



## Report on Public Interest Review

### Proposed Amendment Local Law No. 1 (Community Health and Environmental Management) 2017

May 2018



## 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 9 November 2017, the Sunshine Coast Council proposed to make Amendment Local Law No. 1 (Community Health and Environmental Management) 2017. 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 during December 2017 and January 2018 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 National Competition Policy 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 (the '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.

#### 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 National Competition Policy (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 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 part 7A to be inserted by the proposed amendment local law into *Local Law No. 3 (Community Health and Environmental Management) 2011* identified the following provisions that are possibly anti-competitive.

New Part 7A provision	Effect of provision	Possibly anti-competitive effect
s 25B	Council may designate 'waste collection areas' in which it may conduct general waste or green waste collection, and decide the frequency of such collections.	The effect of designation of a waste collection area may limit opportunities for waste contractor businesses to compete with Council services. (However, waste contractors may have the opportunity to compete for Council waste collection contracts)
s 25D	Council may prescribe requirements on owners/occupiers of premises to supply waste containers or may supply the waste containers itself and recoup the reasonable cost from owners/occupiers.	Compliance with the requirements may have an impact on the conduct of a business activity.
s 25E	Prescribes requirements for the storage of general waste in waste containers.	Compliance with the requirements may have an impact on the conduct of a business activity as they will apply to both commercial and domestic premises.
s 25F	Prescribes requirements for the keeping of waste containers at serviced premises.	Compliance with the requirements may have an impact on the conduct of a business activity as they will apply to both commercial and domestic premises.
s 25G	Council may impose requirements for the storage of general waste at particular serviced premises other than single detached dwellings	Compliance with the requirements may have an impact on the conduct of a business activity, especially at commercial premises.
s 25I	Owners/occupiers of premises that are not serviced must obtain an approval to deposit or dispose of waste through a method other than deposit or disposal at a waste facility	Requirement for an approval may impact on the conduct of a business activity or create an additional barrier to entry to a market.
s 25J	Council may require the occupier of premises where there is industrial waste to supply industrial waste containers, keep them at a required place and keep them clean and in good repair.	Compliance with the requirements may have an impact on the conduct of a business activity.
s 25K	Council may prescribe requirements about the treatment of industrial waste for disposal at a waste facility	Compliance with the requirements may have an impact on the conduct of a business activity, such as a business seeking to dispose of industrial waste.
s 25L	Prohibits disposal of certain waste at a waste facility	Compliance with the requirements may have an impact on the conduct of a business activity.

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

In accordance with the public interest review guidelines, Council excluded section 25L from the review on the grounds that, in prohibiting disposal of hazardous waste, it is specifically concerned with ensuring public health and safety standards are met in the use of waste facilities.

Although many of the other anti-competitive provisions may be characterised as intended to combat the spread of pests and disease and ensure accepted public health and safety standards are met, 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 potentially impacts on business activities. 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 9 November 2017, a public consultation process for the public interest review was undertaken from 10 November to 22 December 2017, a period of six weeks. The consultation about the anti-competitive provisions was run concurrently with the general community consultation about the proposed local law. Stakeholders who requested additional time to make their submission were provided with an additional seven days within which to make their submission

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 5 December 2017 with information about the public interest review.

A public interest review also requires meaningful consultation with relevant businesses. To this end, the week of 13 November 2017 and the week of 20 November 2017 respectively, Council wrote specifically to the following waste industry businesses and industry associations to provide notice of the public interest review and invite comment:

- Visy
- JJ Richards
- Cleanaway
- Remondis
- Waste Management Association of Australia
- Waste, Recycling Industry Association of Queensland
- Sunshine Coast Chamber of Commerce Alliance
- Glasshouse Country Chamber of Commerce
- Caloundra Chamber of Commerce
- Montville Chamber of Commerce
- Nambour Alliance

Submissions from the following three parties were received in response to the call for public comments:

- Waste, Recycling Industry Association of Queensland
- Waste Management Association of Australia
- Remondis

The main concerns raised by the submissions were:

- (a) The proposed local law is anti-competitive in that it allows Council to create a monopoly over commercial waste collection services, thereby creating a barrier to competition in that market.
- (b) The objects clause of the proposed law suggests an intention by Council to extend regulation further than domestic and commercial waste to all forms of waste collection and disposal.

- (c) The proposed local law will increase prices for consumers (especially businesses forced to use Council's commercial waste collection services) with no commensurate increase in innovation or quality.
- (d) The proposed local law violates the competitive neutrality principle.
- (e) The consultation process has not been adequate.

In relation to issue (b), following the consultation, Council has amended the relevant part of the objects clause of the local law to clarify that the law's broad purposes are to be achieved by regulating storage and removal of *general* waste at *relevant* premises. 'General waste' refers only to commercial, domestic and recyclable waste and excludes regulated waste (covered by State laws). 'Relevant premises' are domestic, government and commercial premises. Council's intention is not to broaden the scope of regulation further than the currently applicable State law provisions.

In relation to issue (e), the six-week consultation process for the proposed local law is in excess of Council's standard timeframe for the making of local laws and subordinate local laws, which requires a minimum consultation period of 21 days. As indicated above, the process included specific invitations to waste contractor industry stakeholders to provide feedback, based on a consultation paper that fairly described the proposed local law, its potential anti-competitive impacts, and Council's preliminary assessment of the alternatives. The method of consultation complies with the requirements of the State Government's guidelines for the review of anti-competitive provisions.

The remaining issues (a), (c), and (d) are addressed in the cost-benefit analysis below.

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

### Objective of the provisions

The amendment local law will insert a new Part 7B (Waste management) into *Local Law No.3 (Community Health and Environmental Management) 2011*. The purpose of this local law, stated in section 2, is to 'protect community health, safety and amenity and the environmental values of the region within the local government's area'. Section 2 will be amended to recognise the role of the new Part 7B in achieving this purpose:

- (3) *The purpose is further to be achieved by providing for the regulation of—*
  - (a) *storage and removal of general waste at relevant premises; and*
  - (b) *storage and treatment of industrial waste at relevant premises;*
  - (c) *receiving and disposing of waste at waste facilities.*

### Current market situation

The proposed local law makes no change to the current arrangements for waste management in the Sunshine Coast region. In fact, its intent is to maintain the status quo following the imminent expiry of the current State Government legislation.

The local law in effect replicates existing State Government provisions in Chapter 5A of the *Environmental Protection Regulation 2008* and section 7 in Part 2A of the *Waste Reduction and Recycling Regulation 2011*. Those provisions are due to expire on 1 July 2018, and the State has specifically empowered local governments to make local laws to replace them.

The amendments will ensure that the provisions of Chapter 5A of the *Environmental Protection Regulation 2008* are replicated in sections 25C to 25O of *Local Law No. 3 (Community Health and Environmental Management) 2011*. They empower the Council to take action for matters relating to:

- supply of waste containers
- storage of general waste
- storage/keeping of waste containers
- removal of general waste
- storage and treatment of industrial waste

The provisions also address the following matters at waste facilities:

- prohibited types of waste
- restrictions on burning waste
- restrictions on behaviour at the waste facility
- ability to give directions to a waste transporter.

The new section 25B inserted by the amendments will replace section 7 of the *Waste Reduction and Recycling Regulation 2011*, which enables Council to designate waste collection areas in which the local government may conduct general waste or green waste collection, and decide the frequency of general waste or green waste collection in a waste collection area. Under section 7, Sunshine Coast Council has currently designated its entire local government area as a waste collection area, and this designation will continue to have effect under the new local law regime because of the transitional provision in section 25P of the amendment local law.

In reliance on the current laws and the designation of the waste collection area, Council has entered into contractual arrangements with an independent contractor to conduct general waste collection at domestic and commercial premises in the region. Council uses its utility charging powers under the *Local Government Act 2009* to levy waste charges on these serviced premises. The powers under Chapter 5A further enable Council to supply standard general waste containers to these premises and to require the occupier to place the containers outside the premises on scheduled collection days.

Collectively, Chapter 5A, section 7 and the utility charging provisions in the *Local Government Act 2009* result in a *de facto* restriction on competition to the extent that Council designates an area within its local government area in which Council will conduct general waste or green waste collection and decides on the frequency of collection in the designated areas. This is because all serviced premises are levied the waste charge irrespective of whether they use the waste collection service. While another waste contractor is not restricted from supplying a waste service to a serviced premises, the occupier is unlikely to pay for a private waste service when they will continue to be levied with the waste charge for the Council service. However, all waste contractors are able to compete for Council's waste collection service contracts under periodic open tender processes.

The passage of the proposed local law will not change this situation, as Council will continue to rely on the same provisions to deliver general waste collection services across the region – the only difference is that the provisions will be contained in a local law rather than in State legislation.

### Competitive neutrality

One of the public submissions argued that the proposed local law violates the competitive neutrality principle. Under the competitive neutrality principle, an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector. For local governments, competitive neutrality is enshrined in the requirements of the *Local Government Act 2009* (the LGA).

Council's Waste and Resource Management (WRM) branch is considered a significant business activity for the purpose of section 45 of the LGA. Under section 44, the local government can apply the competitive neutrality principle through either 'commercialisation of a significant business activity, or full cost pricing of a significant business activity'. Council applies the competitive neutrality principle through WRM being a commercialised business unit of Council.

WRM applies the competitive neutrality principle in accordance with section 28 of the *Local Government Regulation 2012* (the LGR). The replication of the waste management powers contained in State legislation in the proposed local law has not changed the nature of how WRM applies the competitive neutrality principle. For clarity, there is no intention on the part of Council to change its current approach in providing waste services within its local government area.

### Restrictions on competition

The submissions to the public interest review accept that there is a public interest in local governments providing uniform waste collection services to *domestic* premises across a local government area. The principal concern raised is extending Council's waste collection services to *commercial* premises has the effect of:

- reducing the opportunity for waste contractors to compete to supply commercial waste collection services to these premises (i.e. they can only compete for the Council contracts and not for individual contracts with each premises); and
- increasing the costs to the business owners operating out of these commercial premises (because the Council service may cost more than a private provider and there may be higher costs in complying with the Council's requirements for serviced premises than private providers' requirements).

Hence the two categories of business stakeholders impacted by the anti-competitive provisions are:

- waste contractors;
- businesses operating out of commercial premises.

In the cost-benefit analysis set out below, the impacts on these two business stakeholder groups will be specifically considered.

### Reasonable alternatives to the anti-competitive provisions

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

- *Planning scheme* – Regulate storage and collection of waste at commercial premises using the planning scheme and development approval conditions;
- *Complaint-responsive regulation* – Stipulate minimum standards for waste storage and collection that would only be enforced following complaints from residents;



- *Public information and education* – Encourage the desired waste management behaviour and practices through public information and education.

The alternative courses of action open to Council to deal with waste management are therefore:

**A. Proceed with proposed local law**

- This option essentially maintains the status quo, with the local law provisions replacing the State law provisions

**B. No local law (rely on planning scheme and public information/education instead)**

- On the expiry of the State law provisions, no local law would replace them
- This would leave waste collection unregulated in the Sunshine Coast
- Private waste contractors could compete to collect domestic waste from residences and commercial waste from businesses
- Council could impose requirements about waste management on *new* commercial operations through the planning scheme and development approval
- Public information and education would be required to encourage households and businesses to deal with waste in a manner that protects public health and safety and community amenity
- There would be no provisions regulating use of waste facilities

**C. Modified local law to regulate domestic waste only (rely on planning scheme and public information/education for commercial waste)**

- On the expiry of the State law provisions, the local law would replace them but only in application to domestic premises
- Collection of commercial waste from commercial premises would be left unregulated, except in relation to new businesses (where the planning scheme and development approvals could impose some requirements)
- Private waste contractors could compete to collect commercial waste from commercial premises
- Public information and education could seek to encourage businesses and waste contractors to deal with commercial waste in a manner that protects the environment and public health and safety and community amenity
- The provisions regulating use of waste facilities would be retained

**D. Modified local law containing minimum standards only (complaint-responsive regulation)**

- On the expiry of the State law provisions, the new local law would provide only for minimum standards for households, businesses and waste contractors to follow in storing and disposing of domestic, commercial and industrial waste
- The local law would not provide for Council to designate waste collection areas for Council to collect domestic and commercial waste
- Private waste contractors could compete to collect domestic waste from residences and commercial waste from businesses

- The minimum standards would be enforced by Council following repeated complaints from residents about breaches at particular premises
- Public information and education could seek to encourage businesses and waste contractors to comply with the minimum standards
- The provisions regulating use of waste facilities would be retained

Table 1 below contains an assessment of these four options with reference to the impacts on four key stakeholders: Council, waste contractors, commercial premises and the general community.

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;
- 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 core values and 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'.

Table 1 – Assessment of proposed local law option and reasonable alternatives

OPTIONS	Impact on stakeholders (costs and benefits)			
	Waste contractors	Commercial premises	General community	Council
<p><b>A. Proceed with proposed local law</b> (maintain status quo)</p> <p><b>NET POSITIVE IMPACT</b> (This is the recommended option)</p>	<p><b>Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Continued opportunity to compete for Council waste management contracts (low positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Non-Council contractors effectively excluded from competing with Council for waste collection services from domestic and commercial premises (high negative)</li> <li>Fewer opportunities to establish private waste facilities (low negative)</li> <li>More compliance requirements for private waste facilities (low negative)</li> </ol>	<p><b>Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Participation in innovative Council waste management initiatives (e.g. to minimise waste and increase recycling) (low positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Reduced choice of waste contractor for commercial waste services (low negative)</li> <li>No flexibility of national businesses to use their existing nationally contracted providers (low negative)</li> <li>Some businesses are paying a higher price for Council waste services than might be negotiated in a competitive market (moderate negative)</li> </ol>	<p><b>High positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Improved amenity and environmental benefits from Council's ability to fund and deliver region-wide strategies for waste minimisation, waste diversion and recycling (moderate positive impact)</li> <li>Lower overall costs of waste collection services due to economies of scale from Council negotiating region-wide waste contracts (low positive)</li> <li>Increased community amenity (noise and traffic management etc) from greater Council ability to manage waste vehicle movements and timing of service provision (moderate positive)</li> <li>Guaranteed access to appropriate waste containers and adequate frequency of collection, determined by reference to health and amenity considerations rather than profit (low positive)</li> <li>Improved amenity due to Council's power to regulate where and when bins are placed for collection (low positive)</li> <li>Provisions about proper use of waste facilities will ensure better management of these facilities, leading to reduced environmental health risks (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Reduced choice of contractor for domestic and commercial waste collection (low negative)</li> </ol>	<p><b>Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Continuity of current waste management arrangements (low positive impact)</li> <li>Council can deliver and regulate waste management services to achieve its goals in protecting the environment and public health, safety and amenity (moderate positive)</li> <li>Greater ability to achieve Council's targets for waste minimisation and recycling (pursuant to Council's Waste Strategy 2015-2025 and Queensland Waste Avoidance and Resource Productivity Strategy 2014–2024) (moderate positive)</li> <li>Opportunity to achieve greater economies of scale and therefore lower cost to Council and ratepayers through negotiating region-wide waste contracts (moderate positive)</li> <li>Council will have local law powers to directly respond to complaints and issues around waste management (e.g. improper waste storage, improper use of bins, bins left on footpaths for excessive periods etc) (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Risk that fewer private contractors in the market leads to less competition on price for Council's contracts (low negative)</li> <li>Risk of less incentive for innovation and quality driven by competition once Council's waste contract locked in (low negative)</li> </ol>

OPTIONS	Impact on stakeholders (costs and benefits)			
	Waste contractors	Commercial premises	General community	Council
<p><b>B. No local law</b>                      (rely on planning scheme and public information/ education instead)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Opportunity to compete in an unregulated market for waste collection services from domestic and commercial premises (high positive impact)</li> <li>2. Private operators of waste facilities will not be subjected to local law regulation (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. Council's current waste contract holder would have reduced business under an unregulated market, leading to reduced profitability (low negative)</li> </ol>	<p><b>Overall: Neutral impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Some commercial premises (e.g. businesses attractive to waste contractors due to volume or nature of waste produced) will be able to negotiate reduced service costs from private providers (low positive)</li> <li>2. Commercial premises will have reduced compliance costs without Council's more stringent local law requirements about storage and disposal of waste (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. Apart from the high volume premises, most commercial premises could be expected to pay higher charges due to contractors' need to recover the same level of fixed costs from a smaller collections base (low negative).</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. More choice of service provider for domestic waste collection (low positive)</li> <li>2. Increased competition which could possibly lead to more innovation and technical development by competing contractors (low positive).</li> <li>3. Possible employment and economic development outcomes from opening up the market to more waste contractors (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>4. Increase in number of waste collection vehicles on residential roads (including duplicate runs on many streets), affecting traffic congestion and community safety and amenity (moderate negative)</li> <li>5. No regulation of timing of collection activities, with potential noise nuisances and reduced amenity (moderate negative)</li> <li>6. No regulation of the type of waste containers used, potentially leading to inappropriate containers and health and amenity risks (low negative)</li> <li>7. Increased likelihood of long haul transport of waste for disposal outside region (low negative)</li> <li>8. No regulation of proper use of waste facilities, leading to environmental health risks (low negative)</li> <li>9. Residents in less accessible areas or premises that generate less volumes of waste might be subjected to higher prices in a competitive market compared</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Possibly reduced enforcement costs because Council would not have regulatory powers over waste management (low positive impact).</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. Significant financial liability under its contractual arrangements with its current contractor (moderate negative)</li> <li>3. Increased costs to Council of waste management where domestic and commercial premises opt out of Council waste services. Tenderers for Council contracts will have less certain waste tonnages and therefore build in more risk components in prices (low negative)</li> <li>4. Inability to pursue Council's targets for waste minimisation and recycling (pursuant to Council's Waste Strategy 2015-2025 and Queensland Waste Avoidance and Resource Productivity Strategy 2014–2024) (moderate negative)</li> <li>5. Inability to respond to community concerns about noise issues (e.g. inappropriate timing of waste collection), traffic issues (e.g. increased waste collection vehicles on roads), inadequate servicing etc (moderate negative)</li> <li>6. Inability to use local law to regulate matters such as appropriate waste containers, material that can be placed in containers, placement of containers for storage and collection etc (low negative)</li> <li>7. Inability to use local law to regulate proper use of waste facilities (low negative)</li> </ol>

	Impact on stakeholders (costs and benefits)			
OPTIONS	Waste contractors	Commercial premises	General community	Council
			<p>to Council's uniform waste charges (low negative)</p> <p>10. Private waste contractors may prioritise more profitable waste services (e.g. cardboard and paper) to the detriment of other forms of recycling (low negative)</p> <p>11. Increased number of contractors will increase the aggregate capital costs across the industry and reduce the average utilisation of waste collection vehicles, leading to an increase in average collection costs (low negative)</p> <p>12. Commercial premises would no longer contribute to the regional public realm waste management infrastructure (low negative)</p> <p>13. Some commercial premises occupiers decide not to have a waste or recycling collection service and bury, burn, stockpile or illegally dump their waste (moderate negative)</p>	<p>8. Planning scheme will only enable regulating waste management for new businesses seeking development approvals (low negative)</p> <p>9. Increased costs in delivering public information/education about good waste management (low negative)</p>

OPTIONS	Impact on stakeholders (costs and benefits)			
	Waste contractors	Commercial premises	General community	Council
<p><b>C. Modified local law to regulate domestic waste only</b>                      (rely on planning scheme and public information/ education for commercial waste)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Opportunity to compete in an unregulated market for waste collection services from <u>commercial</u> premises (high positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. Council's current <u>commercial</u> waste collection contract holder would have reduced business under an unregulated market, leading to reduced profitability (low negative)</li> </ol>	<p><b>Overall: Neutral impact</b></p> <p><b>Positive:</b></p> <p>Same as Option B</p> <p><b>Negative:</b></p> <p>Same as Option B</p>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Possible employment and economic development outcomes from opening up the market to more waste contractors (low positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. No regulation of timing of collection activities from <u>commercial</u> premises, with potential noise nuisances and reduced amenity (moderate negative)</li> <li>3. Increased noise and traffic impacts on neighbours of <u>commercial</u> premises as a result of multiple commercial waste contractors (low negative)</li> <li>4. Increased noise and traffic impacts on residents in mixed use and high rise residential developments where multiple waste collection providers operating (low negative)</li> <li>5. No regulation of the type of <u>commercial</u> waste containers used, potentially leading to inappropriate containers and health and amenity risks (low negative)</li> <li>6. Increased likelihood of long haul transport of waste for disposal outside region (low negative)</li> <li>7. Private waste contractors may prioritise more profitable commercial waste services (e.g. cardboard and paper) to the detriment of other forms of recycling and thus the overall environment (low negative)</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Reduced waste management administration and enforcement costs in respect of commercial premises (low positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. In relation to commercial waste (but not domestic waste), the same negative impacts for Council as Option B would apply (see issues 2-6 above)</li> <li>3. Planning scheme will only enable regulation of waste management for new businesses seeking development approvals, not existing commercial premises (low negative)</li> <li>4. Increased costs in delivering public information/education to commercial premises about good waste management (low negative)</li> </ol>

OPTIONS	Impact on stakeholders (costs and benefits)			
	Waste contractors	Commercial premises	General community	Council
<p><b>D. Modified local law containing minimum standards only</b>                      (complaint-responsive regulation)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b> Same as Option B</p> <p><b>Negative:</b> Same as Option B</p>	<p><b>Overall: Neutral impact</b></p> <p><b>Positive:</b> Same as Option B</p> <p><b>Negative:</b> Same as Option B</p>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. With an open market for waste collection, the same benefits as in Option B (see 1-3) would apply (low positive impact)</li> <li>2. Unlike Option B, residents will be able to complain to Council about waste management activities affecting the environment, public health or amenity (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. The negative community impacts of an unregulated waste management market identified in Option B (see 4-8) would still apply to some extent as Council will not have the same level of control over issues that might affect health and amenity (e.g. number of waste collection vehicles on streets, timing of collection, type of containers used, noise issues and traffic issues) (moderate negative)</li> <li>4. Council's complaint-responsive approach to dealing with waste management may not satisfy community demands for consistent best practice waste management (low negative)</li> <li>5. Residents in less accessible areas or premises that generate lower volumes of waste might be subjected to higher prices in a competitive market compared to Council's uniform waste charges (low negative)</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Council will retain some ability to protect the environment and public health, safety and amenity by enforcing the minimum standards for waste management (low positive impact)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. As Council would no longer have full regulation of domestic and commercial waste collection, the same negative impacts identified for option B would apply (see impacts 2-4 re liability to current contractor, increased costs and inability to achieve waste targets and strategies) (moderate negative)</li> <li>3. Council's ability to respond to community concerns about the environment and public health, safety and amenity issues will be limited to case-by-case enforcement of the minimum standards against waste contractors and premises, rather than proactively managing a best practice, region-wide waste management system (moderate negative)</li> <li>4. Increased costs in delivering public information/education about the minimum standards (low negative)</li> </ol>

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

Table 1 in the previous section has calculated the positive and negative impacts on the key stakeholders of proceeding with the 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 local law (which essentially maintains the status quo by replicating the current State laws), has a moderate positive impact on Council, a moderate negative impact on waste contractors, a low negative impact on commercial premises and most significantly, a high positive impact on the general community. Although this option affects profitability in the waste contracting industry and reduces some choice and flexibility for commercial premises, it has a range of positive impacts for the community in terms of managing waste in a way that protects the environment and public health, safety and amenity. Accordingly, the proposed local law also has a net positive impact for Council, which prioritises these community-wide goals. *The net impact across all stakeholders is positive for this option.*

The analysis shows that **Option B** – not proceeding with the local law, leaving the waste management market unregulated – has a moderate positive impact for waste contractors (as a result of their increased opportunity to compete for work), but has a moderate negative impact on the general community and Council and a neutral impact on commercial premises. The main negative impacts with this option relate to the reduced ability to achieve broader public goals for sustainable waste management, and risks to the environment and public health, safety and amenity in an unregulated environment. *This option therefore has a net negative impact.*

**Option C** – limiting the local law to regulate domestic waste only, leaving commercial waste open to competition – is also assessed as having the same net negative impact as Option B. It has a moderate positive impact for waste contractors due to the ability to compete for commercial waste management, but the impact on commercial premises is neutral and the impact on the general community and Council are moderately negative. Again, the principal concerns with this option relate to the reduced ability to pursue broader public goals for sustainably managing commercial waste, and the risks to the environment and public health, safety and amenity if there is a proliferation of commercial waste services operating in high density areas. In addition, it is not clear that this option would result in a net reduction of costs of waste collection across commercial premises.

**Option D** – modifying the local law to regulate the waste management market through minimum standards only – is also assessed as having a positive impact only for waste contractors, with a moderate negative impact on Council and the general community, and a neutral impact on commercial premises. While it would encourage more competition in waste management, Council's ability to meet the community's expectations to manage waste in a sustainable way that protects the environment and public health, safety and amenity would be severely curtailed by having to rely on complaint-responsive regulation. Like Options B and C, *this option has a net negative impact.*

## 7. Conclusion

The cost-benefit analysis is focused on the optimal way to achieve the Sunshine Coast community's – and therefore Council's – aspirations for waste to be sustainably managed to protect the environment and maintain public health, safety and amenity. To achieve these community goals, outlined fully in the *Sunshine Coast Waste Strategy 2015-2025*, Council must



adopt a strong leadership and regulatory role. The proposed local laws for waste management will be vital to Council's ability to implement this strategy and fulfil its targets for waste reduction and resource recovery. These targets have been set with reference to the Australian Government's National Waste Policy and the Queensland Waste Avoidance and Resource Productivity Strategy (2014–2024).

The proposed local laws will maintain the current regulatory arrangements for waste management on the Sunshine Coast, which give Council the ability to implement an integrated system of waste management for general waste generated in both domestic and commercial premises across the region. In using its powers to manage commercial waste as well as domestic waste, Council is able to pursue broader community goals for sustainable waste management in a way that other entities are unable to deliver. A competitive market for waste collection by multiple entities motivated purely by profit considerations, is not conducive to region-wide waste minimisation strategies. By contrast, the local law will give Council the necessary tools to pursue sustainable and innovative waste management through an integrated approach including:

- educating the community on how to avoid generating waste and reducing the amount of waste for disposal;
- managing waste as a resource;
- ensuring that waste treatment, disposal, recovery and re-use is undertaken in a safe, environmentally sound manner;
- contributing to the reduction in greenhouse gas emissions, energy conservation and production, water efficiency and the productivity of the land;
- Research and development into innovative technology to manage waste emission repatriation;
- School education programs on recycling and waste minimisation;
- Community broad education programs.

Council recognises that broader community goals around sustainability must be achieved through waste management services that are also cost-effective and customer-focused, and do not unjustifiably restrict competition for waste services in the region. However, the cost-benefit analysis has not demonstrated that a less regulated waste management environment will lead to lower costs for consumers, in respect of either domestic or commercial waste collection services. Waste management is a highly capital-intensive industry with significant investment in assets. This cost structure gives rise to economies of scale, whereby the average cost to perform a collection will decline as the number of properties serviced increases. The ability of Council to tender a large number of properties requiring servicing through a competitive process allows each tenderer to determine an appropriate fleet size to achieve a level of utilisation that minimises average costs and leads to lower tendered prices. Given the high fixed costs for each waste contractor, a system of waste collection undertaken by multiple contractors is likely to lead to increased aggregate capital costs across the industry, reducing the average utilisation of waste collection vehicles and leading to an increase in average collection costs.

It cannot be clearly demonstrated, therefore, that a competitive market for waste collection, even in respect of only commercial premises, will lead to reduced costs for consumers. What is clear from the cost-benefit analysis is that such an arrangement, although clearly beneficial to waste

contractors (with the exception of the Council's contracted provider), would create significant public health, amenity and environmental risks. Potential concerns include:

- increased waste vehicle movements leading to traffic congestion,
- public safety issues,
- noise nuisances due to inappropriate scheduling of collection times,
- inability to deal with nuisance issues caused by inadequate or poorly maintained waste containers, and
- increased likelihood of long haul transport of waste for disposal outside region.

None of the alternative approaches canvassed in this review are adequate to manage these risks and protect the public interest.

Overall, while the provisions reviewed have an anti-competitive effect, this report concludes that the benefits to the community of retaining them outweigh the costs and provide the most appropriate way of achieving the objectives of the local law.

## **8. Recommendation**

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