycling industry including the deterioration of markets, closure of processing facilities (eg. SKM) and the need for recycling processors to begin charging to accommodate this change.
3. Council are currently negotiating the proposed charges which would require a variation to the *Kerbside Garbage, Recyclables, Organics, Street Litter & Event Bin Collection Services Contract* and an increased financial cost of approximately \$790-\$861k for the remainder of the contract (until October 2022).

Recommendation:

Section 90 (3) (k) Order

Pursuant to Section 90(3)(k)

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, Acting General Manager Planning and Development, Chief Financial Officer, Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Kerbside Waste Contract Amendments.

The Council is satisfied that pursuant to Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this Agenda item are tenders for the provision of :

- The provision of services, or
- The carrying out of works

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on each of the tenderers as competitive commercial information will be disclosed.

That Council:

2. Supports, in principle, acceptance of a processing charge for recyclables due to changes in the recycling industry and market conditions.
3. Gives delegation to the CEO to negotiate and amend the contract between Solo Resource Recovery and Council to minimise the financial impact and risk to Council.
4. Receives a future report on the outcome of the negotiation with Solo Resource Recovery.

Section 91(7) Order

Pursuant to Section 91(7)

5. That having considered Agenda Item 18.1 Kerbside Waste Contract Amendments in confidence under 90(2) and 3(k) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report be retained in confidence until the conclusion of the contract and that this order be reviewed every 12 months.

Background:

1. On 1 March 2018, China implemented its National Sword Policy which has had a direct effect on how recyclables are currently sorted, processed, and sold into the commodities market (an oversupply of material in the market with little commodity value).
2. Solo are Council's sole contractor for kerbside waste collection and have been providing this services under contract since 2015. The Rural City of Murray Bridge

have the same provider and a very similar contract having tendered for services at the same time.

3. The existing contract with Solo has a fixed rebate (payment to Council) of \$10/tonne for recyclables with no rise and fall applicable to this rate. Solo utilise the services of Visy for the processing of recyclables.
4. The waste industry has undergone significant change as a result of the “recycling crisis” initiated by the China Sword Policy. The flow on effects of this have resulted in additional processing charges being passed on to Council from their contractor.
5. Numerous meetings have been held between Solo and Council since mid-2018, including written correspondence regarding the implementation of a recycling processing charge (passed on by Visy Recycling (Visy), who process Council’s recyclables). In October 2018, staff put a non-binding offer to Solo to accept a processing fee of \$50/tonne and the inclusion of a risk shared approach which was subsequently rejected by Solo in December 2018.
6. In February 2019, a meeting was held between Solo’s CEO (Rob Richards) and State Manager (Adrian Rose) and the CEO’s of affected councils (Mount Barker, Marion, West Torrens and Holdfast Bay and Murray Bridge). The purpose of this meeting was to better understand Solo’s financial position with the intent of continuing negotiations on commercial terms in response to the China Sword Policy. It was agreed that the Solo’s CEO would provide a proposal for the council’s to negotiate (individually). Council have not received anything further from Solo in regards to this.
7. Both West Torrens and Holdfast Bay councils have subsequently negotiated an arrangement directly with Solo. Council are not privy to the details of this negotiation as they are confidential. Marion is continuing to negotiate however their contract expires in April 2020.
8. Solo have been prompted on various occasions since the CEO meeting in February to obtain a revised proposal but were advised that Visy had not requested anything further from them and for council to remain passive.
9. Council received a letter from Solo dated 4 October 2019 urgently requesting a fee increase for the processing of recyclables collected through the kerbside waste collection contract. This proposed increase in fees is being passed on as a result of Visy increasing their fees. The letter provides two options for Council to consider, Option A and B:
 - a. Option A involves backdating to October 2018 – removal of rebate, effective rate of \$55/tonne from 1/10/18 to 30/6/19 and \$70/ tonne from 1 July 2019 until contract expiry. This equates to approximately \$790k for the life of the contract.
 - b. Option B is effective from 1 July 2019 – removal of rebate, effective rate of \$90/ tonne until contract expiry. This equates to \$861k for the life of the contract.
10. Option A presents a better financial outcome for Council (by approximately \$71,000 for the life of the contract).

11. Council staff have acknowledged the letter from Solo and are in negotiation with regard to proposed contractual changes. In a meeting held between Council and Solo's State Manager on 16 October 2019, Solo advised they are open to proposals from Council in response to their letter (dated 4/10/19), however they reinforced that they are not able to absorb the additional costs being proposed by Visy. Solo also advised Council that Visy have ceased paying Solo the \$10/ tonne rebate they were receiving (and passing on to council) for recyclables since April 2019.
12. Solo removed the recyclables rebate from their September 2019 invoice (initially without formal notification to Council). This equates to approximately \$30k per annum. An email received on 18 October 2019 indicated Solo would cease payment of the recycling rebate in response to Visy removing their payment for recyclables. Council are not obligated to pay additional costs that arise from processing recyclables and Solo is contracted to pay the rebate.
13. Council's collection contract with Solo expires on 1 October 2022. Options include three extension periods each up to 12 months (minimum of six months). Depending on the outcome of the negotiation, it is anticipated that the need to tender may arise in late 2021/ early 2022.
14. Solo service the kerbside recycling bins from the Mount Barker District Council area, and transport these materials to a consolidation point at Peats Soil (Langhorne Creek). The recyclables are consolidated (mixed) with recycling collected from the Rural City of Murray Bridge and then transported by Solo to Visy Recycling (Wingfield) for processing. Therefore, the weight of recyclables assigned to Council is based on an estimated per bin weight. This process has not been formally documented.
15. Council recently received \$26,068.80 (+gst) from Green Industries SA as part of the Regional Transport Relief Fund for the period 1/10/18 to 30/6/19, which was designed to offset the increased costs of recycling as a result of the China Sword policy. This funding will help offset some of the proposed additional costs.
16. The State Government recently announced a significant increase to the Solid Waste Levy which has also contributed to increasing costs to the sector and resulted in a significant cost increase to council.
17. The only available recycling processors in SA are Visy and the Northern Adelaide Waste Management Authority (NAWMA), since the commercial failure of SKM Recycling, which has had an effect on public confidence in the recycling sector.
18. Future processors in SA include: the Southern Region Waste Resource Authority (SRWRA), a joint subsidiary of Holdfast, Marion and Onkaparinga councils, who have developed a business case for the development of a \$21 million Material Recovery Facility (MRF) at Seaford Heights to process approximately 60,000 tonnes of product per annum. The other proposed processor in SA is the establishment of a local government owned MRF in Kilburn to process kerbside recyclables from the Cities of Charles Sturt and Port Adelaide Enfield at an estimated cost of \$12.8 million, estimated to be completed in early 2021.
19. The Adelaide Hills Regional Waste Management Authority (AHRWMA) has provided advice and assistance in this matter.

20. Legal advice has also been sought in relation to this matter from Thomson Geer. Their advice is as follows:

- a. Council is not obliged to agree to any price changes put to it by Solo.
- b. Council should recognise that it is effectively dealing with Visy (although Council does not have a contract with Visy) and that Solo are effectively an intermediary.
- c. Council might want to give thought to securing a longer term contract with Visy to make sure that there is no service interruption in the near term.
- d. Any negotiations to extend the contract or secure a longer term contract will progress more effectively if the District Council of Mount Barker and the Rural City of Murray Bridge combine their recyclables into a single contract. Visy would be more interested in a larger contract rather than a smaller contract in terms of securing future volumes.
- e. Council should be mindful that there are two new Material Recovery Facilities (MRF) planning to enter the market. One will be at Southern Waste and the other is proposed to be opened by the City of Charles Sturt and the City of Port Adelaide Enfield. Those two facilities will create some 'chaos' in the market as each facility starts competing for volume. At the moment there is an oversupply of recyclables. In the future there might well be an over supply of MRF's.
- f. In terms of the ongoing relationship with Solo, Council certainly needs a 'wheels relationship' in order to deliver material to Visy or any other MRF for that matter. There has been a long relationship between Visy and Solo and therefore to the extent that Council has a relationship with Visy, we believe that Solo can be counted on to act as a 'wheels business' in order to execute that contract.
- g. One final point to make relates to the proposed annexure in the letter of 30 September 2019 from Visy. This is a proposed change in the contract between Visy and Solo which seeks to protect Visy against changing market conditions. That clause does not currently fall within the contract between Council and Solo. If Council were to enter into a longer term contract with Visy direct, it is quite likely that Visy would seek to put a clause like this into the contract. The clause creates inherent uncertainty for Council as it gives Visy the opportunity to effectively terminate the contract if market conditions change. In our view, market conditions will change over time and therefore a clause of this type creates a significant risk for Council.

Discussion:

21. Options to process kerbside recyclable material is very limited in SA. There is a reliance on the private sector and the only processors currently available are Visy and NAWMA. This has limits on how Council manages their waste, and how they can respond effectively and timely to the significant fluctuations and uncertainty in this market sector.
22. NAWMA is the only immediate alternative location for processing of recyclables (within SA) and they have advised Solo (and AHRWMA) they are at capacity and cannot accept Council's recyclables. NAWMA have quoted a processing charge less than the proposed charge by Solo however this is not a viable long term solution.

23. Solo have requested a response to their proposal within 7 days which is not achievable and they have been advised of this.
24. A contract amendment is required to formally recognise any proposed changes. The LGA have developed a model clause for , noting that Council would seek to implement a cost sharing arrangement and a risk sharing clause to reflect market conditions over time. Council would also request that the methodology for determining weights of recycling bins is documented, along with a suitable review period.
25. There is a risk that failure to reach agreement on a revised processing fee may result in interruption to recycling (or other) collection services, relationship damage with Solo/Visy and/or a negative impact on the viability of the recycling industry in SA. This may also result in landfilling of recyclables which is not desirable.
26. It is recommended that negotiations continue with Solo to agree on a cost and risk sharing approach that provides certainty and continuity of services for the life of the current contract.

Community Engagement:

N/A

Policy:

Council provides a district wide kerbside collection service in line with the 2014 Kerbside waste, recycling & green organics collection service policy (ref 141070152).

Long Term Financial Plan:

The increase in waste fees is not included in the current long term financial plan.

Budget:

The proposed increase fees for recyclables processing has been provisioned in the Annual Business Plan 2019/20.

Option A presents an approximate financial impact of \$324k (+gst) (backdating of \$120k in 2018/19 and \$204k for 2019/20) and is the cheaper of the two options (over the remaining life of the contract).

Option B presents an approximate ongoing annual budget impact of \$263k (+gst).

Another option is being considered which will share costs and risks with Solo and if this is accepted, the budget impact will be less than that shown above.

The waste reserve can be utilised to fund any shortfall in budget.

Statutory/Legal:

Legal advice would be required to finalise the negotiation including any amendment to the contract, proposed risk sharing clauses (including review of Visy's proposed "material change in market conditions clause") and council's response to the immediate removal of the rebate payment by Solo.

Staff Resource Requirements:

The Waste Strategy Coordinator (AHRWMA) is assisting the General Manager Infrastructure and the Manager Infrastructure Maintenance & Operations with ongoing negotiations. The AHRWMA provide guidance and advice on the collection contract at a strategic level in addition to assistance on day to day operational level.

Environmental:

The Mount Barker Environment Strategy (Environment Strategy) objective is to promote resource efficiency. The goals are to reduce waste disposal to landfill by 10% per capita and to improve the waste diversion rate. Disruption to the provision of recycling services would conflict with the Environment Strategy.

Social:

N/A

Risk Assessment:

The recycling industry is under substantial strain in SA. There are a number of potential impacts depending on the response by MBDC (and the other councils). For example, Solo financial collapse, Visy Recycling leave SA (insufficient capacity of remaining recyclers in SA), disruption to the collection of recyclables, higher costs for an alternative processor/ landfill disposal. The risk presented by China National Sword is included on Councils Strategic Risk Register. A risk assessment will be done on any options considered as part of this negotiation process.

Asset Management:

N/A

Conclusion:

Council needs a continuous, affordable, stable and sustainable recycling service for its residents. Council will continue to negotiate with Solo and anticipates that there will be additional cost to process recyclables and the loss of the current rebate for recyclables as a result of China's ban on contaminated recycling imports and the rising financial and environmental costs of disposal to landfill.

Previous Decisions By/Information Reports to Council

Meeting Date	2 October 2018	HPRM Reference	DOC/18/102218
Title	WASTE MANAGEMENT UPDATE		
Purpose	To provide an update on the status of waste management related matters		

Meeting Date	23 January 2019	HPRM Reference	DOC/19/4271
Title	KERBSIDE WASTE – RECYCLABLES – CHINA NATIONAL SWORD		
Purpose	To provide an update on the impact of the China National Sword Policy on recyclables for the kerbside waste collection.		

18. CONFIDENTIAL REPORTS

18.1 REPORT TITLE: CONFIDENTIAL REPORT - KERBSIDE WASTE CONTRACT AMENDMENTS
DATE OF MEETING: 4 NOVEMBER 2019
FILE NUMBER: DOC/19/132581

9.07pm Councillor Leach left the Chamber.

Section 90 (3) (k) and (b) Order

Moved Councillor Jones that:

Pursuant to Section 90(3)(k) and (b)

1. Pursuant to Section 90(2) of the Local Government Act 1999 the Council orders that all members of the public except Chief Executive Officer, General Manager Community Services, General Manager Infrastructure, Acting General Manager Planning and Development, Chief Financial Officer, Risk and Governance Officer and Minute Secretary be excluded from attendance at the meeting for Agenda Item 18.1 Kerbside Waste Contract Amendments.

The Council is satisfied that pursuant to:

- Section 90(3)(k) of the Act, the information to be received, discussed or considered in relation to this Agenda item are tenders for:
 - The provision of services, or

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- Section 90(3)(b) of the Act being information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:
 - conducting business; or
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The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information to be disclosed and discussed has the potential to impact adversely on each of the tenderers as competitive commercial information will be disclosed; and because the disclosure of Council's commercial position may severely prejudice Council's ability to be able to negotiate a cost-effective proposal for the benefit of the Council and the community in this matter and in relation to other contract negotiations.

Seconded Councillor Westwood

CARRIED
OM20191104.33

9.10pm Councillor Leach returned to the Chamber and took his chair

Moved Councillor Westwood that Council:

2. Supports, in principle, acceptance of a processing charge for recyclables due to changes in the recycling industry and market conditions.
3. Gives delegation to the CEO to negotiate and amend the contract between Solo Resource Recovery and Council to minimise the financial impact and risk to Council.
4. Receives a future report on the outcome of the negotiation with Solo Resource Recovery.

Seconded Councillor Seager

CARRIED
OM20191104.34

Section 91(7) Order

Moved Councillor Westwood

Pursuant to Section 91(7)

5. That having considered Agenda Item 18.1 Kerbside Waste Contract Amendments in confidence under 90(2) and 3(k) and (b) of the Local Government Act 1999, the Council pursuant to Section 91(7) of the Act orders that the report and minutes be retained in confidence until the conclusion of the contract and that this order be reviewed every 12 months.

Seconded Councillor Seager

CARRIED
OM20191104.35

RELEASED