



## Report on Public Interest Review:

**Proposed Amendment Local Law No. 1 (Community Health and Environmental Management) 2019; and**

**Proposed Amendment Subordinate Local Law No. 2 (Community Health and Environmental Management) 2019**

October 2019



## 1. Purpose of this document

Before making a local law, local governments are required to review any provisions that restrict competition to ensure that they are in the public interest. At its meeting on 22 August 2019, the Sunshine Coast Council proposed to make Amendment Local Law No. 1 (Community Health and Environmental Management) 2019 and Amendment Subordinate Local Law No. 2 (Community Health and Environmental Management) 2019. This proposed law contains provisions with the potential to restrict competition (i.e. they may be 'anti-competitive provisions'), so the Council conducted a public interest review, between 23 August 2019 and 23 September 2019, in accordance with State Government requirements. The purpose of this document is to report on the outcomes of the public interest review and to outline the Council's decision about whether to proceed with the law.

## 2. Background to public interest reviews

### Why are public interest reviews required?

In April 1995, all Australian governments committed to the National Competition Policy ('NCP') to establish a national approach to achieve greater economic efficiency and to improve the overall competitiveness of the Australian economy. One of the key principles of the NCP was a commitment that all governments, including local governments, would not make laws that restricted competition unless it could be demonstrated that:

- the benefits of the restriction to the community as a whole outweighed the costs, and
- the objectives of the law could only be achieved by restricting competition.

To give effect to this principle, governments agreed to review all laws that restrict competition. For local governments, this requirement is enshrined in section 38 of the *Local Government Act 2009*, which states that a Council must not make a local law that contains an anti-competitive provision unless it has complied with the procedures prescribed by the State for the review of anti-competitive provisions. These procedures are contained in the *National Competition Policy – Guidelines for conducting reviews on anti-competitive provisions in local laws*, Version 1, made by the State Government ('Public Interest Review guidelines').

### What is an anti-competitive provision?

An anti-competitive provision is a provision that the local government identifies as creating a barrier to:

- (a) entry to a market; or
- (b) competition within a market.

### Creating barriers to entering a market

The public interest review guidelines describe this type of anti-competitive provision in a local law as either prohibiting particular business activities or placing obligations on the operators of business activities.

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### Restricting competition in the market

The public interest review guidelines describe this type of anti-competitive provision as giving some benefit or imposing some hindrance on particular business operators.

### What issues are considered in a public interest review?

The key objective of the NCP is to develop a more open and integrated Australian market that limits anti-competitive conduct and removes the special advantages previously enjoyed by government business activities, where it is in the public interest to do so. While the NCP is designed to result in better use of resources and substantial and ongoing benefits to the community, the introduction of increased levels of competition will not always deliver the best overall result for the community. Increased competition can bring benefits to the community, but these need to be balanced against the various social, environmental, public amenity and public health imperatives that underpin a local government's regulatory role. A public interest review is not a review of economic considerations alone.

The types of issues considered in a public interest review are:

- what are the objectives of the laws containing the anti-competitive provisions?
- how will the laws impact on business or restrict competition?
- what are the costs and benefits of the restrictions to Council, to businesses and to the community as a whole?
- are there any alternative means of achieving the objectives without the anti-competitive provisions?

In reviewing the anti-competitive provisions, Council is required to consider the following matters:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

In conducting the review, Council has had regard to the Queensland Treasury's guidelines for conducting public benefit tests for legislation. The current review follows the approach taken for a 'minor review' under those guidelines, whereby the focus is on qualitative data rather than attempting to value impacts in dollar terms. The emphasis in such reviews is on fully identifying and weighing up the positive or negative impacts of the anti-competitive provisions on affected stakeholders.

### 3. Possible anti-competitive provisions in the local law

Analysis of the new provisions to be inserted by the proposed amendment local law into *Local Law No. 3 (Community Health and Environmental Management) 2011* and the proposed amendment subordinate local law into *Local Law No. 3 (Community Health and Environmental Management) 2011* has identified provisions that are possibly anti-competitive.

**Table 1 – Anti-competitive provisions in proposed local law and subordinate local law amendments**

New provision	Effect of provision	Possibly anti-competitive effect
<i>Amendment Local Law No. 1 (Community Health and Environmental Management) 2019</i>		
s 32	The owner of land on which pneumatic waste infrastructure is located must ensure compliance with all operating requirements for that infrastructure (unless it is 'exempted infrastructure') prescribed in a subordinate local law.	Compliance with any prescribed operating requirements may have an impact on the conduct of a business activity as additional costs may be incurred.
s 35	The owner and any occupier of premises equipped with pneumatic waste infrastructure must ensure compliance with requirements prescribed in a subordinate local law about the disposal and handling of Non-AWCS Waste, and the maintenance and operation of facilities and equipment for the storage, processing and removal of such waste.	Compliance with any prescribed requirements may have an impact on the conduct of a business activity as additional costs may be incurred.
<i>Amendment Subordinate Local Law No. 2 (Community Health and Environmental Management) 2019</i>		
s 12	Prescribes the operating requirements for pneumatic waste infrastructure, under authorising local law s 32 (referred to above).	Compliance with the operating requirements may have an impact on the conduct of a business activity as additional costs may be incurred.
s 14	Prescribes the requirements for the disposal and handling of Non-AWCS waste and the maintenance and operation of facilities and equipment for waste storage, process and removal, under authorising law s 35 (referred to above).	Compliance with the requirements may have an impact on the conduct of a business activity as additional costs may be incurred.

### 4. Anti-competitive provisions excluded from the review

The Council did not exclude any of the identified anti-competitive provisions from the review.

Although there may be grounds under the Public Interest Review guidelines for excluding the provisions which could be characterised as intended to ensure accepted public health and safety standards are met and, to a lesser extent, to combat the spread of pests and disease, the Council decided not to exclude them from the review on this basis. Regulating activities to promote and protect community health and amenity is always a balancing act with minimising 'red tape' that

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potentially impacts on business activities. The Council takes the view that it is important to have a public discussion around laws that seek to strike this balance.

## 5. Results of consultation process

Following Council's resolution to make the amendment local law on 22 August 2019, a public consultation process for the public interest review was undertaken from 23 August to 23 September 2019, a period of 32 days. The consultation about the anti-competitive provisions was run concurrently with the general community consultation about the proposed local law.

Council published a notice on its website announcing the public interest review and made a Public Interest Review Consultation Paper available for inspection and download. Council also published a newspaper advertisement on 23 August 2019 with information about the public interest review.

No submissions were received in relation to the public interest review.

## 6. Cost-benefit analysis of the anti-competitive provisions

### Context for the provisions

The proposed local law and subordinate local law amendments were developed to support the introduction of an Automated Waste Collection System (AWCS) in the Sunshine Coast Council area by regulating the operation of:

- (a) pneumatic waste infrastructure ('PWI'), which facilitates the collection and automated transfer of waste for disposal using pneumatic force; and
- (b) the management of waste that cannot be disposed of through PWI ('Non-AWCS waste'), in premises that have PWI installed.

The AWCS will operate in the Maroochydore City Centre Priority Development Area ('Maroochydore PDA'), where the system is being introduced for the first time in the Sunshine Coast Council area – and the first time in Australia. The proposed local law will regulate this AWCS but could, potentially, also apply to any further AWCS established in the Sunshine Coast Council area in the future.

### Object of the provisions and existing regulatory environment

The purpose of the proposed provisions is to regulate the operation of an AWCS to protect:

- the health and safety of users of the infrastructure and members of the community; and
- the amenity and environmental values of areas where an AWCS operates.

The proposed amendment local law seeks to achieve this by providing that:

- (a) operating requirements for PWI may be prescribed and must be complied with by the owner of premises equipped with such infrastructure; and
- (b) requirements about the disposal and handling of Non-AWCS Waste, and the maintenance and operation of facilities and equipment for the storage, processing and removal of such waste, may be prescribed for premises equipped with PWI, and must be complied with by the owner or the occupier of the premises, as ascribed.

The proposed amendment subordinate local law supports the proposed local law by:

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- (a) prescribing the operating requirements for PWI that an owner of land on which such infrastructure is located must comply with; and
- (b) prescribing requirements for:
  - (i) the disposal and handling of Non-AWCS Waste, which apply to an occupier of premises equipped with PWI; and
  - (ii) the maintenance of facilities and equipment for the storage, processing and removal of Non-AWCS waste, which apply to an owner of premises equipped with PWI.

These proposed amendments ('proposed local law') will introduce local law regulation of an AWCS for the first time. The provisions that have been identified as potentially anti-competitive, as referenced in **Table 1** above, are based on certain of the requirements in a set of Prescribed Waste Infrastructure Standards ('PWIS') which have been specifically designed to facilitate introduction of an AWCS in the Maroochy PDA. The PWIS contain all the requirements, designs and specifications for the installation, operation, maintenance and use of PWI, as well as for disposal of Non-AWCS waste at premises with PWI. The PWIS, which Council regards as indispensable to implementation of the AWCS, will apply in their entirety to premises within the Maroochy PDA, independently of the proposed local law, on account of:

- the Maroochy City Centre Infrastructure Agreement 2017 ('Infrastructure Agreement'),<sup>1</sup> which imposes covenants on developers of land within the precinct, which attach to the lot and bind subsequent owners, as provided for in the *Planning Act 2016* (Qld); and
- conditions on development approvals for lots within the PDA which also bind subsequent owners, as well as occupiers, by virtue of the *Economic Development Act 2012* (Qld) under which a PDA is established.

If, in the future, the proposed local law was to be applied to another area where an AWCS is established, it is possible that area would not be a PDA and subject to an Infrastructure Agreement which invokes the PWIS, as with the Maroochy PDA. However, it is probable that any planning scheme for an area where an AWCS will operate would provide for compliance with the PWIS as conditions of relevant development approvals, and the Planning Act also provides that conditions under development approvals attach to the lot and bind subsequent owners and occupiers.

The Council considers that regulatory mechanisms under the Infrastructure Agreement and development approvals will not be adequate to enforce the obligations on owners and occupiers to ensure the proper and safe operation of an AWCS. A local law regime is a much more effective and workable mechanism to ensure compliance with the key elements of the PWIS, and will serve the interests of both owners and occupiers of the relevant premises as well as the broader community. Hence, the local laws incorporate key aspects of the PWIS regarding the operation, maintenance and use of infrastructure, facilities and equipment for both AWCS and Non-AWCS

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<sup>1</sup> An agreement between the Sunshine Coast Council, the Minister for Economic Development Queensland and the State of Queensland in respect of infrastructure, including PWI, in the Maroochy PDA.

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waste disposal, in order to provide an effective and efficient means of ensuring compliance with the PWIS.

### Anti-competitive effects

As outlined in section 2 above, an anti-competitive provision is one a local government identifies as creating a barrier to either:

- entry to a market, by either prohibiting particular business activities or placing obligations on the operators of business activities; or
- competition within a market, by giving some benefit or imposing some hindrance on particular business operators.

The proposed local law may impose obligations which could affect the operation of businesses in an area with an AWCS. To the extent compliance with the obligations entails a cost to those businesses, Council accepts that they may represent a barrier to operating in a relevant area, which could be regarded as a barrier to entry to a market.

In relation to creating a barrier to competition *within* a market, Council does not consider the proposed laws will operate to restrict competition because they will apply to all businesses operating within the market, on the basis of the market being confined to an area with an AWCS (currently, Maroochydore PDA), as compared with a broader geographical area. Council planning and infrastructure commitments have already established that the Maroochydore PDA will have an AWCS. The effect of the proposed local law will be to support that, rather than substantially change the market conditions.

One set of requirements arising under the PWIS which could potentially be regarded as anti-competitive has been considered by the Australian Competition and Consumer Commission. The AWCS chosen by the Council for the Maroochydore PDA is proprietary to the company, Envac Co., Ltd ('Envac'), which Council engaged following a public procurement process, as the only manufacturer and supplier of PWI in Australia and therefore the only company considered to have the capability to establish, operate, maintain and repair the AWCS. Accordingly, the PWIS reference Envac in many instances in relation to the manufacturer and supply of the PWI and its operation and maintenance for a period of five years. This restriction is reflected in the following provisions in the proposed Amendment Subordinate Local Law No. 2 (Community Health and Environmental Management) 2019:

- section 11 defines 'Approved Contractor' with reference to the PWIS;
- section 12(m)(vi) provides that periodic inspection and servicing requirements are carried out by an Approved Contractor;
- section 12(o) requires the maintenance of PWI to be by an Approved Contractor;
- section 12(q)(i) incorporates PWIS requirements which determine whether or not any replacement components for PWI need to be an Envac proprietary product or another product.

On 13 May 2019, the Council lodged a Notification of Exclusive Dealing under section 93(1) of the *Competition and Consumer Act 2010* (Cth) in relation to its engagement of Envac for the abovementioned purposes. By letter of 15 July 2019, the Australian Competition and Consumer

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Commission advised the Council that, based on the information in the Notification, “the notified conduct is not likely to have the purpose, effect or likely effect of substantially lessening competition.”

### Reasonable alternatives to the anti-competitive provisions

The Public Interest Review Consultation Paper identified the following reasonable alternatives to the proposed anti-competitive provisions:

- *Enforcement of existing legal obligations* – seek enforcement of requirements to comply with the PWIS arising from the Infrastructure Agreement and/or through conditions on development approvals, rather than incorporating key requirements into a local law;
- *Complaint-responsive regulation* – a modified local law would stipulate minimum standards for the operation of an AWCS that would only be enforced upon complaints to Council about nuisances or other issues associated with its operation; and
- *Provision of information and education* – inform owners and occupiers of premises with PWI about PWIS requirements and encourage compliance.

The alternative courses of action open to Council to achieve the object of the proposed law - of protecting the health and safety of users of PWI and members of the community and improving the amenity and environmental values of areas where an AWCS operates - are therefore:

#### A. Proceed with proposed local law

- This would incorporate into a local law obligations based on certain requirements in the PWIS regarding the operation, maintenance and use of PWI and the disposal of non-AWCS waste which the owners and occupiers of premises with PWI will already be subject to (in the case of the Maroochy PDA), or are likely to be subject to (in the case of any future AWCS introduced), on account of the Infrastructure Agreement and/or relevant development approvals.
- Council could undertake monitoring of compliance with the local law and enforcement action as necessary, including through issuing of a compliance notice or a ‘stop order’, issuing a Penalty Infringement Notice or initiating proceedings for an offence and potentially seeking a court order for rectification of damage or reimbursement of costs for same.

#### B. No local law (seek compliance with existing legal obligations instead)

- The PWIS would apply to owners and occupiers of premises in the Maroochy PDA on account of the operation of the Infrastructure Agreement and/or associated conditions on PDA development approvals and, potentially, to owners and occupiers in any future area where an AWCS may be introduced through development approvals under the Planning Act.
- If the Council considered enforcement action to be necessary to secure compliance with PWIS requirements, it could pursue one or more of the following avenues:
  - i. In respect of a lot within the Maroochy PDA, initiate dispute resolution action within the terms of the Infrastructure Agreement, which provides for mediation, expert resolution or civil proceedings for breach of contract,

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against a lot owner who is bound by covenants in the Infrastructure Agreement to comply with the PWIS;

- ii. For contravention of a PDA development approval, request the Minister for Economic Development Queensland (MEDQ), or delegate, to take enforcement action against an owner or occupier under the Economic Development Act;
- iii. If Council is nominated as an assessing authority for any condition imposed through a PDA development permit, pursue the (only) available option under the Economic Development Act of issuing an enforcement notice requiring cessation or remedying of a breach; or
- iv. For contravention of a development approval pertaining to premises in any future area where an AWCS may operate, which is not within a PDA, Council could take a range of enforcement initiatives under the Planning Act.

**C. Modified local law incorporating minimum standards, enforced in response to patterns of complaints (complaint-responsive regulation)**

- A local law would incorporate broad standards about operating, maintaining and using PWI and about Non-AWCS waste disposal, rather than detailed obligations based on the PWIS.
- The minimum standards would only be enforced by Council following a pattern of complaints from residents or the public about waste problems or apparent breach of the standards in an area where an AWCS operates.
- If the Council wished to enforce compliance with the PWIS, it would need to have recourse to the courses of action outlined in the last item under Option B above.

**D. No local law (information and education of owners and occupiers of premises with PWI)**

- Council would conduct awareness raising of the PWIS obligations which owners and occupiers are bound by.
- Council could also undertake monitoring of compliance and issue (non-statutory) reminders and warnings.

**Table 2** below contains an assessment of these four options with reference to the impacts on three groups of stakeholders: owners and occupiers of premises with PWI; the general community; and the Council. While the general terms 'owners' and 'occupiers' are used, the concern of this review is the anti-competitive effects of the proposed local law on business activities and, accordingly, the impacts considered in the analysis below focus on those affecting owners and operators undertaking commercial activities (such as property developers) or operating businesses from premises with PWI. Of course, the operation of the proposed law will apply to all owners and occupiers, not just those operating businesses.

The assessment of impacts on stakeholders as *low*, *moderate* or *high* is based on a qualitative analysis taking into account factors such as:

- the likelihood of the impact occurring as described;

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- the magnitude of the monetary implications of the impact, if this is able to be estimated;
- the likely breadth of the impact – for example, the proportion of stakeholders within the group that could be affected;
- the significance of the impact to the stakeholder group's interests, core values or aspirations;
- the time profile of the impact (short, medium or long-term).

For each option, an 'overall assessment' of the impact on a stakeholder is arrived at by reference to the number and significance of the positive and negative impacts on the stakeholder for that option. For example, several low or moderate positive impacts balanced against only one low negative impact results in an overall assessment of 'moderate positive'.

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Table 2 – Assessment of proposed local law option and reasonable alternatives

OPTIONS	Owners and occupiers of premises with PWI	General community	Council
<p><b>A. Proceed with proposed local law</b></p> <p><b>NET POSITIVE IMPACT (Recommended option)</b></p>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Incorporation of key aspects of the PWIS into a local law creates a concise set of readily understandable obligations (as compared with the PWIS in their entirety which are lengthy and complex) through a simplified regulatory instrument (moderate positive)</li> <li>2. Regulation under a local law could reduce the risk of alternative enforcement of obligations (under the Infrastructure Agreement or development approvals), and procedures under local law would be simpler with less punitive consequences by way of penalties or other court orders (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. Additional source of legal obligations under a local law and increased likelihood of a breach being detected and enforced under a local law (v. under State legislation or through civil proceedings) (moderate negative)</li> </ol> <p><i>Note: References to enforcement action being taken under the Infrastructure Agreement are relevant only to owners, not occupiers, because the latter are not bound by its covenants; however, owners are bound by conditions on development approvals and could be subject to this form of enforcement action.</i></p>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Increased scope for Council to ensure compliance with PWIS requirements incorporated into a local law and therefore for realisation of a fully effective AWCS, with associated benefits for public health, safety, amenity and the environment (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. Increased regulatory burden in the Sunshine Coast Council area by expansion of local laws (low negative)</li> </ol>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Increased scope for Council to ensure compliance with PWIS requirements incorporated into a local law and therefore for realisation of a fully effective AWCS and its associated benefits: <ul style="list-style-type: none"> <li>- for public health, safety, amenity and the environment;</li> <li>- as an Australian-first demonstration of an AWCS (high positive)</li> </ul> </li> <li>2. Enforcement under a local law is more efficient in terms of time and costs than the (limited) enforcement options available to Council under State legislation of through civil proceedings (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. Costs would be incurred in administering the local law and taking enforcement action (low negative)</li> </ol>
<p><b>B. No local law</b></p> <p>(rely on enforcement of Infrastructure Agreement (for Maroochydore PDA) and/or of</p>	<p><b>Overall: Neutral impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. No additional source of legal obligations to comply with PWIS under a local law (moderate positive)</li> <li>2. If Council pursued compliance (against an owner) under the Infrastructure Agreement, dispute resolution options commence with a meeting and can involve mediation with the agreement of the parties which has potential to</li> </ol>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. No increased regulatory burden in the Sunshine Coast Council area by way of expanded local laws (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. In the absence of local law regulation, limited scope for Council to enforce compliance with PWIS requirements</li> </ol>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. No expenditure by Council on local law enforcement (low positive)</li> <li>2. Scope to seek to enforce covenants in the Infrastructure Agreement through alternative dispute resolution which, while entailing some cost, has potential for better outcomes for all parties (although</li> </ol>

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OPTIONS	Owners and occupiers of premises with PWI	General community	Council
<p>conditions in development approvals under State legislation)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p>resolve the matter without penalty, although costs are incurred (low positive)</p> <p><b>Negative:</b></p> <p>3. The absence of a local law containing a concise, readily understandable formulation of key PWIS obligations represents a lost opportunity for clarifying obligations for owners/occupiers through a simplified regulatory instrument (low negative)</p> <p>4. As compared with enforcement under a local law:</p> <ul style="list-style-type: none"> <li>- pursuit by Council of dispute resolution options under the Infrastructure Agreement could involve civil proceedings for breach of contract (against owners) which would be costly to defend and to satisfy any resulting court orders; and</li> <li>- any enforcement action under State legislation for contravention of a development approval would be more costly to defend and offences attract significantly higher penalties (moderate negative)</li> </ul>	<p>poses risks for realising a fully effective ACWS and its associated benefits for public health, safety, amenity and the environment (moderate negative)</p>	<p>this option is not available to enforce against occupiers who are not bound by the covenants) (low positive)</p> <p><b>Negative:</b></p> <p>3. In the absence of local law regulation, limited scope for Council to enforce compliance with PWIS requirements (because options for enforcement by Council of development approvals under State legislation are minimal) poses risks for realising a fully effective AWCS and its associated benefits for public health, safety, amenity and the environment (moderate negative)</p> <p>4. Alternative enforcement mechanisms, including civil actions for breach of the Infrastructure Agreement (if alternative dispute resolution fails) and any options available to Council under State legislation, would be more costly and protracted to pursue than local law enforcement (low negative)</p> <p>5. If the absence of effective enforcement mechanisms led to damage to PWI on private premises, and/or, as a consequence, to public PWI, Council may incur significant costs for rectification of damage and/or pursuit of court orders compelling owners or occupiers to undertake rectification work or reimburse costs; the absence of local law remedies would compound the time and expense involved (moderate negative)</p>
<p><b>C. Modified local law containing minimum standards only</b></p> <p>(complaint-responsive regulation)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p style="text-align: center;"><b>Overall: Neutral impact</b></p> <p><b>Positive:</b></p> <p>1. Minimal local law regulation enforced only in response to repeated complaints reduces the likelihood of enforcement action being taken for breaches (moderate positive)</p> <p><b>Negative:</b></p> <p>2. The incorporation of minimum standards in a local law may have the effect of diverting the attention of lot owners/occupiers from understanding and complying with their pre-existing PWIS obligations (under Infrastructure Agreement and development approvals, as applicable), and possibly cause confusion, increasing</p>	<p style="text-align: center;"><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <p>1. Publication of minimum standards in a local law, together with an invitation or encouragement to lodge complaints regarding the operation of an AWCS, will increase understanding and engagement by the public about the AWCS which:</p> <ul style="list-style-type: none"> <li>- may increase the likelihood of correct use of PWI (ie waste inlets) by the public, although there is already a PWIS requirement for signage at outlets instructing about use, so the impact will be minimal; and</li> <li>- may improve the public's ability to identify problems or issues arising from operation of an AWCS and alert</li> </ul>	<p style="text-align: center;"><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <p>1. Publication of minimum standards in a local law, together with an invitation or encouragement to lodge complaints regarding the operation of an AWCS, will increase understanding and engagement by the public about the AWCS which:</p> <ul style="list-style-type: none"> <li>- may increase the likelihood of correct use of PWI (ie waste inlets) by the public, although there is already a PWIS requirement for signage at outlets instructing about use, so the impact will be minimal; and</li> <li>- may improve the public's ability to identify problems or issues arising from operation of an AWCS and alert</li> </ul>

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OPTIONS	Owners and occupiers of premises with PWI	General community	Council
	<p>the risk of non-compliance with those obligations and resultant ('higher stakes') enforcement action (low negative)</p> <p>3. The absence of a local law containing a concise, readily understandable formulation of key PWIS obligations represents a lost opportunity for clarifying obligations for owners/occupiers through a simplified regulatory instrument (low negative)</p>	<p>Council about these through lodging complaints (low positive)</p> <p><b>Negative:</b></p> <p>2. Increased risks for realising a fully effective AWCS and its associated benefits to the community (for public, health, safety, amenity and the environment) if there are failures by owners and occupiers to comply with PWIS associated with an absence of proactive monitoring by Council under complaint responsive regulation, particularly because the public will not be in a position to identify – and bring complaints about – many instances of non-compliance (moderate negative)</p>	<p>Council about these through lodging complaints (low positive)</p> <p>2. Fewer Council resources will be expended on local law enforcement (low positive)</p> <p><b>Negative:</b></p> <p>3. Complaint-driven enforcement of minimum standards by Council will impact its ability to respond in a timely way due to the absence of proactive monitoring and, given the nature of PWI (much of it on private premises and underground):</p> <ul style="list-style-type: none"> <li>- problems or concerns about its operation are most likely to be detected by owners/occupiers who would be unlikely to lodge complaints about matters for which they may bear some responsibility; and</li> <li>- the public will not necessarily be in a position to identify problems or concerns about which to complain (moderate negative)</li> </ul> <p>4. Council resources will be expended in the processing of complaints (low negative)</p> <p>5. Increased risks for realising a fully effective AWCS and its associated benefits to the community (for public, health, safety, amenity and the environment) if there are failures by owners and occupiers to comply with PWIS associated with an absence of proactive monitoring by Council under complaint responsive regulation (moderate negative)</p> <p>6. If the absence of a proactive regulatory approach led to damage to PWI on private premises, and/or, as a consequence, to public PWI, the Council may incur significant costs for rectification of damage and/or pursuit of court orders compelling owners or occupiers to undertake rectification work or reimburse costs; the absence of local law remedies would compound the time and expense involved (moderate negative)</p>

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OPTIONS	Owners and occupiers of premises with PWI	General community	Council
<p><b>D. No local law (rely on awareness raising for owners and occupiers about PWIS requirements)</b></p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Neutral impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>No additional source of legal obligations to comply with PWIS under a local law (moderate positive)</li> <li>Owners/occupiers are better informed about their obligations (independent of local laws) to comply with the PWIS which may improve compliance and reduce the risk of enforcement action under State legislation or in civil proceedings (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>The absence of a local law requiring compliance with key PWIS requirements means there is no immediate or proximate threat of enforcement if the information or education is not heeded and this would limit the incentive to comply, possibly rendering an owner/occupier open to 'higher stakes' enforcement action (as outlined below) (moderate negative)</li> <li>If enforcement is pursued, the absence of a local law means enforcement would proceed under State legislation and/or the Infrastructure Agreement entailing (in most instances) disadvantages in terms of increased costs of defending proceedings and liability to higher penalties and other court orders (moderate negative)</li> </ol>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>No increased regulatory burden in the Sunshine Coast Council area by way of expanded local laws (low positive)</li> <li>Increased awareness by owners/occupiers of PWIS obligations may improve compliance and therefore the prospects for an effective AWCS and its associated benefits (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>No scope for Council to ensure compliance with PWIS requirements under a local law and limited scope for it to take enforcement action otherwise, reducing prospects for an effective ACWS and its associated benefits for public health, safety, amenity and the environment (moderate negative)</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Increased awareness by owners/occupiers of PWIS obligations may improve compliance and therefore the prospects for an effective AWCS and its associated benefits (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Very costly to provide information/education, which could include: compiling, printing and distributing documents; drafting and sending letters with reminders or warnings; and holding information sessions (high negative)</li> <li>Risk of Council becoming a defacto advisory service, assuming responsibility for informing owners/occupiers about legal responsibilities Council is not (directly) responsible for imposing (moderate negative)</li> <li>The absence of a local law requiring compliance with key PWIS requirements means there is no immediate or proximate threat of enforcement if the information/education provided is not heeded and this would limit the incentive to comply and the effectiveness of the approach (moderate negative)</li> </ol>

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### Summary of net impacts of the anti-competitive provisions and alternative options

**Table 2** in the previous section has estimated the positive and negative impacts on the key groups of stakeholders of proceeding with the proposed local law containing anti-competitive provisions (Option A) and the three reasonable alternatives (Options B, C and D).

The analysis shows that **Option A** – proceeding with the proposed local law – has a positive impact on all stakeholders. Lot owners and occupiers of premises with PWI benefit from simplified and less onerous regulation, compared with the other sources of their PWIS obligations under the Infrastructure Agreement or development approvals. Responding to enforcement action under local law is likely to be a less costly and less onerous activity for owners and occupiers than defending enforcement action under the Infrastructure Agreement or development approvals. There are positive impacts for the general community and the Council by way of improved prospects of an AWCS being successfully implemented, and realisation of the associated benefits of that for public health, safety, amenity and the environment, as well as providing demonstration of the viability of AWCS. Positive impacts for the Council extend to having less costly and more efficient enforcement options under a local law, compared with the other, limited options at its disposal for enforcing PWIS obligations. *The net impact across all stakeholders is positive for this option.*

The analysis shows that **Option B** – not proceeding with the proposed local law – has an overall neutral impact on the owners and occupiers of premises with PWI as a result of the trade-off between reduced regulation and the possibility of being subject to other, potentially more costly and onerous options for enforcement of PWIS obligations. For occupiers and owners, this option also misses the opportunity to clarify key PWIS obligations in a concise, accessible form in a local law. The impacts on the general community and on Council have been assessed overall as low negatives on account of increased risks to the successful operation of an AWCS and its attendant benefits for the community stemming from the absence of a ready means of enforcing PWIS obligations and, for Council, the additional time and cost associated with pursuing the (limited) alternatives. *This option therefore has a net negative impact.*

**Option C** – modifying the local law to provide only minimum standards for the operation of an AWCS, to be enforced based on patterns of complaints by members of the community to Council – has been assessed as having a neutral impact for the owners and occupiers of lots with PWI because, as with Option B, the positive impact of an absence of regulation is offset by: the risks of alternative enforcement options, particularly because minimum standards may have the unintended effect of de-emphasising the need for compliance with the PWIS; and the absence of the opportunity for a clear, cogent statement about key PWIS obligations in a local law. Analysis of the impacts on the general community under this option reveals a positive impact in terms of increased understanding and engagement in matters concerning an AWCS; however, this is outweighed by the risk of complaint-responsive regulation being inadequate to deliver a fully effective AWCS and its attendant benefits. An overall low negative impact for the Council indicated through the analysis was informed by the same considerations, as well as a possible additional negative impact of Council having to deal with any damage caused to PWI on account of regulatory failure. The analysis shows that, given the nature of the PWI, a passive, complaint-driven approach to regulation would be less effective than the more prescriptive and proactive approach in Option A. Like Option B, *this option has a net negative impact.*

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**Option D** – not proceeding with the proposed local law, but rather ensuring owners and occupiers of premises with PWI are aware of their PWIS obligations and encouraging compliance – has also been assessed as having a *net negative impact*. Despite the obvious benefits of owners and occupiers of premises with PWI being better informed about their obligations to comply with the PWIS, the subject-matter is large and complex and there are risks that, in the absence of a tangible regulatory incentive to meet these obligations – in the form of a readily enforceable local law (as compared with alternative regulatory options which are more cumbersome and less responsive) – the effectiveness of awareness raising efforts will be limited. Accordingly, this option has been assessed as having an overall neutral effect on owners and occupiers. For the general community, small positive effects were identified arising from the desirability in-principle of containing the regulatory burden and relying on less coercive means of compliance, although offset against these was the issue of the risk to an AWCS if an effective regulatory system is not in place. For the Council, the analysis revealed an overall negative impact due to the high cost of undertaking awareness raising combined with reasonable doubts about its effectiveness and the potentially serious consequences of any regulatory failure in this area.

## 7. Conclusion

The cost-benefit analysis above focused on the optimal way to support the Sunshine Coast Council's commitment to the delivery of an innovative, Australian-first automated waste collection system and the benefits for the community associated with it. The system will protect public health and safety and increase amenity in the area by removing the need for garbage trucks and bins on streets, along with the odours, noise, vermin and street cleaning associated with street level waste disposal. It will also increase user recycling rates, assisting the Council to fulfil its targets under the *Sunshine Coast Waste Strategy 2015-2025*, which have, in turn, been informed by the Australian Government's National Waste Policy and the Queensland Waste Avoidance and Resource Productivity Strategy (2014–2024).

Council recognises the desirability of minimising the regulatory burden on businesses, particularly where it entails increased costs or reduced competitiveness, as is the case with the provisions in the proposed local law identified in this review. However, this objective needs to be balanced with the desirability of securing 21<sup>st</sup> century infrastructure solutions of community-wide benefit. The first AWCS will be the new Maroochydore PDA and Council has been candid with potential developers and land purchasers about the requirements of the PWIS which owners and occupiers of premises in the area will be subject to, key aspects of which are incorporated in the proposed local law. It is open to developers and businesses to choose alternative development sites or locations within the region that are unaffected by the AWCS (and the proposed local law).

Compliance with the PWIS by the owners and occupiers of premises with (private) PWI (together with compliance by Council with the PWIS in relation to the public PWI with which it connects) is essential for the AWCS to operate as intended. The proposed local law will underwrite these requirements, by incorporating PWIS requirements relating to the operation, maintenance and use of an AWCS, as they apply to owners and/or occupiers of relevant premises, and providing efficient and effective options for Council to respond to breaches. The local law offers the additional benefit of distilling in one location a set of requirements which are otherwise dispersed throughout the lengthy PWIS document. Council consultation with stakeholders in the lead-up to development of the proposed local law revealed that this would assist lot owners, occupiers and future purchasers in understanding the PWIS. The cost-benefit analysis in this report reveals that alternative means of pursuing compliance with the PWIS, including by seeking to enforce legal obligations arising

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from other sources, would not be as effective in achieving compliance as relying on a local law. Alternative enforcement options will not always be available to the Council (which may have to request action by State government entities) and, where available, may be more cumbersome, protracted and costly to pursue, and leave persons in breach liable to more severe consequences (by way of higher penalties or court orders), compared with enforcement action under a local law. The absence of an enforcement mechanism that can deliver timely, decisive and cost-effective results has potential to jeopardise the viability of an AWCS and realisation of the benefits for the community and individuals expected from the public and private investment underpinning it.

Overall, despite the negative impacts on businesses of the provisions of the proposed local law which have been reviewed, this report concludes that the benefits to the community of retaining them outweigh the costs and that they provide the most appropriate way of achieving the object of the proposed law.

## 8. Recommendation

The anti-competitive provisions in the proposed local law should be retained in the public interest.