

# SUBMISSION JOINT PROCUREMENT of WASTE SERVICES: OPTIONS PAPER

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Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

# OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs more than **55,000 people**



Local government in NSW looks after more than **\$136 billion of community assets**



Local government in NSW spends more than **\$1.9 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna**



NSW has 450 council-run libraries that attract more than **34.8 million visits each year**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



NSW councils manage an estimated **3.5 million tonnes of waste each year**



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

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## **LGNSW Opening Comments**

LGNSW is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community. Local Government NSW (LGNSW) welcomes the opportunity to provide feedback to the NSW Environment Protection Authority (EPA) on the *Joint procurement of waste services: Options paper*.

This submission was endorsed by the LGNSW Board in April 2022.

LGNSW notes the significant role that a joint procurement facilitation service could have in supporting councils, regional waste groups and waste service providers to deliver the multiple objectives within the Waste and Sustainable Materials Strategy 2041 (WaSM) alongside emerging waste priorities. LGNSW has consulted widely with councils, regional waste groups and other key stakeholders including Local Government Procurement (LGP) through the preparation of this submission, so comments reflect the broad position of the Local Government sector. Councils play a critical role in delivering waste management services and their experience and expertise should be acknowledged and utilised to inform the development of the proposed joint facilitation service.

This submission incorporates feedback from LGP, a wholly owned subsidiary of LGNSW. LGP is a not-for-profit organisation and a 'prescribed entity' by legislation. The goal of LGP is to share procurement expertise and ensure that a range of practical knowledge is available to NSW councils, regional organisation of councils (ROCs), joint organisations (JOs), non-NSW councils, not-for-profit organisations, universities, state government agencies and departments.

During the 2020/21 financial year, council spend through LGP contracts was \$709 million. Overall, 2,401 online requests for information, quotations and proposals were submitted through LGP panel contracts with an estimated value of \$513 million. LGP's efficiency and expertise saved the NSW Local Government sector an estimated \$69 million or equivalent of 324,750 resource hours overall for the financial year.

LGNSW recognises that there are a range of specialised procurement services available to councils that have expertise in procurement and routinely support NSW councils in undertaking procurement of waste services. It is anticipated that expert procurement services, in addition to LGP, will have aided councils in securing similar positive outcomes to LGP's.

LGNSW is supportive of a joint procurement service which will encourage and support local government in joint procurement. If the service can overcome the challenges identified in the options paper it has the potential to further develop circular economy outcomes across NSW as well provide financial and environmental benefits across communities.

The pool of \$16 million in funding would best service NSW councils if it were applied to the development of a holistic service model as opposed to a series of distinct but linked services. As such perhaps there is no need to "reinvent the wheel" and that a centralised service, which builds upon the foundations of successful joint procurement could form the basis for a highly effective joint procurement service. One which incorporates not only State Government oversight but valuable input at the regional level, ensuring the service is best suited for local government.

## Background

It is estimated that the value of council waste contracts currently exceeds \$1.7B annually and that councils may not be able to harness this collective bargaining power due to a range of difficulties. These include, the current regulatory context, existing market forces and infrastructure shortfalls in addition to the challenges identified within Section 3 of the options paper.

The expectation is that up to 5-10% of waste spend across councils could be saved through effective joint procurement. Over a \$1.7B spend, this represents a significant percentage of existing waste budgets that councils could effectively redirect to further meet projected waste targets, deliver on WaSM program priorities, and contribute to agreed net zero targets.

## Summary of Recommendations

Please see below for a summary of LGNSW's key recommendations across key issues as well as all five options as presented in the *Joint procurement of waste services: options paper*.

The position of LGNSW and the local government sector is that the service should include a combination of the option. There is no one option that should not be included.

**Recommendation 1:** LGNSW recommends that the NSW EPA remain conscious of the requirements of the *Local Government Act 1993* when it comes to Councils engaging service providers.

**Recommendation 2:** LGNSW recommends the NSW Government partner with suitably qualified procurement agencies as well as existing regional waste organisations and others to identify the ongoing, emerging and priority opportunities and challenges, and breakdown barriers to joint local government procurement, building on the work already underway.

**Recommendation 3:** LGNSW recommends that the NSW EPA should explore with the ACCC a blanket authorisation for all NSW councils to jointly procure waste services subject to the necessary probity and scrutiny measures.

**Recommendation 4:** LGNSW recommends that other contextual challenges such as risk, the current regulatory framework, and the outcomes from the IPART review of Domestic Waste Management charges be considered when determining the service model for a joint facilitation service.

**Option 1 - Funding pool to provide financial support to seek out approaches, options, and expertise.** This option is ranked as a **high priority**.

**Recommendation 5:** LGNSW recommends the pool of \$16 million be used as an opportunity to create an integrated service as opposed to a series of distinct or standalone resources.

**Recommendation 6:** LGNSW recommends the model for a joint procurement service should be based upon successful existing structures including Local Government Procurement and others and utilise resources and experience from councils who have undertaken joint procurement successfully.

**Recommendation 7:** LGNSW recommends joint contracts should be supported as well as joint procurement or alternative support made available for joint contracts.

**Option 2 - Information service to allow better access to information to inform decision-making.** This option is ranked as a **high priority**.

**Recommendation 8:** LGNSW recommends the resources developed through an information service should build upon existing resources and take into consideration the successes and challenges of joint procurement which may have already been undertaken.

**Recommendation 9:** That the NSW EPA undertake further investigations to determine how the development of an information service could overcome information asymmetries noting that market concentration and lack of contestability represent some of the most significant challenges to joint procurement.

**Option 3 - Training in best-practice procurement to support upskilling of councils in joint procurement.** This option is ranked as a **high priority**.

**Recommendation 10:** LGNSW recommends that a training package should include general procurement as well as detailed modules for joint procurement, allowing it to be tailored to specific council needs. Key modules would include:

- introductory training / general procurement,
- waste contracts and tendering,
- contract negotiations, including managing mediation between parties,
- understanding current and emerging technologies,
- market structures to leverage opportunity,
- guiding principles for short- and long-term contracts,
- risk management, and
- examples of joint procurement (waste or non-waste).

**Recommendation 11:** LGNSW recommends training be delivered at a centralised level to maximise efficiency and ensure that training is accessible and appropriate.

**Recommendation 12:** LGNSW recommends that training be delivered through existing RTOs in order to ensure the suitability and frequency of training.

**Recommendation 13:** LGNSW recommends that training be made available as either face to face or online (hybrid option).

**Option 4 - Expert advice service to help address complex and/or specific issues that may arise.** This is ranked as a **moderate priority**.

**Recommendation 14:** LGNSW recommends that the expert advice service be made up of experts drawn from across several sectors including local government to advise on a broad range of issues. Suggested issues / outputs could include:

- To develop base contract templates for councils covering collection contracts
- Operate a clearing house / brokering service to match materials with markets
- Research emerging waste issues
- Development of commercial terms for contracts
- Establishment and management of pricing benchmarks across various wastes

**Recommendation 15:** LGNSW recommends that access to the expert advice service be readily available for all councils and that advice is held through a centralised network for ongoing and equitable access.

**Option 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.** This option is ranked as a **moderate priority**.

**Recommendation 16:** LGNSW recommends that any strategic infrastructure analysis should complement work already undertaken and needs to be regularly updated potentially annually to identify emerging opportunities.

**Recommendation 17:** LGNSW recommends that a strategic infrastructure analysis should consider the implications of other jurisdictions and be developed in consultation with other State governments.

**Recommendation 18:** LGNSW recommends that once the facilitation service is operational that grant funding continues to be made available, potentially from the NSW waste levy, to enable councils to drive infrastructure investment.

## Response

Detailed below are the overarching considerations that represent local government's feedback on a preferred model for facilitating joint procurement. The recommendations arising from this section mostly sit outside the content of the options paper but addressing these issues would assist the proposed facilitation service to work effectively by removing barriers and enhancing opportunities.

### *Existing Regulatory Framework*

There is substantial regulation which guides NSW local government procurement including;

- The *Local Government Act 1993*, Local Government (General) Regulation 2021
- *Competition and Consumer Act 2010*
- Tendering Guidelines for NSW Local Government 2009
- Model Code of Conduct for Local Councils in NSW 2020
- *Government Information (Public Access) Act 2009* (GIPA Act), *State Records Act 1998* and
- Councils own purchasing policies.

Whilst robust regulation is critical for the purpose of probity and transparency, it does create multiple levels of "red-tape" which can create additional challenges and complexities for council staff. This highlights the need for staff to have a detailed understanding of the regulatory framework before undertaking any form of procurement. Few councils would have highly qualified staff who have detailed knowledge of the regulatory framework and procurement experience, therefore

training combined with additional resources residing in a centralised location would be beneficial

LGNSW notes that the Office of Local Government (OLG) is currently reviewing the Local Government Tendering Regulation 2021 and consultation closed in October 2021. The local government sector anticipates that the regulation will be updated to reflect the increasing use of technology in tendering and that this alone will serve to improve council procurement processes. It is noted that the EPA will liaise with OLG regarding any implications of the review on the development of a joint procurement facilitation service. LGNSW also understands that following the regulation review the OLG will undertake a comprehensive review of the existing guidelines for local government procurement in response to a recommendation from the Auditor-General. It is anticipated that the EPA and OLG will liaise throughout that review process to ensure that no recommended changes would impede the success of a joint procurement facilitation service.

Recent reforms, including the establishment of joint organisations, have also enhanced efficiencies in local government procurement through increased opportunities to collaborate.

It is recommended that the NSW EPA remain conscious of the requirements of the Local Government Act when it comes to Councils engaging service providers. The requirements of the Act are different to those of State Government entities, and the EPA may find the councils are precluded from using a new resourcing arrangement due to regulatory restraints. LGP could potentially provide independent advice on this matter.

**Recommendation 1:** LGNSW recommends that the NSW EPA remain conscious of the requirements of the *Local Government Act 1993* when it comes to Councils engaging service providers.

#### *IPART Domestic Waste Management Charges Review*

Local Government funds domestic waste management services by levying separate domestic waste management charges through Section 504 of the *Local Government Act 1993*. IPART through its Local Government Cost Index Survey found that on average, contractor and consultancy costs accounted for 46% of domestic waste management costs. This represents one of the largest cost categories from 2017 - 2019. The IPART findings from the recent review of Domestic Waste Management Charges reiterate that a lack of effective competition in the waste market, coupled with previously identified barriers to effective procurement are all likely to influence procurement outcomes.

The IPART review also found that major contributors to increases in DWM charges were because of external cost drivers, outside their control. IPART's Draft Report released in mid-December 2021 recommends adoption of pricing principles and an annual 'benchmark' peg on domestic waste management charges (DWMC), starting at 1.1% in 2022/23. IPART would then publish annually a report on the extent to which councils' annual DWMC increased more than the peg each year.

The recommendations from the IPART review, if adopted, would have significant impacts on council ability to deliver waste services, this is especially so for councils that are yet to commence a food organics or food and garden organics service by 2030 as per the mandate from the NSW EPA. The IPART review is contributing to a level of unease from councils around how they will continue to fund the mix of waste services required to meet current waste targets. Whilst joint procurement

could play a role in making financial gains through competitive tendering, there are other risks which may influence the decision of councils to undertake joint procurement.

### *Voluntary Participation*

LGNSW notes that participation in any joint facilitation procurement service would be voluntary and LGNSW advocates for the autonomy of councils to undertake procurement in a way that best benefits their own community.

Joint procurement may not be appropriate in certain circumstances and may not always provide the best solution for all councils. It can be both time consuming and costly and can sometimes result in a suboptimum solution for councils that decide to discontinue the process. To increase joint procurement, LGNSW recommends the NSW Government partner with suitably qualified procurement agencies as well as other stakeholders to identify the ongoing, emerging and priority opportunities and challenges. This will help break down barriers to joint local government procurement, building on the work already underway.

**Recommendation 2:** LGNSW recommends the NSW Government partner with suitably qualified procurement agencies as well as existing regional waste organisations and others to identify the ongoing, emerging and priority opportunities and challenges and breakdown barriers to joint local government procurement, building on the work already underway.

### *Defining Best Value*

Under the *Local Government Act 1993* councils must review tenders based upon the best financial value but it is evident that in some circumstances other sustainability criteria should rank higher. There is an opportunity here to broaden the definition of best value to enable public good outcomes. Whilst changes can come with the difficulty of councils reaching consensus potentially this is an area where a review could be undertaken to benefit the sector at large.

### *Australian Competition and Consumer Commission (ACCC)*

To better facilitate joint procurement, the NSW EPA could explore with the ACCC a blanket authorisation for all NSW councils to jointly procure waste services subject to the necessary probity and scrutiny measures. Such an authorisation could demonstrate the advantages that all councils and their communities can benefit from in joint arrangements. These benefits include cost savings, environmental and social benefits. There are numerous precedents of local government joint procurement for the ACCC to draw upon. The competition impacts would of course still need to be assessed by the ACCC to ensure compliance with the relevant legislation however the feedback from councils is that seeking ACCC approval is costly, time consuming and often difficult. It is evident that reform in this area would benefit future joint procurement opportunities.

**Recommendation 3:** LGNSW recommends that the NSW EPA should explore with the ACCC a blanket authorisation for all NSW councils to jointly procure waste services subject to the necessary probity and scrutiny measures.

### *Innovation*

There is a nexus between innovation and procurement and the need to drive innovation has been highlighted as a priority through recent consultation. Waste collection contracts are some of the longest council contracts, they can range from 10 – 20 years in order to limit costs. These contracts rely on a high degree of confidence in waste volumes which (if not substantial) can impact on the likelihood of infrastructure investment. Smaller councils are at a distinct disadvantage in this regard, lower volumes of waste can result in less opportunity for infrastructure and investment and can encourage councils towards a business as usual (BAU) model.

There is evidence that the length of waste contracts may limit the desire to drive circular economy innovation. However, innovation could be achieved during the lifespan of contracts by allowing for side agreements. It can be difficult to even modernise services during long contracts which illustrates the need to consider what role the facilitation service could have in terms of building capacity for innovation.

### *Risk Appetite*

Councils are independent, locally elected corporate bodies. Political influences as well as the four-year electoral cycle can influence the way that councils approach collaboration including joint procurement and contract management. Staff turnover can be high in the local government sector and as result, there may be less continuity of relationships which can negatively impact councils' capacity to negotiate a joint arrangement. There have been instances where the relationship between councils has broken down during the contract period due to imbalances in the relationship around risk, decision making, outcomes and communication. This can lead to a reluctance to enter future collaborations. If these risks are addressed, the financial and environmental benefits would be substantial.

### *External Cost Drivers*

There are significant external cost drivers which continue to impact councils' financial capacity to deliver waste services. To suggest that joint procurement as a way of overcoming these pressures without exploring the nexus between individual cost drivers and the resulting pressure on councils may be an over-simplification. Recent cost drivers include the implementation of the China Sword policy, a perceived lack of investment in waste infrastructure, the implementation of the NSW CDS scheme (and its impacts on the value of kerbside co-mingled recycling) along with ongoing market fluctuations and increasing service costs.

Seeking solutions to market concentration is a priority, and support for councils to leverage their collective bargaining power would lead to improved procurement for councils as well as improved contestability and drive circular economy. Collectively fostering greater investment in infrastructure whilst shifting the larger portion of risk to the market rather than as the responsibility of councils.

LGNSW recommends that these contextual challenges be considered when determining the service model for a joint facilitation service.

**Recommendation 4:** LGNSW recommends that other contextual challenges such as risk, the current regulatory framework, and the outcomes from the IPART review of Domestic Waste Management charges be considered when determining the service model for a joint facilitation service.

## Option 1

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

Financial assistance through a funding pool is a high priority option for councils and should be considered an investment in joint procurement. The pool of \$16 million available to implement the joint facilitation service is a welcome investment, however, it will be imperative to maximise the use of funds for all NSW councils to benefit over the long term. It is anticipated that the \$16 million will deliver on all the proposed options and this being the case, LGNSW would recommend consideration of the challenges present within the current operating context, as noted above, when finalising the framework.

Investing in joint procurement will likely result in cost savings for councils and these savings could enable councils to redirect funds towards other waste priorities, ensuring that any savings are directly reinvested in additional waste projects and programs.

LGNSW notes that there are procurement agencies already in place which operate on a cost recovery basis and this model is self-sustaining. Given the \$16 million pool is finite, it will be essential to deliver a facilitation service that is sustainable over the period of the WaSM strategy.

LGNSW concurs that a pool of funds designed to assist councils with seeking out approaches, options, and expertise with relation to joint procurement is an important option. Councils have indicated a strong preference for this not to become a “slush fund”, where funds can easily be dissipated, without achieving strong outcomes. In addition there is little support from within the sector for funds to be distributed on a per council basis - this is not considered to be an efficient use of funds and councils don't see that this will result in sector wide gains.

Rather, the funding pool is an opportunity to potentially fund a centralised service model building upon the success and expertise of existing procurement agencies such as Local Government Procurement. There is also some support from across the sector for a two-tier joint procurement service where services are offered through a centralised agency with substantial support from regional organisations. There would be a role in such a model for the State Government to manage the financial stewardship and provide oversight to the agency's undertakings.

Councils have noted that joint contract management is separate to joint procurement. Further clarification around what the available pool of funds will cover is requested to ensure that there is a clear definition of what the facilitation service will support. Further to this, if joint contract management is not to be covered by the service, then alternative support mechanisms to promote joint contract management should be made available. Joint contracting of waste collection services is a costly and time-consuming process for councils and represents an excellent opportunity to gain financial savings through joint contracts.

LGNSW concurs with the options paper that building ongoing collaboration and relationships are essential to successfully undertake joint procurement however there are several challenges which

are likely to impede successful collaboration. Councils are independent, locally elected corporate bodies. The political nature of councils can mean that priorities change with a new election cycle and that councils may move away from what had once been a common objective. It is not clear how any or all the five options can completely overcome this challenge and LGNSW would recommend that further consideration needs to be given to this as an opportunity.

Getting councils to align to a similar framework for procurement will be challenging. This will require regular engagement with councils and there may be opportunity to use existing engagement structures rather than setting up new structures to facilitate this. Building upon the strength of existing governance structures in ROC's and JO'S is strongly recommended and where forums for collaboration exist, LGNSW would support building on these existing mechanisms.

Market concentration in the provision of waste services is the biggest barrier facing councils and other stakeholders in undertaking joint procurement. LGNSW is wholly supportive of any investment in the local circular economy with a specific focus on; increasing manufacturing and processing capabilities and facilitating increases in end markets for recycled material. These opportunities represent an excellent opportunity for local and state government to partner together to deliver on multiple objectives.

In summary the funding pool is a welcome initiative and critical to the success of the facilitation service however LGNSW would call for greater clarity around the way that these funds will be expended. All opportunities to build upon existing services and relationships should be identified to ensure that the service does not replicate existing structures already in place.

**Recommendation 5:** LGNSW recommends the pool of \$16 million be used as an opportunity to create an integrated service as opposed to a series of distinct or standalone resources.

**Recommendation 6:** LGNSW recommends the model for a joint procurement service should be based upon successful existing structures including Local Government Procurement and others and utilise resources and experience from councils who have undertaken joint procurement successfully.

**Recommendation 7:** LGNSW recommends joint contracts should be supported as well as joint procurement or alternative support made available for joint contracts.

## Option 2

### **Information service to allow better access to information to inform decision-making**

LGNSW supports an information service to improve access to information to inform decision making. Councils generally concur with the types of resources that the service might deliver but note that this material should not replicate what is already available, and that an information service should build upon the body of knowledge already available.

Information asymmetry is recognised as a challenge for many councils, especially regional and remote councils who may not tender for contracts regularly. This challenge is compounded where councils have a lack of qualified staff who have both the time and capacity to access information pertinent to procurement. It may not always be the case that information is not available; it may

simply not be accessible because of time and other constraints. Conversely it is important to acknowledge the significant work of ROC's and JO's in delivering procurement for councils and managing contracts on their behalf. Because of this work, there is likely a substantial body of information directly relevant to joint procurement already available within these organisations.

LGNSW concurs that the twin challenges of information asymmetries and a lack of access to resources can be addressed both through an information service as well as an expert advice service. There will need to be a strong intersection between these options to ensure relevant information and advice is readily available without replicating resources already available.

Information asymmetry is a complex issue and through consultation it is still unclear as to whether local government's preferred method for overcoming this challenge would be to;

- (a) Limit access to the resources created through the facilitation service to "members" or council subscribers in order to prevent market access to the content, or
- (b) Whether by making resources and advice available broadly to the local government sector and market at the same time would be more beneficial as it would close any loopholes ensuring that all parties have access to the same information.

This may require further consideration.

An information service would best serve councils if the resources developed met the critical information issues as identified by them. These could include cost, project timeframes, risk management, project governance and contract management. An information service should draw upon existing resources to inform its advice and at the same time acknowledge important work already undertaken in this area by councils, ROCs, and JOs as well as central bodies such as LGP and others.

Councils are keen to see case studies amongst the resources provided as these were raised repeatedly as a potentially useful mechanism for gaining direct insight into other councils' tendering success. Councils have also recommended further resources in addition to those included in the options paper, which could include:

- Information about emerging recycling markets.
- Research findings around emerging waste treatment options.
- Tendering and contracting models covering EOI, market sounding, industry consultation, open tender, head contractor model and,
- Technical forums and other options for peer discussion.

LGNSW concurs that councils and regional waste groups are well placed to provide feedback on this proposal due to their experience in tendering and joint procurement. There are many examples where councils have successfully undertaken joint procurement and these examples highlight councils' commitment to securing best value for money. LGNSW would also draw attention to the report "Regional Contracting Options" prepared for WSROC by Arcadis in July 2018 for western Sydney and Macarthur councils. This report provided an assessment of the various joint procurement tendering and contracting models by councils and would provide a useful reference for consideration in the options paper.

An information service should consider not only the barriers to undertaking joint procurement but also build the capacity of councils and regional waste groups to undertake improved procurement. One option is to develop a series of best practice policies and templates to facilitate the use of

recycled content in government procurement. A suite of comprehensive guidance documents could drive innovation and investment in infrastructure in key locations therefore, supporting joint procurement into the future.

There is opportunity to develop policies and procedures which would further drive circular economy opportunities. For example, the investigation of recycled content substitutes and their availability in all procurement decisions, as well as a weighting for recycled content relative to virgin materials in existing procurement guidelines. Local government feedback indicates there is a perceived unsuitability of recycled content that is informed by a lack of awareness or confidence in recycled materials, credible information made widely available to councils could help overcome these concerns. Other emerging issues could form the basis for guidance documents as well, enabling councils to have access to the most current information affecting their delivery of waste services.

Market power is a key challenge faced by councils, and whilst the options paper indicates that publication of material such as key datasets, pricing and performance benchmarking can increase the level of independent scrutiny of the market without changes to market concentration it is unlikely that these will alleviate many of the challenges. China Sword, COAG export bans, COVID-19 and a myriad of other factors have given rise to increasing costs for councils during the lifespan of existing contracts.

Councils face a sizeable risk of increasing costs due to the typical length of waste contract (10 years plus) coupled with the limited negotiating power when contracts are renewed. It has been noted that pricing benchmarks would be a useful tool for councils in order to give them greater access to pricing information and to correct some of the current information asymmetries in the marketplace. Market power can also be limited through initiatives such as infrastructure development which can drive better value for money outcomes across the sector.

Finally, from a regulatory perspective the NSW Government, LGP and others can show leadership through adding recycled content producers to their procurement panels. In addition, the existence of prescribed entities in the Local Government Act & Regulation should be recognised and each should be incorporated as a part of any resourcing or advice services.

**Recommendation 8:** LGNSW recommends the resources developed through an information service should build upon existing resources and take into consideration the successes and challenges of joint procurement which may have already been undertaken.

**Recommendation 9:** That the NSW EPA undertake further investigations to determine how the development of an information service could overcome information asymmetries noting that market concentration and lack of contestability represent some of the most significant challenges to joint procurement.

## Option 3

## **Training in best-practice procurement to support upskilling of councils in joint procurement**

LGNSW supports the provision of increased training to upskill council staff as this will address some of the challenges to building internal capacity and addressing a skills shortage. However at the same time LGNSW readily acknowledges the wealth of skill and experience that exists within local government. Councils and their delivery partners do have substantial knowledge and experience especially with the provision of waste services and there are many councils who have undertaken joint procurement successfully to deliver regional waste infrastructure and manage complex collection contracts.

Feedback from the local government sector indicates that training is a high priority and councils have been requesting this for some time. As such, a well-designed training package is likely to be well received by the sector. The concern is the length of time that may be taken to develop the training noting that there is an immediate need. To address this, the training package could build upon existing training in the short term and be expanded in consultation with councils.

It is the variability in skills and knowledge across councils which this training could redress. As such there will be distinct differences in councils needs around training, LGNSW would suggest that further consultation with councils and partners is needed to identify needs which should inform the development of a training package.

LGNSW would recommend that training in procurement be developed to specifically address waste contracts and tendering. Whilst introductory training will be useful for new staff and should form part of the package, additional training will need to target more complex issues related to procurement including:

- Contract negotiations covering how to manage mediation.
- Understanding current and emerging technologies.
- Market structures to leverage opportunity.
- Guiding principles for short- and long-term contracts and,
- Risk negotiation strategies.

In terms of maximising financial spend on training, councils wish to avoid paying for the same service with every new contract. As such, the recommendation is for the resources developed through the information service, training package and expert advice service to form a library for future reference for councils. This could free up future funds to address issues where a gap is identified in the future.

The training package will need to focus specifically on waste issues however there may be opportunity to utilise examples where successful joint procurement is undertaken in other areas of council's service provision, such as road maintenance. Some councils have suggested that access to training and/or information around best practice procurement in other service areas would be beneficial and useful. This could potentially be of great benefit to regional councils where senior staff may work across several service areas.

The content of the training could be broadened to include specialised training around such topics as transport logistics and circular economy. It has been noted that good procurement outcomes cannot be achieved in a vacuum and that staff need skills and knowledge across a range of matters as they relate to waste and procurement. There may be examples from other sectors such as roads and traffic management which could be of benefit to waste staff within councils.

Training should be made available to both waste staff and procurement staff across councils to ensure that both sections of council have access to knowledge and information around waste procurement. The development of the training package will need to be undertaken with consideration given to the variability of organisational structures and responsibilities across councils and other stakeholders. In some organisations, finance staff and waste staff may have clear lines of sight regarding procurement and in other organisations it may be less so

Councils commonly work with a variety of key stakeholders. Whilst some councils undertake procurement regularly others may rely on support from key stakeholders through existing ROC and JO networks. This can influence the nature and structure of procurement and should be considered when developing appropriate training modules, as this will influence the level of "need".

Councils have repeatedly commented that the high turnover of council staff is likely to impact the efficacy of any training program and staff turnover should be considered as part of the development of the training package. If the concurrent development of an information service and expert advice service were to result in reduced consultancy fees for councils, the opportunity might exist for these funds to be directed towards more widespread, frequent and targeted training for staff.

Refresher training should be considered as an essential part of the training program and static resources (such as those developed to support the roll-out of CRC's) to further support training objectives should also be developed. The timing and frequency of training will also affect the potential uptake and should be factored into this option.

The NSW EPA will have an important role in developing the training content and partnering with registered training organisations (RTOs) is an opportunity to leverage existing training service providers for delivery. Whereas suitable training may have been available through organisations such as TAFE NSW in the past this would appear to no longer be the case. The delivery of training will need to be determined and LGP is an RTO which could support the delivery of training in due course.

A second suggestion is to engage consultants from within the waste industry, including those associated with the large waste service providers to assist with developing content and/or delivering aspects of the training. Finally, the training package could include peer to peer learning where council staff could contribute to training through the development and delivery of case studies. Overall the training package will need to be delivered at a centralised level to ensure the training modules are relevant, are responsive to emerging needs, are readily accessible and are cost effective.

LGNSW has received feedback indicating that a hybrid approach to training may be most suitable where there is the option for either face to face or online training. For some councils face to face training enables staff to focus on the training and network with peers, whilst for other councils, travel times, travel costs and lack of supporting staff resources may prevent staff attending training and online delivery is preferred. The logistics of delivering the proposed training package will be equally as important as the content to build an effective and valuable resource.

**Recommendation 10:** LGNSW recommends that a training package should include general procurement as well as detailed modules for joint procurement, allowing it to be tailored to specific council needs. Key modules would include:

- introductory training / general procurement
- waste contracts and tendering
- contract negotiations, including managing mediation,
- understanding current and emerging technologies,
- market structures to leverage opportunity,
- guiding principles for short- and long-term contracts,
- risk management, and
- examples of joint procurement (waste or non-waste)

**Recommendation 11:** LGNSW recommends that training to be delivered at a centralised level to order to maximise efficiency and ensure that training is accessible and appropriate.

**Recommendation 12:** LGNSW recommends that training be delivered through existing RTOs in order to ensure the suitability and frequency of training.

**Recommendation 13:** LGNSW recommends that training be made available as either face to face or online (hybrid option).

## Option 4

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

LGNSW supports the development of an expert advice panel to assist with addressing complex and specific issues. This service will be critical in assisting councils with meeting the multiple objectives of the WaSM program and specifically the mandate to commence a food organic and/or food and garden organics collection by 2030.

This option, alongside the development of an information service could address the lack of access to skills and a knowledge base which has already been identified as a challenge. Noting that councils all have varying access to resources and expert advice around procurement. Any information provided through these options must be transparent, impartial, and well informed so that councils can have confidence in the quality of the guidance to make complex procurement decisions. The risk attached to expert advice will need to be quantified both to encourage councils to take up the option and to limit exposure to any risks.

There are several key aspects to the development of an expert advice service where greater clarification is needed:

- a) The qualifications of the panel members and how members are approved to the panel.
- b) The panel needs to be truly transparent and impartial, especially where a fee for service may form part of the service model and cost recovery mechanisms.
- c) The period of panel member tenure.
- d) The method by which councils can access the panel.

- e) The timeliness and responsiveness of the panel and,
- f) The range of subjects panel members can advise on.

Access to the expert advice service should be straightforward and the process needs to be clearly defined, including the timeframe for response. Councils may require guidance on when they should apply to the service for timely advice. Access to the expert advice service should not be via a contestable application as this could become a time-consuming process that would disadvantage smaller, regional, and remote councils.

As in option one, councils have indicated that they do not wish to see funds available through this option simply end up as an allocation of consultancy hours. This is an inefficient method of providing advice as it is less likely that others could benefit from the cumulated advice.

Upskilling Regional Waste Coordinators on joint procurement is a way of enabling them to support councils on projects of regional significance. There may be merit in giving coordinators greater access to the expert advice service and sit in on deliberations with other councils to gain greater insight. Potentially the expert advice service could facilitate mentoring with coordinators to continue the process of upskilling.

In brief the service is recognised as a mechanism by which councils can access expert and independent advice however LGNSW sees opportunities for capacity building, to improve skills and knowledge over the medium to longer term. For example, funds could be utilised to engage extension officers within the facilitation service to assist councils and stakeholder with key aspects of contract management.

The second aspect of the expert advice service is the type of advice that panel members may advise on and LGNSW concurs with the broad list of options as included in the options paper. Specifically we recognise that focusing on best value will be of assistance in enabling councils to move away from cost as the key assessment criterion, and that redefining 'best value' is an important consideration.

Councils have also indicated that helping to resolve disputes as they emerge in the contract phase is important, as is managing conflict throughout the lifespan of the contract. The potential for a brokering service has also been identified by LGNSW as an opportunity. Councils have indicated that legal advice above all other advice is critical and a necessary support for councils when making decisions around contracts. However, the concern is with respect to the cost of legal advice, where costs may average \$700 per hour for legal advice, councils only currently have access to limited funds to gain complex contractual advice.

Feedback from councils indicates that market power continues to allow waste providers to influence tendering outcomes. For example, by not complying with conditions of tendering this may force a council to reject all tenders and enter negotiations with the current provider to continue essential waste collections. This may also enable a tenderer to diminish the impact of councils' preferred terms and conditions and negotiate on unfavourable terms of the specification. It is anticipated that expert advice could assist with managing complex issues such as this, which are beyond the likely scope of training and/or the development of resources. Where there is no genuine intent to compromise by parties, councils can end up second best.

If the local government sector used the same base contract template with the same legal advice/legal counsel available to all councils, it would significantly strengthen the bargaining

position of all councils. Templates have been identified as an opportunity to assist councils with accessing off-the-shelf expert advice however the effectiveness of these can be limited due to their narrow application. However considering the FOGO mandate by 2030 this may be an area where templates developed by an expert panel could be utilised to assist with the development of tendering documents and contract negotiations.

Expert advice on managing the implications of market contestability could be a focus for the expert advice service as negotiating with the large multinational waste companies that dominate the waste sector in NSW is extremely difficult. Most councils ultimately accept the contracts provided with no room for negotiation. There is a substantial opportunity through the joint facilitation service to further support councils with this issue. Commercial arrangements will also require review as they are anticipated to be sub-optimal.

The expert advice service could potentially foster a centre of excellence for local government procurement that identifies opportunities for joint procurement based on material flows and benefits to ratepayers and provides support to regional waste groups and others that wish to initiate and deliver joint procurement. Where local government has already established 'centres of knowledge', whether it be on waste or procurement, these should be integral in any future joint facilitation service. These should not be overlooked on the assumption that only the private sector 'experts' will be appointed to the facilitation service.

There is opportunity for the expert advice service to undertake research and provide advice on emerging opportunities and challenges enabling councils to get ahead of emerging waste issues. One example of this might be through the establishment of a clearing house/brokering service (virtual) matching waste/resource materials to potential users/manufacturers of recycled products to assist with addressing some of the uptake barriers to using recycled content.

Other suggestions to be covered by the expert advice service include developing improved aggregated commercial terms across the state across which cover all suppliers, this would provide councils with additional funds to drive other sustainability/net zero initiatives for councils.

**Recommendation 14:** LGNSW recommends that the expert advice service be made up of experts drawn from across several sectors including local government to advise on a broad range of issues. Suggested issues / outputs could include:

- To develop base contract templates for councils covering collection contracts
- Operate a clearing house / brokering service to match materials with markets
- Research emerging waste issues
- Development of commercial terms for contracts

**Recommendation 15:** LGNSW recommends that access to the expert advice service be readily available for all councils and that advice is held through a centralised network for ongoing and equitable access.

## Option 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**

LGNSW recognises that undertaking a strategic infrastructure analysis could help address infrastructure gaps by identifying options to support increased diversion from landfill and address challenges such as, distance and contestability. Feedback from councils suggests that there is no real concurrence that this option is as high a priority as the other options. However there is agreement that it would be valuable for some councils and could facilitate joint procurement. There is however, greater support for this option in regional and remote communities where economies of scale and distance represent greater challenges. Regions who rely on infrastructure located interstate have a particular interest in sounding out future infrastructure needs.

LGNSW concurs that the NSW Government will need to take on a coordination role to strategically plan for critical waste infrastructure, noting the challenges that have previously been identified by councils which need to be overcome, including:

- Land availability – vacant land is scarce, particularly in the Sydney region.
- Planning constraints – zoning often prohibits waste infrastructure close to the source.
- Willingness – infrastructure projects require a significant level of long-term political and administrative will.
- Financial viability – like the private sector, local government also seeks an acceptable level of financial viability.
- Funding – infrastructure projects require significant amounts of funding. Funding for infrastructure primarily comes from rates revenue held in reserve. This can take years to save.
- Risk – significant commercial and business risks are involved.
- Expertise – procuring major infrastructure projects requires a significant level of technical expertise and resourcing.
- Waste volumes – waste volumes may be inadequate to render new infrastructure viable, particularly in regional areas.
- Distance – transportation distances to market often render infrastructure unviable, particularly in regional areas.
- Proximity to other states - those regions located in proximity to the Australian Capital Territory, Queensland and Victorian borders have access to infrastructure and markets in neighbouring states. This makes infrastructure development in proximity to the border less viable.
- Availability of service – in smaller and remote locations the logistics of getting contractors/machinery at an affordable rate is often a problem. Costs are particularly prohibitive when small quantities are involved.

For local government to genuinely be a participant in the delivery of waste infrastructure in NSW, each of these barriers needs to be investigated and addressed. Recognition of waste and resource recovery as an essential and priority service is the key opportunity for improvement. This includes prioritising short, medium, and long-term planning for delivery, operation, maintenance and retention of waste and resource recovery infrastructure and services.

The options paper suggests that the strategic infrastructure analysis will help overcome the challenge of economies of scale and distance. These challenges are complex and likely to be compounded in remote and regional areas where there is the higher likelihood of there being less

contestability than in metropolitan areas. Remote councils face the heightened risk of less choice with relation to service providers, even more so when waste companies own local infrastructure, and they may be forced to accept the only contractor willing to undertake the work at a higher cost.

Transportation costs represent a large proportion of regional waste service charges and councils often subsidise the cost of waste transport to limit increases in disposal fees for residents. It is agreed that joint contracts can provide one way of limiting transport costs where a contractor will schedule collections across multiple sites as is common across Western NSW, but this can lead to other difficulties including scheduling complexities and the risk of sudden price increase. Whilst some of these may be outside the control of the service provider others result from market contestability.

Another important consideration is where contracts cross state borders. There are councils along the NSW/Victorian border as well as those located adjacent to the ACT and one in far western NSW which utilise waste infrastructure located interstate either because this is a more economical option and/or is located nearby. Any infrastructure analysis should consider the importance of these existing contracts, and the NSW Government has an opportunity to partner with other State Governments to ensure that councils have access to appropriate infrastructure irrespective of state borders.

There is variety of viewpoints from within councils suggesting that the proposed infrastructure analysis is already underway and that a more specific needs analysis should be undertaken when councils are looking to undertake joint procurement. Councils have also commented that further analysis should build upon the infrastructure analysis already undertaken through the WaSM strategy noting the likely cost to undertake this work. This work could potentially be funded from a separate funding source to the \$16 million pool made available for the joint procurement facilitation service.

Finally, infrastructure is a long-term investment and requires; surety around waste targets and licensing requirements, financial investment from multiple levels of government/other stakeholders as well confidence in waste volumes and waste priorities over the long term. This level of risk may mean that councils are unwilling to invest in regional infrastructure.

Increasing market competition would encourage innovation and investment in infrastructure. In metropolitan Sydney since the sale of state owned WSN Environmental Solutions in 2010 most of the waste infrastructure is operated by a very small number of companies limiting competition, with these companies also processing material from the regions. Providing certainty around investment through clear reliable policy direction and sound regulations would encourage new players to enter the market.

If further infrastructure analysis is identified as a priority, then there are major opportunities for the development of waste precincts/hubs. Planning for these could cover; onsite waste collection and processing, removing kerbside bin presentations, facilitating activated street frontages and increased amenity outcomes within urban densification for place-based developments. Place-based precincts should also include identified waste and resource recovery precincts with sound transport logistics.

The options paper notes that joint procurement can increase the resource pool available to explore relevant options including the purchase and ownership of required strategic facilities. This a problematic assumption due to the nature of risk associated with infrastructure investment

and needs to be explored further.

**Recommendation 16:** LGNSW recommends that any strategic infrastructure analysis should complement work already undertaken and needs to be regularly updated potentially annually to identify emerging opportunities.

**Recommendation 17:** LGNSW recommends that a strategic infrastructure analysis should consider the implications of other jurisdictions and be developed in consultation with other State governments.

**Recommendation 18:** LGNSW recommends that once the facilitation service is operational that grant funding continues to be made available, potentially from the NSW waste levy, to enable councils to drive infrastructure investment.

## Conclusion

The Waste and Sustainable Materials Strategy 2041 presents the opportunity to transition NSW to a circular economy that will provide long-term economic, social, and environmental benefits for NSW. WaSM contains multiple program priorities and councils are on varying stages of the journey in working towards the roll out of many of the priorities. However consultation has highlighted two overarching contextual challenges in meeting the objectives contained within the WaSM strategy.

1. The infrastructure required to meet future circular economy targets is currently lacking and whilst it is identified in the WaSM strategy, without infrastructure planning and development being prioritised there is no possibility of councils achieving the targets even with joint procurement being a more readily available option.
2. Councils are generally unable to leverage collective purchasing due to a range of issues, predominately market concentration and a lack of expertise in negotiating with the five large multi-national companies that deliver waste services.

As detailed throughout this submission LGNSW acknowledges that a joint procurement facilitation service covering the options included within the options paper would represent a valuable opportunity for councils to maximise the option of joint procurement. Each of the options within the paper have merit and all are identified as being either a moderate or high priority and LGNSW recommends that all of the options be included.

LGNSW invites the EPA to consider the feedback provided throughout this submission as it is based upon consultation with a wide group of stakeholders. As noted in the options paper, some councils have a stronger preference for one option over another but there is sector wide support for a well-funded, centralised service that offers multiple opportunities for councils to easily access support to undertake effective joint procurement. Thank you again for the opportunity to comment on the *Joint Procurement of waste services: Options paper*. If you would like further information on LGNSW's position, please contact Alison Thompson, Senior Policy Officer – Waste on 02 9242 4056 or [alison.thompson@lgnsw.org.au](mailto:alison.thompson@lgnsw.org.au).