



GOLDEN PLAINS SHIRE

ATTACHMENTS

**Under Separate Cover
Ordinary Council Meeting**

6.00pm Tuesday 22 October 2019

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7.10	Authorisation of Chief Executive Officer to Enter Limited Term Recycle Contract	
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31 August 2018

The Hon. Ms Kairouz, MP
 Minister for Local Government
 Level 26, 121 Exhibition Street
 MELBOURNE VIC 3000

Dear Minister,

Recyclable Materials Reveal and Processing Contract with SKM in the G21 region

The five G21 Councils (City of Greater Geelong, Colac Otway Shire Council, Surf Coast Shire Council, Borough of Queenscliffe and Golden Plains Shire Council) hold a Recyclable Materials Reveal and Processing Contract with SKM Recycling.

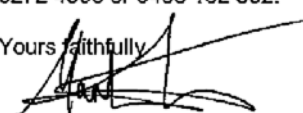
The contract commenced in July 2010 with a contract term of 20 years. The length of contract allowed a Materials Recovery Facility (MRF) to be set up in Geelong, providing essential waste infrastructure within the region. The G21 Council's kerbside collection contracts also rely on the SKM contract, as the specified processing facility for our kerbside collection contracts is SKM Recycling plant in Geelong.

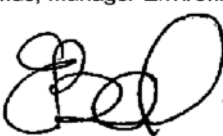
The five G21 Councils are seeking an exemption to Section 186 of the Local Government Act until 30 June 2025 and a revised date of 31 December 2018 for the signing of the Contract Variation for compliance with the Recycling Services Temporary Relief Funding Arrangement. This joint application For Ministerial Approval under section 186 to 30 June 2025 will allow the contracts continuation. We believe the continuation of our contract will achieve best value for our community through continued provision of regional infrastructure supporting our municipal recycling collections. In applying for this extension the G21 Councils are also seeking to avoid a breach of contract through being forced into early termination because the current contract variation ministerial exemption extends only to 30 June 2020. By maintaining the current contract through to 30 June 2025 the continuation of municipal kerbside recycling reveal and processing services in the G21 municipalities is ensured.

Given the recent disruption to recycling markets worldwide, Councils have been working with SKM Recycling for a number of months to formalise a variation to the existing contract. As of the date of this letter, the contract variation has not been formally agreed to by both parties. Councils and SKM have made every available effort to negotiate in good faith and formalise a variation agreement, however both parties are close to reaching agreement.

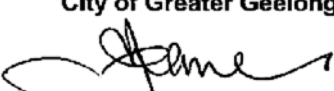
Please find enclosed the application form for your consideration. Should you have any questions, please don't hesitate to contact Rodney Thomas, Manager Environment and Waste Services, City of Greater Geelong on 5272 4806 or 0488 152 862.


Yours faithfully

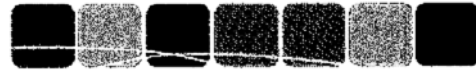

Martin Cutter
 Chief Executive Officer
 City of Greater Geelong


Eric Braslis
 Chief Executive Officer
 Golden Plains Shire Council


Keith Baillie
 Chief Executive Officer
 Surf Coast Shire Council


Lenny Jenner
 Chief Executive Officer
 Borough of Queenscliffe


Peter Brown
 Chief Executive Officer
 Colac Otway Shire



Application for Ministerial Approval under
Section 186(5)(c) of the *Local Government Act 1989*

Council

Council Name	City of Greater Geelong Colac Otway Shire Council Golden Plains Shire Council Borough of Queenscliffe Surf Coast Shire Council
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Contact Officer

Name Person with knowledge in relation to the proposed contract.	Rodney Thomas
Position	Manager Environment and Waste Services – City of Greater Geelong
Telephone	03 52724806
Email	rthomas@geelongcity.vic.gov.au

Signatory

Name Person signing the application and covering letter to the Minister should be the Chief Executive Officer or officer delegated the power to enter into the proposed contract.	Martin Cutter CEO, City of Greater Geelong Peter Brown, CEO, Colac Otway Shire Council Eric Braslis CEO, Golden Plains Shire Council Lenny Jenner CEO, Borough of Queenscliffe Keith Baillie CEO, Surf Coast Shire Council
Position	Chief Executive Officer of the respective Councils.
Signature	
Date	August 2018

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<p>The five G21 Councils are seeking an exemption to Section 186 of the Local Government Act until 30 June 2025 and a revised date of 31 December 2018 for the signing of the Contract Variation for compliance with the Recycling Services Temporary Relief Funding Arrangement.</p> <p>The five G21 Region Councils that are the subject of this application are the 'Participating Councils' in a regional agreement with SKM Industries through a series of contracts interlinked by a cornerstone contract held by City of Greater Geelong. This contract is ongoing and does not have a legal termination mechanism available until 30 June 2025.</p> <p>All five Participating Councils are in combined negotiations with SKM Industries (SKM) in response to the change in international market pricing conditions of the recycling industry. These negotiations are to agree on a Deed of Variation required to meet the new pricing structure for the G21 councils Recycling Services.</p> <p>All Participating Councils are included within the Approval of Arrangements issued by the Minister for Local Government on 02 July 2018. The current Approval of Arrangements is conditional on Councils entering into revised contracts prior to 30 September 2018.</p> <p>The Participating Councils appear unable to complete satisfactory contract negotiations for a variation prior to 30 September 2018 despite the genuine and best efforts of all Participating Councils and SKM. The G21 Councils expect negotiations to be completed by 31 December 2018.</p> <p>The commencement of contract variation is dependent on negotiations that the G21 group of Councils are currently engaged in with their recycling receiver and processing contractor, SKM Industries.</p> <p>This application requests that an approval of arrangements be issued enabling the receiver and processing of kerbside recycling to be provided to the five Participating Councils under a varied contract to 30 June 2025.</p> <p>The payments from 1 March 2018 to 30 June 2018 would be met from the Victorian Government's Recycling Services Temporary Relief Funding Arrangement and the payments from 1 July 2018 would be met by the respective G21 Councils.</p>	<p>It is important to submit the application well before the proposed commencement date of the contract to allow Local Government Victoria and the Minister sufficient time to consider the application.</p> <p>Note: the Minister cannot grant an approval under section 186(5)(c) of the Act retrospectively in relation to a contract already entered in to.</p>
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Proposed commencement date of the contract

1. Nature of contract – Is the proposed contract one for the purposes of section 186 of the *Local Government Act 1989*?

1.1 Is the proposed contract for the purchase of 'goods', 'services' or 'works', for the purposes of section 186(1) of the Act?

(If YES, please specify. If NO, section 186 does not apply).

<p>For the purposes of section 186(1), goods, services and works include the following:</p> <ul style="list-style-type: none"> • Goods – moveable personal property, especially merchandise used in trade or commerce and requiring carriage from one place to another; • Services – the provision of what is necessary for the installation and maintenance, the supply of utilities or commodities; • Works – the operation of building or repair, such as road works. <p>Examples to note –</p> <ul style="list-style-type: none"> • Licences and Leases in some circumstances may be considered a purchase of a service. • Insurance contracts are generally considered a contract for service. • Loans are generally considered not to be contracts for goods or services. <p>Reference to Procurement Guidelines 2013: 3.2.3 3.6.3 – 3.6.11</p>	<p>Please specify:</p> <p>YES.</p> <p>The proposed agreement is for the provision of a municipal recyclables receival and processing service. The proposed agreement is required in response to a material change in market pricing conditions of the international recycling industry.</p> <p>The proposed agreement will incorporate a 'gate fee' payment per tonne payable to SKM Industries within the terms of the agreement. The quantum of this gate fee payment is likely to be from \$60 reducing to \$45 per tonne with additional costs for contamination. Based on the current tonnages collected for processing each Participating Council will exceed the threshold of \$150,000 for the purchase of this service for the proposed contract variation period which is the subject of this application.</p> <p>The Participating Councils are each currently a party to an existing individual contract agreement with SKM Industries for the provision of receival and processing services for kerbside recycling. Each Participating Council agreement is linked through a 'cornerstone' contract between City of Greater Geelong and SKM Industries. All Participating Council agreements are identical with the exception of the 'cornerstone' clause. The cornerstone contract effectively enables SKM Industries to terminate the other Participating Council contracts should the City of Greater Geelong Contract end. All Participating Councils met the requirements of the Local Government Act (1989) Section 186 before entering into the existing contracts.</p> <p>In 2009 the five Participating Councils entered into individual a 20 year contract for the acceptance and processing of kerbside recyclable materials. The longer term agreement required the service provider to build a Material Recovery Facility within the local region. This was essential for providing best value to the Participating Councils' respective communities. Further explanation of how this proposal achieves best value is included below in section 2.2.</p> <p>The existing agreement with SKM Industries is based on a payment by SKM Industries to the Participating Council for the municipal kerbside recyclable material. The existing contract terms are no longer viable under the current international market price conditions.</p> <p>The existing contract is a 20 year term with an option to end the contract at the 15 year anniversary of 30 June 2025. Notice of the intent to end the contract is required 24 months prior to 15 year anniversary date so must be provided on 30 June 2023. The purpose of the 24 month notice period is to ensure service continuity is maintained while the G21 Councils undertake a procurement process to select a new service provider. This two year period allows time for the new contractor to make arrangements to establish a new receival facility.</p> <p>The current Instrument of Approval issued by the Minister on 2 July 2018 requires the new agreement terminate on 30 June 2020.</p>
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<p>To avoid a return to the pricing structure of the existing contract in June 2020 this application seeks to extend the Deed of Variation allowed under an instrument issued to 30 June 2025.</p> <p>The return to the pricing structure of the existing contract would result in the service provider being required to make payment to the Participating Councils for the kerbside recyclable material. This would most likely lead to a unilateral decision to end the contract by SKM, from their inability to sustain financial losses. This termination would be a breach of contract and lead to a period of recycling receipt services not being provided.</p> <p>The Participating Councils are requesting an Approval of Arrangement to be issued enabling Councils to enter into an agreement with SKM to provide services until 30 June 2025 and seek an extension of time for the contract variation to be reached from 30 September to 31 December 2018. This would enable councils to:</p> <ul style="list-style-type: none"> • Enable Councils to pass on the funding received from the Recycling Services temporary Relief Funding Arrangement to SKM Industries. • End the contract on 30 June 2025 within the mechanisms available in the current contract without exposure to legal liabilities. It would also enable the councils to end the contract with the required lead time required to undertake an effective procurement process. • Or continue the contract under the initial contract terms, which would only be possible if the international recycling commodity market returned to 2010 pricing conditions. 	
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1.2 Is the estimated value of the proposed contract for its full term, \$150,000 or more (for the purchase of Goods or Services), OR \$200,000 or more (for the purchase of Works)?

Yes / No: (If YES, please specify. If NO, section 186 does not apply).

<p>In determining the full term of the contract, if the contract includes an 'option to extend' clause, the full term <u>must</u> include the extension period.</p> <p>Reference to Procurement Guidelines 2013: 3.2.1</p> <p>In estimating the value, Council must factor in:</p> <ul style="list-style-type: none"> • Applicable goods and services tax (GST); • Anticipated contingency allowances or variations; • Any other and reasonably foreseeable costs. <p>Note, where the value of the proposed contract is a nominal amount, the Council must consider the market value of the contract for the purposes of section 186.</p> <p>Reference to Procurement Guidelines 2013: 3.2.2</p>	<p>Please specify:</p> <p>YES</p> <p>The proposed amending agreement includes a proposed gate fee, payable by the Participating Council to SKM Industries, commencing at \$60/tonne reducing to \$45 per tonne with additional costs for processing and disposal of contamination.</p> <p>The quantity of recyclable material processed by SKM for each Council in the 2016/17 financial year is noted below:</p> <p>City of Greater Geelong – 28,000 tonnes per annum Colac Otway Shire Council - 2,186 tonnes per annum Golden Plains Shire Council – 2,955 tonnes per annum Borough of Queenscliffe – 555 tonnes per annum Surf Coast Shire Council – 4,249 tonnes per annum</p> <p>It is estimated that each Participating Council would be committing to the following additional financial impact to 30 June 2025 based on the tonnage processing costs above and includes allowances for contamination disposal.</p> <p>City of Greater Geelong - \$11,117,000 Colac Otway Shire Council - \$868,000 Golden Plains Shire Council - \$1,173,000 Borough of Queenscliffe – \$221,000 Surf Coast Shire Council - \$1,687,000</p>
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<p>Please specify: YES.</p> <p>State Government funding has been received by all Participating Councils under the Victorian Recycling Market Temporary Relief Funding Arrangements. The State Government funding is directed toward covering a portion of the anticipated price rises in the period 1 March 2018 to 30 June 2018. This funding is relevant to the amending deed within this application. According to the Funding Agreement, payments by the State Government are dependent on resolving a number of pricing related matters within contracts (refer attached sample Funding Agreement).</p> <p>The capped value of funding allocated to each Participating Council for the period 1 March 2018 – 30 June 2018 is noted below:</p> <p>City of Greater Geelong - \$552,000 Colac Otway Shire Council - \$44,400 Golden Plains Shire Council - \$47,700 Borough of Queenscliffe - \$10,860 Surf Coast Shire Council - \$82,080</p> <p>The Participating Councils are not receiving external funding for the period 1 July 2018 to 30 June 2025. Each Participating Council has made provision of the financial impact of these processing costs in their respective Council adopted budgets commencing from the 2018/2019 financial year.</p>	<p>Please specify what amount of the goods, services or works under the contract is being funded by:</p> <ul style="list-style-type: none"> • Council; • State Government (please provide details of the funding arrangement and/or a copy of the Funding Agreement if possible); • Other (please specify). <p>Note, where the Council's only role in a funding arrangement is that of 'fund manager' and passes on funds from another level of government or other body, then section 186 of the Act does not apply to Council and Ministerial approval is not required.</p> <p>Reference to Procurement Guidelines 2013: 3.6.8</p>
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1.3 Is Council receiving any funding in relation to the proposed contract? Yes / No: (if YES, please specify)

2. Grounds for Approval – Council must demonstrate why a public tender or expression of interest process as required under section 186(1) of the Act is not viable prior to entering into the proposed contract.

2.1 Are the proposed goods, services or works contestable?

Yes / No: (If YES, please specify).

<p>Is there a market for the proposed goods, services or works i.e. is there more than one provider within the market that can provide the goods, services or works in accordance with Council's specifications?</p> <p>If not, provide information that demonstrates that there is no other provider (other than the provider Council intends to engage) that meets Council's specifications for the goods, services or works.</p> <p>Reference to Procurement Guidelines 2013: 3.7.3</p>	<p>Please specify:</p> <p>YES.</p> <p>There is no legal method by which the current contract with SKM can be terminated. If councils unilaterally terminated their contract there would be a breach of contract and legal and cost liabilities would follow. SKM would in all likelihood not receive recyclable material from the G21 Councils creating the risk of recyclable material going to other processors and significantly increasing costs or going to landfill if the other processors do not have capacity to receive the G21 Councils material.</p> <p>SKM is the only receive and processing contractor that has additional capacity to process significant quantities of additional material.</p> <p>The existing Victorian market place for receipt of kerbside recyclable material is serviced by the following three major service providers:</p> <ol style="list-style-type: none"> 1) Visy; 2) Polytrade Recycling; and 3) SKM Recycling (SKM). <p>The effective price of other service providers ranges from \$60 per tonne to \$125 per tonne from Visy and Polytrade respectively. These costs do not include additional transport costs required to use the Services of Visy or Polytrade and additional costs for removal and disposal of contamination, ranging up to 10% of total tonnage.</p> <p>The Visy business model is around paper and cardboard whereas Polytrade is based around plastics. Both contractors would find the additional volumes from the G21 Councils difficult to process and there is a significant risk that the other two processors would not accept this volume of material.</p> <p>The five Participating Councils are currently being serviced by an SKM Industries facility, located in Geelong where Councils receive a payment per tonne for recyclable material deposited. The current contract is no longer financially viable and cannot continue without a price variation resulting from the international price change in recycling arising from the Chinese import restrictions. Any new tender would expose council to all of these costs being passed on as there appears to be only one contractor that has the current capacity to service the G21 Councils.</p> <p>A significant period of time is required to undertake market research to allow the potential for another processor from interstate to enter the Victorian market during this period of price uncertainty. The market price conditions that would encourage another processing contractor to tender in Victoria currently do not exist and may take a number of years for this to change. It is necessary for the G21 Councils to negotiate with our current processing contractor SKM to ensure recycling receipt and processing services continue to be provided for the G21 Councils' ratepayers and residents.</p>
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<p>There are no other facilities within the Geelong area capable of receiving the contracted quantities. A minimum of two years would be required to contract and establish a new facility following a tender process. Transporting recyclable material to a facility outside the Geelong area would result in significant additional transport costs to Participating Councils. The need to transport material would also have significant impacts to the associated contracts. For example, in most cases additional time required to deliver material to an acceptance facility outside of the region would create the need for additional collection vehicles, adding significant costs to these contracts. In some instances other contracts have been aligned to the processing contract with SKM. Change to the point of acceptance may place some member councils in breach of other contracts.</p>	
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2.2 Will engaging the specified provider provide Council best value for money?

Yes / No: (If YES, please specify).

<p>Provide information that demonstrates that engaging the specified provider will provide Council best value for money compared to any other provider that also meets Council's specifications.</p> <p>Note, obtaining value for money does not necessarily mean obtaining the lowest price, but rather the best quality and value for the price.</p> <p>Best value may be demonstrated by, among other things:</p> <ul style="list-style-type: none"> • reference to benchmarking of the estimated costs and quality of the goods, services or works, such as comparing against similar projects undertaken by the Council or other councils; • quotes obtained; • quantity surveyor assessment; • engaging the provider will result in economies of scale, and be a cost saving to Council compared with any other provider; • the provider is operating on a cost-neutral basis, resulting in a cost saving to Council compared with any other provider. <p>Note, past experience with a provider is not proof that they are the best available in the current market.</p> <p>Reference to Procurement Guidelines 2013: 3.7.3</p>	<p>Please specify:</p> <p>YES.</p> <p>The prices being negotiated with councils current receival and processing contractor are in the range of \$60 per tonne reducing to \$45 per tonne.</p> <p>The effective price of other service providers ranged from \$60 per tonne to \$125 per tonne plus transport and contamination costs from Visy and Polytrade respectively. Therefore retaining the existing contract leads to a lower receival and processing price for recyclables.</p> <p>The engagement of SKM Industries through a regional contract has resulted in economies of scale and a cost saving to the G21 Councils due to the aggregated materials enabling a Material Recovery Facility to be located within the region. Although negotiated rates within the industry are commercial in confidence the information that the participating Councils have is the rates being offered to the G21 Councils are the lowest available as provided above.</p> <p>Proceeding to a new tender, would be a breach of contract and most likely lead to an immediate cessation of service by SKM This would then expose the G21 councils to the unknown risk of price instability.</p> <p>A tender would allow the tendering contractors to pass on all the risks to Councils through a significant price increase. There is an industry understanding that Visy and Polytrade are not seeking to increase the processing volumes or do not have the capacity to increase their volumes.</p> <p>By having the ability to negotiate with the current contractor SKM the G21 councils retain the ability to provide consistent budget outcomes for residents at a reasonable cost as shown above on current price trends.</p> <p>The contract that the G21 Council have is robust and is suited to the services being provided. There is no necessity to change the contract except to meet the challenge of a fall in international pricing which has been transferred to Councils through a variation in the pricing for processing.</p> <p>The proposal to ensure the continuation of the Participating Council's contracts to 30 June 2025 with amended terms reflective of the current market provides best value for the council's respective communities.</p> <p>The proposal to continue the Instrument of Approval until 30 June 2025 will avoid the cost and liabilities of a contractual breach should an early termination of the contract in June 2020 be forced to occur. Additionally this scenario does not enable councils the necessary lead time to enable another supplier to establish a receival facility in the region.</p> <p>It is the opinion of the G21 Participating Councils that tendering the receival and processing services at 30 June 2020 following the termination of the five contracts without a period of notice will not result in best value for money and may potentially make continuity of service difficult to achieve.</p> <p>For a new service provider to enter the market, a long lead time would be required. Establishing a new recyclables receival facility is difficult</p>
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<p>Following changes to policies flowing from the recent fires at recycling processing facility. There is no certainty of obtaining the appropriate permits and approvals for a new recycling receiving facility. It is also reasonable to assume that a new service provider seeking to establish a new local recovery facility would require a long contract period. It is the opinion of the Participating Councils that the current market conditions are not favourable to achieving best value for money at this time.</p> <p>Alternatively a change in service provider who does not operate locally would lead to an additional cost burden for transport as well as a number of consequential cost impacts. A change in service provider to one outside the region would negatively impact the regional economy through the loss of local jobs.</p> <p>Allowing the Participating Councils the ability to continue to 30 June 2025 will enable councils to ensure continuity of the kerbside recycling services. It will provide councils with certainty regarding the service costs and will assist in avoiding unnecessary costs of a contractual relationship breakdown through a breach of contract. Maintaining certainty with an agreement for services with SKM Industries until 2025, will assist the recycling industry to adapt to the change in international market conditions. It is the opinion of the G21 Councils the continued provision of service by SKM Industries provides the best value for money for Councils and local community at this time.</p> <p>Best value is also achieved with improved sorting and recovery of recyclables. SKM are the only processor in Victoria with state of the art plant and only processor capable of meeting the contamination standards required by the Chinese markets.</p> <p>Providing certainty to SKM that the contract term will continue to 30 June 2025 will ensure the confidence needed to invest in infrastructure at the local Geelong facility. Improved infrastructure will aid in producing a better product which will meet the higher expectation of the international and local end user. Without this certainty of a term to 2025 SKM will not have the security to justify investment for plant upgrades.</p> <p>Benchmarking of future tendered rates by other councils will be undertaken to ensure that the price of recyclable processing is known and will allow the G21 Councils to make their best decisions for future contracts. The price risks of the current contract variation are known and these risks are being shared between SKM and councils through the negotiated price variation.</p> <p>The G21 Councils regularly meet with SKM through a Contract Monitoring Performance Committee as required by the contract to discuss current trends in the recycling processing and market. The G21 Councils will also liaise through the MAV and the Barwon South West Waste and Resource Recovery Group. These two actions combined with individual council contract meetings ensure we are receiving value for money.</p> <p>Future contracts where applicable will include model clauses that add value to the contract.</p> <p>Allowing the term to continue to 30 June 2025 with revised pricing through a contract variation for recycling receipt and processing services enables Best Value for the residents and ratepayers of the G21 municipalities to be provided.</p>	
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2.3 Are there arrangements in place which prevent the Council engaging another provider?

Yes / No: (If YES, please specify).

<p>Where applicable, provide information that demonstrates that there are arrangements in place which restrict the Council to only engaging the specified provider.</p> <p>Examples include where government funding is granted on condition that the Council engages a particular provider or where a certain body only has the authority to undertake the works on the particular land or site in question.</p> <p>It should be noted that where a provider occupies Council owned premises under a lease arrangement, this alone is not a ground for the Minister to grant an approval under section 186(5)(c) to allow the Council to contract directly with that provider. The lease arrangement between the Council and its tenant is a separate contract. Any risk to Council arising as a result of the Minister not granting an approval in such circumstances is a matter for the Council.</p> <p>Reference to Procurement Guidelines 2013: 3.7.3</p>	<p>YES</p> <p>Barriers to Councils engaging another operator are as follows:</p> <ol style="list-style-type: none"> 1) There is no legal mechanism to terminate the existing contract and engage another contractor. 2) If Councils terminate the current contract with SKM this would expose Councils to litigation and costs for a breach of contract. 3) There are no other service providers in our region currently able to accept and process the combined volumes of the Participating Council's material that is currently collected. 4) For a new service provider to enter the market a long lead time is required to obtain the required permits and approvals to meet the new policy guidelines for storage of recyclables. Financing, designing, constructing and commissioning the facility also add to this lead time. 5) Uncertainty in the current market place is a large barrier for a new service provider to enter the market. For a new provider to enter the Victorian recycling processing industry they need a long period of stable pricing. The 'National Sword Policy' introduced by China has severely disrupted recycling markets worldwide and it is not known when stable pricing for recycling materials will return. Tendering in an unstable price period is likely to result in higher tendered prices. 6) SKM have the only large scale plant that can process material to the standards required by the Chinese "National Sword Policy", Continuing the current contract with SKM will ensure the recycling material is processed at a capacity and quality for international markets. Victoria still requires that a significant amount of its recycled product be exported until a local remanufacturing industry is developed. 7) The SKM Industries Geelong facility is listed in all of the Council's kerbside collection contracts as the Nominated Recycling Disposal Facility. If this were to change increased costs would be incurred to Councils kerbside collection contracts to transport the material to an new disposal facility not located regionally. 8) In addition to the additional transport costs noted above, nomination of an alternative recycling facility outside of the region will create the requirement for additional kerbside collection trucks through lost time for transport to a non-regional facility imposing additional costs for kerbside collections.
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Disclaimer:

Approval by the Minister for Local Government does not and cannot represent a guarantee or acceptance of responsibility by the State Government in relation to liabilities incurred or in relation to any aspects of the contract.

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