



## **Final Report**

# **Sunshine Coast Regional Council: Competitive Neutrality Complaint**

**June 2012**

Level 19, 12 Creek Street Brisbane Queensland 4000  
GPO Box 2257 Brisbane Qld 4001  
Telephone (07) 3222 0555  
Facsimile (07) 3222 0599

general.enquiries@qca.org.au  
[www.qca.org.au](http://www.qca.org.au)

The Authority wishes to acknowledge the contribution of the following staff to this report

Dan Kelley, John Fallon, Rick Stankiewicz

© Queensland Competition Authority 2012

The Queensland Competition Authority supports and encourages the dissemination and exchange of information. However, copyright protects this document. The Queensland Competition Authority has no objection to this material being reproduced, made available online or electronically but only if it is recognised as the owner of the copyright and this material remains unaltered.

## TABLE OF CONTENTS

	PAGE
<b>GLOSSARY</b>	<b>IV</b>
<b>PREAMBLE</b>	<b>V</b>
<b>EXECUTIVE SUMMARY</b>	<b>VIII</b>
<b>1. INTRODUCTION</b>	<b>1</b>
1.1 Referral of Competitive Neutrality Complaint	1
1.2 SCRC’s Waste Management Strategy and Business Activity	2
1.3 Competitive Neutrality	4
1.4 Consultation	5
1.5 Draft Investigation Report	5
<b>2. THE DECISION TO INVESTIGATE</b>	<b>7</b>
2.1 Review Prior to Investigation	7
2.2 Notice of Investigation	9
<b>3. COMPETITION ISSUES</b>	<b>11</b>
3.1 Relevance	11
3.2 Legal Framework	11
3.3 Market Effect of the Mandatory Levy	13
<b>4. PRICING</b>	<b>15</b>
4.1 WCRAQ Pricing Complaints	15
4.2 SCRC’s Pricing Practices	15
4.3 Competitive Neutrality Requirements	16
4.4 The Mandatory Levy is the Source of the Competitive Advantage	17
4.5 SCRC’s Implementation of the Full Cost Pricing Reform	18
4.6 SCRC Compliance with the Pricing Requirements of the Full Cost Pricing Reform	23
4.7 Service Definition and Revenue Threshold	25
4.8 Full Cost Pricing – Non-commercial Objectives	26
4.9 Appropriate Use of the Levy Authority	27
4.10 Conclusions	28
<b>5. CONDUCT</b>	<b>31</b>
5.1 WCRAQ Conduct Complaints	31
5.2 SCRC Service Descriptions	31
5.3 Interference with WCRAQ Customers	32
5.4 Conclusion	33
<b>6. COMPETITIVE NEUTRALITY CRITERIA</b>	<b>34</b>
6.1 Matters to be Considered	34
6.2 Relevance of the Competitive Neutrality Criteria when the Authority is the Referee	34
6.3 Need to Ensure Competitive Neutrality is Complied With	35
6.4 Local Government Policies about Competitive Neutrality	36
6.5 Local Government Policies, or a Law, about Ecologically Sustainable Development	37

---

6.6	Policies or a Law about Industrial Relations or Occupational Safety and Health	60
6.7	The Need to Promote Competition	60
6.8	The Need to Allocate Resources Efficiently	62
6.9	Consumer Benefits	63
6.10	Conclusion on Competitive Neutrality Criteria	64
<b>7.</b>	<b>RECOMMENDATIONS AND PROCEDURAL REQUIREMENTS</b>	<b>65</b>
7.1	Recommendations	65
7.2	Reasons	65
7.3	Implementation Issues	67
7.4	WCRAQ Position on Recommendations	68
7.5	Next Steps	69
	<b>REFERENCES</b>	<b>71</b>

**GLOSSARY**

AEC	AEC Consulting Group
ARS	Annual Revenue Statement
AWT	Alternative Waste Technology
Business Activities Regulation	Local Government (Beneficial Enterprises and Business Activities) Regulation 2010 (Qld)
CBA	Cost Benefit Analysis
Competition Act	Competition and Consumer Act 2010 (Cth)
CSO	Community Service Obligation
DERM	Department of Environment and Resource Management
DLGP	Department of Local Government and Planning
EPA	Environmental Protection Act 1994 (Qld)
EPA Policy	Environmental Protection (Waste Management) Policy 2000 (Qld)
EPR	Environmental Protection Regulation 2008 (Qld)
Full Cost Pricing Guide	Department of Communication and Information, Local Government and Planning, Full Cost Pricing in Queensland Local Government – A Practical Guide (2000)
Local Government Act	Local Government Act 2009 (Qld)
Local Government Act 1993	Local Government Act 1993 (Qld)
MRF	Materials Recycling Facility
NPV	Net Present Value
Operations Regulation	Local Government (Operations) Regulation 2010 (Qld)
QCA Act	Queensland Competition Authority Act 1997 (Qld)
SCRC	Sunshine Coast Regional Council
the Authority	Queensland Competition Authority
Waste Act	Waste Reduction and Recycling Act 2011 (Qld)
WCRAQ	Waste Contractors and Recyclers Association of Queensland
WRM	Waste and Resources Management

---

## PREAMBLE

### Competitive neutrality principle:

The competitive neutrality principle relevant in this case is that businesses should remove competitive advantages due to their position as a government entity whenever possible and appropriate.

### Complaint

Waste Contractors and Recyclers Association of Queensland (WCRAQ) complained about Sunshine Coast Regional Council's (SCRC):

- (a) attempts to enforce a monopoly over bulk waste recycling services (conduct issues); and
- (b) pricing of services in a way that prevented WCRAQ members from competing (pricing issues).

### Conduct

The Final Report finds that the conduct claims are not a competitive neutrality issue:

- (a) SCRC is no longer claiming a statutory monopoly position; and
- (b) in any event, the conduct alleged could be undertaken by non-government entities.

### Pricing

SCRC prices bulk general waste and recycling as a bundle with a combined price, but most customers do not take up bulk recycling bins. As a result, customers who take both services are subsidised by customers that take only the waste service – resulting in a de facto bulk recycling monopoly.

SCRC has established its waste business as a Type 1 significant business activity and applied the 'full cost pricing reform' option of the Local Government Act. This requires:

- (a) removal of competitive advantages where possible and appropriate; and
- (b) commercial pricing of goods and services.

SCRC argues that under the Local Government Act and associated regulations and policies:

- (a) it is entitled to levy utility charges on all ratepayers;
- (b) commercial pricing is achieved when the revenues of the business activity recover the full costs of the activity as a whole; and
- (c) there are no requirements for the pricing of individual goods and services.

The Final Report finds that:

- (a) the mandatory levy constitutes a competitive advantage that is only possible because of government ownership of the business activity;
- (b) commercial pricing means that prices for individual goods and services may deviate from full costs, provided there is a reasonable commercial basis;
- (c) SCRC has not provided a valid commercial basis for its pricing of bulk recycling services; and

- 
- (d) the legislation provides that subsidies should be provided through transparent community service obligations, which SCRC has not done.

Therefore, SCRC has a competitive advantage, which it must remove if possible and appropriate.

### **Possible**

SCRC is the only jurisdiction in Queensland that has a mandatory levy that applies throughout its entire area. Therefore, it must be possible to provide bulk recycling services on a competitive basis.

### **Appropriate**

SCRC maintains that its environmental goals to achieve 70% diversion of commercial waste from landfill by 2014 cannot be achieved with competition:

- (a) according to SCRC, without the use of the mandatory levy for the bundled service, commercial firms will not purchase the recycling service to a sufficient extent; and
- (b) as a result, waste currently being recycled will be sent to the landfill.

A cost-benefit analysis (CBA) provided by SCRC claims to show substantial net costs associated with eliminating the current pricing policy under two scenarios:

- (a) existing waste and recycling facilities are used; and
- (b) SCRC builds an alternative waste technology (AWT) that is capable of diverting 70% of general waste from landfill through incineration.

Other alternatives – e.g., a tax and subsidy scheme are dismissed by SCRC as being ineffective or too difficult to implement.

The Final Report highlights key weaknesses in the CBA, including:

- (a) the critical assumption in scenario 1 that diversion rates would fall from the current 17.4% level to 4.4% is considered unlikely given that the diversion rate in Queensland is over 18% while SCRC is the only Council with a mandatory levy throughout its area;
- (b) alternatives to the assumptions adopted are dismissed without sufficient analysis; and
- (c) the AWT scenario is the highest cost alternative and would significantly raise disposal costs.

At the Authority's request, a consultant undertook a CBA using alternative assumptions and found that plausible combinations of subsidies, efficiencies from competitive supply, and effective targeted recycling of high value material by competitors would eliminate the net costs.

### **Recommendations**

SCRC should:

- (a) eliminate the use of the mandatory levy;
- (b) provide bulk recycling on a commercial basis;
- (c) allow competition in bulk recycling collection and disposal; and
- (d) use tax and subsidy mechanisms to encourage commercial recycling.

## **Legal issues**

SCRC is not required to implement the recommendations, but must report to the Authority on reasons for not doing so.

A number of ambiguities in the legislative framework are identified. Although they do not impact the findings and recommendations in the Report, the Authority recommends that the Local Government Act and the Business Activities Regulation be reviewed with a view to clarifying ambiguities identified in the Report.



## EXECUTIVE SUMMARY

### Complaint

On 14 April 2011, the Sunshine Coast Regional Council (SCRC) referred a competitive neutrality complaint to the Queensland Competition Authority (the Authority).

The complaint was made against SCRC's Waste and Resource Management (WRM) business activity by the Waste Contractors and Recyclers Association of Queensland (WCRAQ) on behalf of a number of its members.

WCRAQ's complaint was that:

- (e) SCRC was offering to provide bulk waste recycling services at no charge to its customers and WCRAQ members were unable to compete on the same terms as SCRC was offering (pricing issues); and
- (f) SCRC was making inaccurate descriptions of its own services to customers and, promoting its services over those of WCRAQ members (conduct issues).

### SCRC's Waste Minimisation Strategy

SCRC (December 2009) adopted a Waste Minimisation Strategy to promote its environmental objectives to minimise waste and maximise recycling to become Australia's most sustainable region.

Consistent with this goal, all commercial ratepayers are charged a mandatory waste management services levy. Each commercial ratepayer receives a general waste bin and is entitled to a recycling bin of the same size at no extra charge to encourage commercial recycling (SCRC June 2010). Commercial ratepayers are not allowed to 'opt-out' of the mandatory levy. That is, they must pay SCRC for the bundled service even if they would prefer that another provider supply all or part of their waste management requirements.

SCRC believes that competitive provision of waste management services will result in a loss of control over the waste stream that will prevent the Council from implementing the most efficient waste management technology and result in a failure to meet waste minimisation targets.

### Competitive Neutrality Principle

The competitive neutrality principle is that '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' (*Local Government Act 2009* (Qld) s43(3)) (*Local Government Act*). Adherence to the competitive neutrality principle is required 'if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation' (*Local Government Act* s43(2)).

The *Local Government Act* s44 provides that the competitive neutrality principle may be applied by adopting one of a number of reform options for significant business activities, including commercialisation, corporatisation, and full cost pricing.

After conducting a public benefit assessment, SCRC applied the full cost pricing reform option to the WRM business activity (AEC 2010). The full cost pricing reform does not require structural change, but does require pricing the business activity on a commercial basis (s44(4) *Local Government Act*) and removal of competitive advantages or disadvantages due to the entity being in the public sector (whenever possible and appropriate) (*Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* (Qld) (*Business Activities Regulation*) s20(1)(b)).

## Decision to Investigate

Pursuant to the requirements of the Business Activities Regulation, the Authority considered the matters relevant to deciding whether:

- (a) WCRAQ had made a genuine attempt to resolve the dispute;
- (b) the complainants represented by WCRAQ are legally entitled to provide the goods and services, and
- (c) WCRAQ members would be potentially adversely affected by SCRC's possible breach of the principle of competitive neutrality.

The Authority considered these requirements had been met and, therefore, accepted the referral and commenced the investigation.

## Competition Issues

The complainant must be an actual or potential competitor with the local government in the supply of the goods or services that are the subject of the complaint in order for a complaint about a breach of the principle of competitive neutrality to be validly made.

SCRC (July 2011) advised that it could find no formal law or policy establishing a monopoly for its WRM business activity. The Authority also notes that there are no provisions in local or State laws and policies, including the *Environmental Protection Act 1994 (Qld)* (EPA) and associated regulations or policies that provide for a waste management monopoly.

SCRC (April 2011a) stated 'that domestic and commercial waste collection services on the Sunshine Coast shall be provided by its collection contractors as a valid exercise of a statutory function to ensure a number of outcomes that may not be achievable if that collection system was open to competition.' The statutory function referred to is the power to apply a levy under Local Government Act s94.

In the course of the investigation SCRC (September 2011) clarified SCRC's position and confirmed that rate payers are free to use other services providers.

Therefore, there is no statutory monopoly in place for the waste management business (or any components of the business) and the complainants are legally entitled to compete with SCRC.

SCRC's mandatory levy is applied to all bulk waste customers. The exercise of the levy power in this way gives SCRC a degree of market power, or *de facto* monopoly power, because customers are unlikely to purchase a competitor's service in the presence of a mandatory levy with no 'opt-out' provision.

## Pricing Issues

### Competitive Advantage

Several sizes and types of bulk waste and recycling bins are provided. The total cost of providing each category of bulk general waste and bulk recycling service is averaged over all commercial customers for each bin category in order to calculate a uniform mandatory levy.

The majority of bulk waste customers do not take the recycling bins. Thus a portion of the cost of each type of bulk recycling service is paid by all the bulk waste ratepayers, even those that do not use the recycling service. The charge levied to all bulk service customers who are provided with both

general waste and recycling bins is less than the average total cost of providing the service to them. Consequently, ratepayers that do not use the recycling service subsidise ratepayers that do.

The Authority has concluded that the mandatory levy with no opt-out provision provides SCRC with a competitive advantage (that provides it with market power) only because the WRM business activity is in the public sector. No commercial service provider has the ability to mandate such a levy or apply such a charge to customers who do not use the service. Consequently any commercial service provider that prices services in the manner SCRC does would have part of its business competed away by other service providers.

### Commercial Pricing

SCRC (January 2012a and April 2012) maintains that its pricing methodology complies with the full cost pricing reform requirements because the WRM business activity as a whole recovers its full costs. Therefore, a key issue in the investigation was whether the full cost pricing reform applies at both the level of the business activity as a whole and at the level of individual services supplied as part of that business activity.

Guidance on how to apply the Local Government Act commercial pricing requirement can be found in the Business Activities Regulation, the Department of Communication and Information, Local Government and Planning, Full Cost Pricing Guide (2000) (the Full Cost Pricing Guide) and Queensland Government, National Competition Policy and Queensland Local Government: A Queensland Government Policy Statement (July 1996).

The Authority considers that it is possible to interpret the Local Government Act, Business Activities Regulation, and Full Cost Pricing Guide as either requiring:

- (a) merely that collectively the goods or services supplied by the relevant business activity must be charged on a basis to enable the total revenues to recover the aggregate full cost of providing all such goods or services (effectively the view that SCRC asserts); or
- (b) in addition, that the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs unless there is a valid commercial basis for not doing so.

SCRC's submission relies almost entirely on its interpretation of the Full Cost Pricing Guide to conclude that full cost recovery is only required at the business activity level. The Authority agrees that it is possible to interpret the Guide in this way. However, the Guide provides at best ambiguous support for SCRC's position. The Authority believes that the Local Government Act and the Business Activities Regulation, which were enacted subsequent to the Guide and should be given precedence over it, clearly require commercially reasonable pricing of individual services. The full costs of individual services provide a benchmark. Deviation from the benchmark is allowed where appropriate for commercial reasons.

The Authority considers that the more meaningful and preferred interpretation is that full cost pricing is effectively achieved if:

- (a) collectively the goods or services supplied by the relevant business activity are charged on a basis that recovers the aggregate full cost of providing all such goods or services; and
- (b) the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs unless there is a valid commercial basis for not doing so.

SCRC has not provided a commercial basis for not pricing its commercial waste recycling services at full cost. Nor has SCRC identified any community service obligations (CSOs) for the service. There is, therefore, no case for pricing the bulk waste recycling service below its full cost.

Irrespective of which definition of full cost pricing is adopted, the Authority does not consider that SCRC's pricing occurs on a commercial basis (as required under the Local Government Act) because the mandatory levy provides a competitive advantage possible only due to SCRC's government status.

## Conclusions

In respect of the WCRAQ's specific complaints, the Authority has therefore concluded that:

- (a) SCRC is not offering to provide the bulk waste recycling services provided by WCRAQ members at no charge to their customers. In this respect WCRAQ's complaint is not substantiated; but
- (b) WCRAQ complaint that its members are unable to compete on the same terms as SCRC is offering is substantiated as:
  - (i) The mandatory levy has no 'opt-out' provision and therefore provides WRM with a competitive advantage – only because WRM is in the public sector. A customer that does not require or desire a recycling bin could not be forced by a commercial service provider to pay a contribution to the cost of recycling services provided to other customers. Therefore, SCRC has a competitive advantage due solely to its government status; and
  - (ii) SCRC's charges to bulk recycling service customers are below the cost of providing those services.

## Conduct Issues

WCRAQ's conduct complaints mainly involved representations made by SCRC to customers about the nature of SCRC services or the authority of the complainants to provide services. Irrespective of the veracity of the complaints, such representations do not constitute a breach of the principle of competitive neutrality as false claims can be made by any entity (with or without public ownership).

WCRAQ's complaints with regard to SCRC's market conduct being a breach of the principle of competitive neutrality are not substantiated.

## Competitive Neutrality Criteria

A competitive advantage due to the entity being in the public sector must be removed whenever 'possible and appropriate'. Bulk recycling services are offered on a competitive basis throughout Queensland. Therefore, it is clearly possible to remove the advantage. However, SCRC considers that its mandatory levy (with no 'opt-out' provision) is in the public interest. The Business Activities Regulation (s140(2)) requires a Referee in considering a complaint to consider a variety of competitive neutrality criteria related to public interest considerations.

The Authority evaluated the competitive neutrality criteria to determine whether it is appropriate for SCRC to remove the competitive advantage that its mandatory government levy provides. SCRC's principal argument in favour of retaining its current pricing policies is that monopoly control over commercial waste services is required to promote its environmental goals. The need for ecologically sustainable development is one of the competitive neutrality criteria.

## Ecologically Sustainable Development

SCRC (January 2012a) believes that unless it maintains control over the commercial waste stream through the mandatory levy it may not be able to meet the waste minimisation targets in its Waste Minimisation Strategy (2009) because the best new technology will not be economic if commercial operators divert waste from Council facilities.

A cost benefit analysis prepared for SCRC found that significant net costs would be incurred by moving from current bulk waste management policies to a policy where mandatory utility charges are not levied for commercial collections (AEC 2011).

A key assumption of the cost benefit analysis is that without the mandatory levy a significant number of commercial customers would choose not to recycle and competitive recycling companies would only be interested in collecting high value recycling (e.g., cardboard and paper) and would not collect lower valued recyclable material (such as glass and plastic). The environmental costs would be significant additional demand for scarce landfill space, higher levels of carbon emissions from landfills, higher rates of soil contamination and more noise and congestion from less efficiently organised commercial waste collection operators.

AEC estimated costs and benefits under two scenarios. In the first scenario existing disposal facilities would be used to handle the additional waste that it assumes would be sent to landfill. In the second scenario AEC estimates the benefits and costs that would be foregone if an Alternative Waste Technology (AWT) currently under consideration is not built because SCRC loses control over the commercial waste stream.

The AEC assumption is that an AWT facility would be economical only if delivery of the bulk waste stream to the AWT is guaranteed. The specific AWT technology modelled by AEC would be capable of diverting a substantial portion of the waste stream from landfill by using incineration to convert waste to energy.

The Authority considers that it is extremely unlikely that the AWT modelled by AEC would be an economical option even if SCRC retains its monopoly control over the commercial waste stream. AEC reports that the cost per tonne of processing waste through the AWT is substantially higher than either disposal to landfill or other AWT technology options that were not modelled. Substantial increases in municipal (residential) charges would be required to pay for the AWT. This cost to the community is not included in the AEC cost benefit analysis.

With respect to the scenario that does not involve building the AWT, the net cost of ending the SCRC commercial monopoly is based on the assumption that waste diversion rates fall from their current level of 17.3% to 4.4% – the diversion level that SCRC asserts was achieved in portions of the SCRC territory prior to implementing the mandatory levy. (Waste diversion is defined as the percentage of the total waste stream diverted from disposal at a landfill through recycling or other means.)

The Authority considers that it is unlikely that the diversion rate would fall to the level assumed by AEC. The Department of Environment and Resource Management (DERM) reported that the average diversion rate in Queensland in 2008 was 18 percent, close to what SCRC claims its policy has achieved even though SCRC is the only Council in Queensland that imposes a mandatory levy throughout its entire area.

The 4.4% diversion rate prior to the mandatory levy does not include recycling collected by competitors prior to institution of the mandatory levy. Therefore, a significant portion of the growth from 4.4% to 17% is likely due to substitution from competitors to SCRC. Even if the mandatory levy is eliminated, a significant volume of high value material is likely to be collected by competitors. Moreover, at least some commercial customers are likely to retain their commingled recycling service.

## Other Environmental Concerns

One of the reasons SCRC cites for the need to build an expensive AWT facility is the shortage of landfill capacity in the Sunshine Coast. Lloyd Consulting (2009) notes that South East Queensland has two of Australia's best private sector landfills. The Swanbank and Ti-Tree facilities both have accelerated degradation landfills that generate power from landfill emissions.

SCRC has taken the position that it does not want to ship waste outside its area, citing traffic congestion and other environmental concerns. Nevertheless, waste is shipped over significant distances in Australia (Veolia 2012).

AEC also estimates the social cost from additional waste collection truck runs that it assumes will result from competition. AEC's cost estimate is based on the upper range of available estimates. Further, the increase in the number of truck runs assumed by AEC seems excessive.

AEC also considers the qualitative costs of noise and congestion. These may be addressed by regulations to limit pick-up times for all competitors (as is the case in many cities).

## Experience from Other Jurisdictions

The absence of a mandatory waste levy for all commercial ratepayers in other jurisdictions provides *prima facie*, but only *prima facie*, evidence that the net benefits of restricting commercial competition are not as large as SCRC claims. Data provided by AEC (2011) show that SCRC is the only Council that restricts all commercial general waste and recycling competition in its area. Some limited restrictions do apply in some jurisdictions.

## Alternative Policy Options

AEC (2011) has assigned low benefits or high costs of implementation to a number of alternative policy tools available to encourage commercial recycling in a competitive market. AEC rejects a wide range of alternative policy approaches as being too costly or difficult to implement.

Synergies (2012) points out that AEC's 'assessment of options to encourage recycling is superficial and does not provide sufficient analysis to support the rejection of alternatives'. Increasing the cost of using the landfill or using a CSO to reduce the cost of delivering bulk recycling to recycling centres are policies that would provide market signals to competitors to help SCRC achieve its environmental goals.

SCRC (January 2012) considered that the CSO approach would be inappropriate in that it would place the burden of meeting waste diversion targets across the community rather than on those actually generating the waste in the first place. However, under current arrangements SCRC's bulk recycling service customers do not bear the full burden of the costs they impose. Moreover, to the extent that the waste minimisation strategy is intended to reflect broader community benefits, it is appropriate for the community to subsidise such an initiative, and for that subsidisation to be transparently reported (through an appropriate CSO).

Synergies (June 2012) has estimated costs and benefits of the SCRC policy in the 'without AWT' case under alternative assumptions about diversion rates and efficiencies that competition could provide. The possible efficiencies include lower operating costs, higher rates of technological change, more efficient collection and processing of high value recyclable material, and an increase in the quality and variety of recycling services available to commercial customers. Synergies demonstrate that plausible assumptions about efficiencies and diversion rates achievable under competition can lead to positive net benefits from competition, taking account of costs for designing and implementing pricing or subsidy mechanisms.



## The Need to Promote Competition

The need to promote competition is one of the competitive neutrality criteria. SCRC maintains that the benefits of competition are captured through its competitive tendering process, and that free entry into the commercial bulk recycling business will not result in effective competition.

The Productivity Commission (2006) found that municipal (residential) waste collection is best organised around monopoly due to significant economies of density. However, the Productivity Commission noted that competition is appropriate for firms that produce large amounts of waste or have specific requirements as to the frequency of waste collection. That is, competition is feasible and appropriate for commercial waste and recycling. Indeed, throughout Queensland and Australia more generally, the commercial recycling business is typically open to competition.

WCRAQ (January 2012a) reports that multiple recycling operators are available to provide bulk recycling services for the Sunshine Coast.

Competition within the market, where it is feasible, rather than competition for the market through a one-off tender process, is typically preferred as it is more likely to encourage efficient pricing, meet customer needs and promote more rapid introduction of technological advances.

## Conclusion

After considering the submissions on these matters, and reviewing available information, the Authority's view is that a case for exempting SCRC pricing from competitive neutrality requirements based on consideration of the competitive neutrality criteria has not been proven.

The Authority recognises that, in the absence of detailed convincing information, it is not possible to establish, with absolute certainty, that the current SCRC pricing arrangements should be changed to remove the competitive advantage for SCRC's WRM business activity. However, the practices of other councils and jurisdictions, the questionable benefits and appropriateness of the AWT, the feasibility of market based incentives to encourage recycling, and efficiencies that generally flow from competition all lead the Authority to conclude that the application of a mandatory levy with no opt-out capability is not appropriate.

## Recommendations

The Business Activities Regulation (s145) requires the Referee to make recommendations on how the business entity can conduct the business activity in a way that complies with the principle of competitive neutrality and provide the reasons for the recommendation.

The Authority considers that the following are the key elements of a strategy that would allow WRM to conduct bulk waste recycling service in a way that complies with the principle of competitive neutrality (and achieve SCRC's objectives):

- (a) remove bulk waste recycling services from the scope of the mandatory arrangements associated with bulk waste services (to eliminate the competitive advantage);
- (b) ensure that bulk waste recycling services are provided on a commercial basis unless there are good reasons not to do so, in which case any subsidy should take the form of a CSO that would allow all service providers to compete on a similar basis;
- (c) allow competitive collection of bulk waste for recycling purposes;
- (d) allow competitive disposal of bulk recycled waste; and

- (e) ensure appropriate differential pricing of landfill and alternatives for recycling and disposal of bulk waste, including consideration of imposition of a landfill levy to replace the state levy that is being repealed in order to directly encourage commercial recycling and fund recycling programs or enforcement activity.

## Reasons

As discussed in the body of the Report, the Authority considers that the recommendations will effectively:

- (a) take account of SCRC's commitment to its Waste Minimisation Strategy;
- (b) recognise that services provided below cost will be taken up at a more rapid rate;
- (c) recognise the limited local options for further landfill and the uncertainty associated with an AWT solution (at least of the technology and size being contemplated);
- (d) realise the benefits of a more competitive framework for service delivery as it relates to collection and disposal – noting that this will also most effectively access more of the national and regional economies of scale and scope, and promote greater innovation in service delivery (not necessarily only by current service providers);
- (e) respond to SCRC's concern about potential lack of servicing of some customers (market failures) where profitable recycling may not be possible due to the costs involved;
- (f) respond to SCRC's concerns about the costs of implementing a law to impose a commercial waste management monopoly;
- (g) respond to SCRC's concerns about the cost of implementing a CSO regime and its potential to result in the local community subsidising waste disposal by other communities; and
- (h) respond to SCRC's concerns about the costs of implementing and enforcing regulations to require commercial uptake of recycling services.

## Matters of Legal Interpretation

In the course of the investigation, the Authority identified several instances of a lack of clarity and potential ambiguity in the legislation that governs compliance with, or the investigation of, complaints about breaches of the principle of competitive neutrality.

These include:

- (a) the Business Activities Regulation (s19) could be interpreted as limiting the application of the full cost pricing reform requirements to situations where full cost pricing is occurring as part of another type of reform (commercialisation and corporatisation) rather than to the full cost pricing reform.

The Authority has proceeded on the basis that the full cost pricing reform requirements do apply when full cost pricing is not part of another reform (s19 does not expressly exclude its application to the full cost pricing reform).

- (b) it is possible to interpret the Local Government Act, the Business Activities Regulation and the Full Cost Pricing Guide variously as either requiring:



- (i) merely that collectively the goods or services supplied by the relevant business activity must be charged on a basis that recovers the aggregate full cost of providing all such goods or services (effectively being the view expressed by SCRC); or
- (ii) in addition, that the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs absent a commercial basis for not doing so.

The Authority has concluded that it is possible to reconcile the various interpretations as requiring that full cost pricing is effectively achieved if, for an activity, the total expected revenue from all sources is expected to cover all costs of the business activity, and that, except where there are appropriate commercial circumstances for not doing so, prices for particular goods and services should reflect their full cost.

- (c) the Business Activities Regulation (s138) does not require the Authority to consider the competitive neutrality criteria when considering the appropriateness of the principle of competitive neutrality.

The Authority has proceeded on the basis that the Local Government Act, which provides the head of power for the Business Activities Regulation, notes that the principle of competitive neutrality must be applied if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation. Consideration of such public benefits is therefore relevant and open to the Authority and the competitive neutrality criteria provide a useful framework for this purpose.

In the circumstances of this investigation the Authority notes that its findings would not have been altered by adopting the alternative interpretations referred to above. However, the Authority suggests that the Minister for Local Government review the competitive neutrality requirements created under the Local Government Act with a view to clarifying their intent.

### **Draft Investigation Report**

SCRC and WCRAQ were provided with an opportunity to review a copy of a preliminary Draft Report at the Authority's offices on 8 December 2011. The purpose of the review was to ensure that no information considered confidential was being inadvertently disclosed by the Authority. However, SCRC objected to the analysis and conclusions in the preliminary draft and by letter dated 9 December 2011 requested an opportunity to provide additional information. The Authority granted this request.

Additional information and argument was supplied to the Authority on 10 January 2012. A significant element of the SCRC's response was that the Authority had not adequately considered the cost benefit analysis prepared for SCRC by AEC and previously submitted to the Authority. The Authority requested Synergies to conduct a peer review of the AEC study.

The Authority revised its preliminary draft to respond to information supplied by SCRC and included the results of the Synergies peer review. The Draft Investigation Report was provided to WCRAQ and SCRC on 24 February 2012, requesting comments by 2 April 2012. SCRC requested additional time to respond to the Draft Report, but the Authority considered that SCRC had already been provided adequate opportunity to respond to the arguments in the Draft Report and denied the request.

SCRC provided extensive comments on the Draft Report on 2 April 2012 indicating broad disagreement with the Authority's findings, analysis and recommendations. This Final Investigation Report responds to arguments in the SCRC submission responding to the Draft Report.

The Executive Summary of SCRC's submission in response to the Draft Report lists the major disagreements with the Authority's analysis and findings. The following table presents SCRC

positions regarding the Draft Report and provides a brief response from the Authority with references to the relevant discussion in this Final Report.

**Table 1: SCRC Submission and Authority's Response**

<i>SCRC Comment</i>	<i>Response</i>	<i>See Section</i>
<i>1. The Draft Report contains fundamental errors in the interpretation and application of the full cost pricing and legislative and associated requirements of the principle of competitive neutrality.</i>	The Authority's interpretation of the competitive neutrality requirements as discussed in the Draft Report has not changed in light of SCRC's submission. However, the Authority has restructured the discussion in the Final Report and added commentary to address specific arguments raised.	4.3
<i>2. The Draft Report is internally inconsistent – sometimes treating bulk waste recycling services as a significant business activity in its own right and sometimes as part of a significant business activity.</i>	There is no inconsistency. WRM is the significant business activity. Competitive neutrality requirements apply to individual services that are part of the activity.	4.3
<i>3. The Draft Report fails to apply the requirement of full cost pricing 'on average' across the whole of the significant business activity, and seeks, incorrectly, to apply full cost pricing to a single service or component of the significant business activity.</i>	<p>SCRC's submission relies almost entirely on its interpretation of the Full Cost Pricing Guide to conclude that full cost recovery is only required at the business activity level. The Authority agrees that it is possible to interpret the Guide in this way. However, the Guide provides at best ambiguous support for SCRC's position. The Authority believes that the Local Government Act and the Business Activities Regulation, which were enacted subsequent to the Guide and should be given precedence over it, clearly require commercially reasonable pricing of individual services. The full costs of individual services provide a benchmark. Deviation from the benchmark is allowed where appropriate for commercial reasons.</p> <p>Moreover, SCRC fails to recognise that the mandatory levy provides SCRC with a competitive advantage that it is possible and appropriate to remove. This competitive advantage, which is based on SCRC's exercise of its government powers, and which it is possible and appropriate to remove, is sufficient by itself for the Authority to conclude that SCRC has violated competitive neutrality requirements.</p>	4.3, 4.4
<i>4. The Draft Report fails to draw any conclusion on whether Waste &amp; Resources Management total revenue covers total costs of the significant business activity.</i>	The requirement for WRM's total revenue to cover total costs is only one element of the full cost pricing reform. However, the complaint under investigation relates to the SCRC's use of its governmental powers to create a competitive advantage and to the pricing of particular services. Therefore, the relationship between total revenue and total cost of the significant business activity does not change the Authority's conclusions. The offering of bulk waste and recycling services on terms that provide a competitive advantage due to SCRC's government status, and at prices that do not reflect the full costs of those services and are not otherwise consistent with reasonable commercial practice, is the subject of the investigation into SCRC's pricing. It constitutes a breach of the competitive neutrality principle irrespective of any conclusion reached about the total revenues and costs of the WRM business activity.	4.5

<i>SCRC Comment</i>	<i>Response</i>	<i>See Section</i>
<i>5. The Draft Report fails to apply the threshold monetary test when seeking (incorrectly) to treat the bulk waste recycling service as a significant business activity</i>	<p>SCRC's argument is that bulk waste recycling is not itself a significant business activity to which competitive neutrality and full cost requirements apply. On this interpretation a local government could structure the offerings of a business activity such that a variety of separate services are defined, each of which falls below the revenue threshold for a significant business activity, thus relieving itself of having to comply with competitive neutrality requirements. This is not a reasonable result.</p> <p>SCRC makes the related argument that even assuming that the legislative framework applies to individual services (as the Authority considers it does), the relevant service being supplied by SCRC is a single 'best practice solid waste management' service sold to commercial customers, which includes both the general waste and recycling options. The Authority's view is that placing two separate services that can be provided by distinctly different infrastructure with identifiable and separate costs into a single bundle does not in substance make them part of a single service for competitive neutrality purposes.</p>	4.7
<i>6. The Draft Report purports to distinguish and dismiss a relevant determination of the Productivity Commission (which contradicts the draft interpretation of the relevant principles by the Authority) on grounds that are not sustainable.</i>	The Authority discussed the Productivity Commission decision in its Draft Report and has not changed its view that Queensland's competitive neutrality legislation and regulations differ from those of the Commonwealth. Commercial pricing of particular goods and services is required for local government significant business activities.	4.5
<i>7. The Draft Report makes recommendations based on an interpretation of the relevant legislative requirements that the Authority asserts are so ambiguous, they need to be reviewed by the relevant Minister.</i>	The Draft Report reached conclusions based on the Authority's interpretation of the relevant legislative requirements. However, the Authority recognises that there is disagreement about the applicability of full cost pricing to individual goods and services and suggests review by relevant ministers. In any event, the contrary interpretation would not change the Authority's conclusion that the mandatory levy violates competitive neutrality principles because its application provides a competitive advantage only because of government ownership of the service. This finding is not related to the disagreement about the application of the full cost pricing principle.	4.10
<i>8. The Draft Report makes recommendations based on an interpretation that clearly contradicts the unambiguous pricing principles in the Full Cost Pricing in Queensland Local Government – A Practical Guide (FCP Guide) previously reviewed by the Authority before implementation.</i>	<p>The Authority stands by the interpretation of the Full Cost Pricing Guide stated in the Draft Report, and notes that the language of both the Local Government Act and the Business Activities Regulation support its conclusions about SCRC pricing not meeting the requirements of the full cost pricing reform.</p> <p>The Final Report includes a discussion of the Queensland Government Full Cost Pricing Policy for state enterprises. The Full Cost Pricing Policy uses full cost pricing as a benchmark for pricing of individual services, consistent with the Authority's interpretation of the requirements of the Local Government Act and the Business Activities Regulation.</p>	4.5

<i>SCRC Comment</i>	<i>Response</i>	<i>See Section</i>
<i>9. The Draft Report lacks understanding by the Authority of the market failure inherent in the provision of recycling services by private sector operators to commercial and industrial premises, with these operators faced with considerably reduced economies of scale (number of services undertaken) and scope (number of products collected across a range of different waste generators), in addition to only being active in providing recycling services to recover high value products (i.e. bulk paper and cardboard) from high value waste generators.</i>	<p>The Authority addressed SCRC’s view of the recycling market failure in the Draft Report. The Authority considers that restriction of competition is not necessary to achieve reasonable environmental goals. Regulation, market based policies and CSOs can be used to promote environmental objectives while maintaining the benefits that competition provides.</p> <p>The SCRC view on potential competitiveness for commercial waste services is inconsistent with the findings of the Productivity Commission Waste Management study discussed in the Draft Report.</p> <p>WCRAQ has reported that its members would offer competitive commingled bulk recycling bin services to commercial customers in SCRC’s area, as they do in other areas.</p>	6.5
<i>10. The Draft Report lacks consideration by the Authority of the waste stream as a whole.</i>	The Authority understands the implications of its recommendations for the waste stream as a whole and discussed this subject in the Draft Report.	6.5
<i>11. The Draft Report has the presumption by the Authority that Council’s position must be worse than the alternative without appropriate consideration given to performance of the alternative.</i>	The Draft Report contained an extensive discussion of economic and environmental issues in the context of its evaluation of the competitive neutrality criteria. The Authority’s recommendations are intended as suggestions for accommodating reasonable environmental goals in the context of competitive provision of bulk recycling services.	6.5
<i>12. The Draft Report jumps to conclusions across a range of issues based on high-level information and experiences in other industries without appropriate investigation into cause and effect in the local context and for waste activities with a responsibility to maximise waste diversion from landfill.</i>	The Authority does not consider that SCRC has a ‘responsibility to maximise waste diversion from landfill’ to the exclusion of other important goals, including the goals of National Competition Policy. The mandatory levy is effectively an anticompetitive provision. SCRC should have justified the establishment of such a monopoly through a full public benefit assessment with input from affected parties and state government.	6.5
<i>13. The Draft Report contains the continued assertion that the adoption of the Authority’s recommendations would not impact resource recovery outcomes in the region, when they will clearly have significant and long-lasting effects on the extent of resource recovery from the commercial and industrial sector in addition to the need to potentially site additional landfills within the Sunshine Coast region.</i>	The Authority does not consider that its recommendations would not impact resource recovery outcomes in the region. Indeed, the Authority believes that it possible that certain alternatives to the mandatory levy could increase resource recovery from present levels. The Authority recommends alternatives to the anticompetitive mandatory levy that would encourage commercial recycling without imposing a de facto monopoly.	7.3

---

<i>SCRC Comment</i>	<i>Response</i>	<i>See Section</i>
<i>14. The Draft Report concludes that waste disposal to landfill/s in Ipswich would be a more appropriate outcome than resource recovery, which would appear to directly contradict the proximity principle in applicable waste management legislation.</i>	The proximity principle of the <i>Waste Reduction and Recycling Act 2011</i> is a goal. The Authority's believes that there are alternatives, including using landfills outside of SCRC's area, that may allow for greater resource recovery without the need for building an expensive AWT that likely has a negative net present value and would substantially raise costs for all Sunshine Coast ratepayers.	6.5
<i>15. The Draft Report contains draft recommendations which, for all the reasons articulated above, could not be implemented by Council.</i>	The Authority's recommendations are based on well accepted tax, subsidy and regulatory mechanisms that have a solid basis in public policy. The Queensland Waste levy and the carbon tax are examples of using price signals in the context of competitive markets to encourage results that are considered socially beneficial.	7.3

---

## 1. INTRODUCTION

### 1.1 Referral of Competitive Neutrality Complaint

On 14 April 2011, the Sunshine Coast Regional Council (SCRC) referred a competitive neutrality complaint to the Queensland Competition Authority (the Authority) (SCRC April 2011a). The complaint was initially made to SCRC by the Waste Contractors and Recyclers Association of Queensland (WCRAQ) ) on behalf of some of its members, on 23 April 2010, and was made against SCRC's Waste and Resources Management (WRM) business activity (WCRAQ 2010).

#### 1.1.1 WCRAQ Complaint

The WCRAQ complaint concerns SCRC's bulk (commercial) recycling services provided to commercial premises. WCRAQ objected to SCRC's Regional Waste Minimisation Strategy 2009-2014 (SCRC December 2009). According to WCRAQ, the Waste Minimisation Strategy is based on restricting the private sector in providing bulk waste services, including bulk recycling services.

WCRAQ made several specific complaints about SCRC pricing and conduct in the waste management business:

- (a) SCRC's bulk recycling service, offered to businesses as being free/no extra charge, falsely and dishonestly excludes the information that SCRC has in fact charged the property owner for the service in its rate structure;
- (b) customers are not informed that SCRC now incurs two new additional costs as a result of introducing bulk recycling services:
  - (i) SCRC's additional contractor cost for conducting the new service; and
  - (ii) SCRC's additional costs for having recyclables collected and processed;
- (c) WCRAQ members are unable to compete on the same terms as SCRC is offering;
- (d) SCRC officers have actively encouraged customers to cancel their commercial recycling service on the basis that SCRC is offering a free bulk recycling service; and
- (e) SCRC claims to offer a weekly service, but only in fact offers a fortnightly service.

Attached to SCRC's correspondence to the Authority was copy of correspondence from Elliott May lawyers on behalf of WCRAQ (Elliott May March 2011) that focused on two issues, namely that:

- (a) officers of SCRC working within WRM have been directed to write to numerous businesses encouraging them to breach their existing contracts; and
- (b) SCRC's repeated use of the phrase 'unauthorised contractor' when referring to WCRAQ members suggests that the conduct of those members is somehow improper and/or unlawful.

Elliott May (May 2011) subsequently sought to make a complaint on behalf of WCRAQ directly with the Authority. The Local Government Act 2009 (Qld) (Local Government Act) does not provide for such complaints against local governments to be made directly to the Authority. However, the Authority considers that the matters raised by Elliott May could be used as information supporting the complaint referred by the SCRC.

Elliott May asserts that SCRC is enjoying a competitive advantage by:

- (a) implying that the activities of WCRAQ members are improper and unlawful;
- (b) recommending to WCRAQ customers that they have the right to terminate valid and binding contracts entered into between WCRAQ members and customers;
- (c) advising customers that WCRAQ members are unauthorised contractors;
- (d) offering to provide the commercial services provided by WCRAQ members at no charge to their customers; and
- (e) inducing the customers of WCRAQ members to breach their contracts with members on the basis that it would be financially advantageous for the customers to do so and implying to customers that they may do so without any adverse consequences.

In essence, the complaint involves both the pricing and conduct of SCRC's WRM business activity.

### 1.1.2 SCRC Referral

SCRC (April 2011a) states that:

*Council's policy position is that domestic and commercial waste collection services on the Sunshine Coast shall be provided by its collection contractors as a valid exercise of a statutory function to ensure a number of outcomes that may not be achievable if that collection system was open to competition.*

SCRC (September 2011) refers to its authority to levy utility charges (Local Government Act s94) and establish rates by Council resolution (Local Government Act s94(2)) as the relevant statutory functions.

SCRC also states that certainty over the inclusion or exclusion of commercial premises in the WRM collection service structure is required prior to expiration of its current collection contracts and in order to plan for new recycling and waste facilities.

## 1.2 SCRC's Waste Management Strategy and Business Activity

### 1.2.1 Strategy

SCRC (December 2009) adopted a Waste Minimisation Strategy designed to promote its environmental objectives by minimising waste and maximising recycling in order to become 'Australia's most sustainable region – vibrant, green and diverse.'

SCRC (January 2012a) notes that environmental sustainability is a very important consideration in policy development and implementation and in day-to-day operations.

AECgroup (AEC) (2011) notes that:

- (a) 'Council is significantly constrained in its waste disposal options with capacity exhaustion of current landfill space within the next 7-10 years based on current levels of waste generation and community dissatisfaction with new landfills in the region';
- (b) SCRC's Waste Minimisation Strategy aims to divert 70% of waste from landfill by 2014. The Queensland Government waste diversion target for commercial and industrial waste by 2020 is 60%. (Waste diversion is defined as the percentage of the



total waste stream diverted from disposal at a landfill through recycling or other means.)

- (c) As part of the Queensland Government strategy, a \$35.00 per tonne levy has been applied (in effect by SCRC from December 2011) to all commercial and industrial waste land fill – but not to domestic waste, recyclable waste or for local government cleansing operations (e.g., street sweeping, park bins) The new Queensland Government has subsequently determined to eliminate this waste levy.;
- (d) there has been ‘significant improvement in diverting waste from landfills through better education of residents, doubling of a garden waste service catchment, continued expansion of recycling bins to commercial premises and improved sorting and recycling of building waste; and
- (e) achievement of the SCRC waste diversion target will likely revolve around alternative waste management solutions such as the development of an Alternative Waste Technology (AWT) facility. Such a facility would utilise advanced processing of waste using technology such as anaerobic digestion, composting, incineration, and waste to energy.

SCRC (April, 2011a) asserts that it needs certainty over the volume of waste received from Council’s SCRC’s collection services and this extends to ‘right sizing’ other significant contracts/infrastructure, including the Material Recovery Facility and the potential Alternative Waste Technology facility. However, SCRC (April 2011b) noted that construction of an AWT is dependent upon the availability of proven technology and funding from the (soon to be repealed) Queensland Government waste levy.

And further, SCRC notes that if SCRC’s statutory function is lost post contract signing, as a result of the intervention from other levels of government, there is the potential for significant penalties to be incurred by the Sunshine Coast community.

## 1.2.2 Business Activity

SCRC provides waste collection services to both domestic households and commercial premises through the WRM business activity. WRM is also responsible for managing SCRC’s waste disposal and recycling processing centres.

SCRC (January 2012a) states that WRM ‘is primarily responsible for the co-ordination and facilitation of waste activities to ensure waste products are collected and processed/disposed in a socially and environmentally appropriate manner consistent with regional sustainability objectives’.

SCRC also indicates that ‘WRM is not intended to be a business unit with profit maximisation in mind and is instead considered to provide a community-focussed function with the responsibility of implementing Council’s (and the community’s) Waste Minimisation Strategy and managing the array of contracts in place to achieve this outcome.’

Domestic households are provided a bundled waste collection and disposal service, consisting of a weekly general waste service (80L, 140L or 240L) and a fortnightly recyclables service (240L). A green waste service (240L) is available for an additional charge (SCRC June 2010).

Commercial premises are provided with general waste bins in size categories ranging from wheelie bins to large trash compacting bins. The charge is based on the bin size provided at each property.

WRM makes available a recycling service up to the same size as the general waste service (up to a maximum of 3m<sup>3</sup>). The recycling service is available to all commercial ratepayers for no additional charge beyond the charge for the waste bin.

Commercial services with bins larger than 240L are referred to as bulk services (which include both bulk general waste and bulk recycling services). The WCRAQ complaint relates to bulk recycling services.

WRM contracts with private sector operators to provide both domestic and commercial waste collection services (SCRC August 2011). The contractors are selected through a competitive tender process. There are currently three contractors, one for each of the areas previously administered by the Councils that were amalgamated into SCRC in 2008.

### 1.3 Competitive Neutrality

The competitive neutrality principle is that ‘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’ (Local Government Act s43(3)).

Examples of competitive advantages which an entity may have because it is in the public sector include exemption from taxation and differential regulation from that applied to the private sector. Conversely, government businesses may also suffer disadvantages that can affect their ability to compete on an equal footing. For example, government businesses are subject to public sector accountability legislation such as the *Freedom of Information Act 1992*<sup>1</sup> (Queensland Government, 1996).

#### 1.3.1 Implementation

The principle of competitive neutrality is applied to a significant business enterprise of a local government ‘if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation’ (Local Government Act, s43(2)).

Significant business activities are defined by the *(Local Government (Beneficial Enterprises and Business Activities) Regulation 2010 (Qld)* (Business Activities Regulation). Type 1 significant business activities are those with annual revenues exceeding \$23.6 million (Business Activities Regulation s9(2)). SCRC’s WRM business activity had revenues of \$57.5 million in 2009-10, making it a Type 1 significant business activity.

Councils must consider application of the corporatisation, commercialisation or full cost pricing reform options for their Type 1 significant business activities. A Public Benefit Assessment of reform options was conducted for SCRC by AEC. AEC recommended adoption of the full cost pricing business model:

*The [Public Benefit Assessment] shows that when comparing the net community benefit of the available reform options, the adoption of the Full Cost Pricing (FCP) business model provides the greatest net community benefit when compared to the Commercialised Business Unit (CBU) and Local Government Owned Corporation (LGOC) business models (AEC2010).*

SCRC sought to apply the full cost pricing reform option to the WRM business activity on the basis of the AEC public benefit assessment (SCRC June 2011b).

---

<sup>1</sup> Now replaced by the *Right to Information Act 2009* (Qld).

### 1.3.2 Full Cost Pricing Reform

The full cost pricing reform option does not require structural change, but does require ‘removal of competitive advantages or disadvantages due to the entity being in the public sector whenever possible and appropriate’ (Business Activities Regulation s20(1)(b)) and pricing the business activity on a commercial basis (s44(4) Local Government Act and Business Activities Regulation (Schedule 1, s2(1))). The requirements of the full cost pricing reform are addressed further in section 4.3.

### 1.3.3 Competitive Neutrality Criteria

In considering a competitive neutrality complaint, the Business Activities Regulation (s140(2)) requires a Referee to consider local government policies and directions to the business entity related to the treatment of competitive advantages or disadvantages, including: community service obligations (CSOs); availability of services; and economic and regional development issues.

The Referee must also consider a set of competitive neutrality criteria when investigating a competitive neutrality complaint. These include: local government policies, or a law, about ecologically sustainable development, industrial relations, occupational health and safety; the need to promote competition; and the need to allocate resources efficiently (s140(3) Business Activities Regulation).

The relevance, and implications, of these competitive neutrality criteria to the investigation, including their application when the Authority is the referee, are addressed in section 6.

## 1.4 Consultation

In response to requests from the Authority, additional submissions and information were supplied by both SCRC and WCRAQ during the course of the investigation. The Authority considered all submissions made by SCRC and WCRAQ and consulted extensively on the matters of the complaint.

In addition, the Authority reviewed, *inter alia*, SCRC’s: Waste Minimisation Strategy (2009); the Waste Minimisation Strategy Up-Date (2011); the Waste & Resources Management Operational Plan (2011/12); the Public Benefit Assessment of Reform Options for Waste Management Activities (AEC Group, June 2010); and, the Cost-Benefit Analysis of Levying Waste Utility Charges on Commercial Premises (AEC Group, September 2011).

In the course of the investigation, the Authority also met with staff of the Department of Environment and Resource Management (DERM) to discuss the role of the *Environmental Protection Act 1994 (Qld)* (EPA) in regulating waste management and consulted with the Treasury Department and the Department of Local Government and Planning (DLGP).

## 1.5 Draft Investigation Report

SCRC and WCRAQ were provided with an opportunity to review a copy of a preliminary Draft Report at the Authority’s offices on 8 December 2012. The purpose of the review was to ensure that no information considered confidential was being inadvertently disclosed by the Authority. However, SCRC objected to the analysis and conclusions in the preliminary draft and by letter dated 9 December 2012 requested an opportunity to provide additional information. The Authority granted this request.

Additional information and argument was supplied on 10 January 2012. A significant element of the SCRC response was that the Authority had not adequately considered a cost

benefit analysis prepared for SCRC by AEC and previously submitted to the Authority. The Authority requested Synergies Economic Consulting (Synergies) to conduct a peer review of the AEC study.

The Authority revised its preliminary draft to respond to the additional information supplied by SCRC and included the results of the Synergies peer review. The Draft Investigation Report was provided to WCRAQ and SCRC on February 24 and requested comments by 2 April 2012. SCRC requested additional time to respond to the Draft Report. However, the Authority considered that SCRC had already been provided with an adequate opportunity to respond to the arguments in the Draft Report and denied the request.

WCRAQ provided a brief response to the Draft Investigation Report. SCRC provided extensive comments on the Draft Report indicating broad disagreement with the Authority's findings, analysis and recommendations.

This Final Investigation Report has taken into account matters raised in the submissions received from stakeholders. In addition, this Final Report takes into consideration further analysis developed in the course of its own investigations as well as a second Synergies Report prepared at the request of the Authority to analyse certain matters raised by the SCRC submission on the Draft Report.

## 2. THE DECISION TO INVESTIGATE

### 2.1 Review Prior to Investigation

The Business Activities Regulation (Chapter 6) establishes a detailed process for the Authority to follow when considering complaints that have been referred by a local government. The first step is for the Authority to decide whether to accept the referral. The Authority may refuse to investigate if the Authority reasonably believes that the complainant has not met the requirements discussed below (Business Activities Regulation s136).

SCRC (January 2012a) advised that it has taken the initiative to forward the complaint to the Authority as a competitive neutrality complaint for investigation as a result of the 'need to ensure that its policy position (and ability to levy a waste management utility charge on commercial properties under the Local Government Act) could be maintained as part of the next round of collection contracts, in addition to contracts for resource recovery operations'.

#### 2.1.1 Genuine Attempt to Resolve the Dispute

The complainant must have made a genuine attempt to resolve the dispute using the process established by the Council.

WCRAQ (August 2011) formally raised its concerns with SCRC's waste management business activity in correspondence of 23 April 2010 (WCRAQ 2010) and 30 March 2011 (Elliott May 2011). WCRAQ (August 2011) states that it followed up with additional letters and phone calls, but did not receive a response. By referring the matter to the Authority, the SCRC appears to have formed the view that the WCRAQ correspondence constituted a valid attempt to resolve the dispute.

The SCRC did not apply its dispute resolution process, which provides for an initial investigation by the SCRC to establish the facts, preparation of a draft response, and consultation with the complainant.

SCRC (January 2012a) advised the Authority that the complaint process was not followed in this case due to uncertainty over then pending regulations. The Business Activities Regulation 2010 had not been finalised when the complaint was made and also changes were being made to the *Environmental Protection Act 1994* (EPA) and the *Trade Practices Act 1974*<sup>2</sup>.

SCRC also noted that the WCRAQ April 2010 letter was not formally identified or made as a competitive neutrality complaint. However, Elliot May (March 2011) did expressly raise competitive neutrality concerns.

The Authority could possibly decline to investigate on the ground that WCRAQ could have made further attempts to resolve the dispute using SCRC's process. However, the fact that the dispute resolution process was not used in this instance results from SCRC's actions and not those of WCRAQ. The Authority proceeded on the basis that WCRAQ made a genuine attempt to resolve the dispute.

#### 2.1.2 Complainant Must be Legally Entitled to Provide the Goods and Services

The complainant(s) must be an actual or potential competitor with the local government in the supply of the goods or services that are the subject of the complaint.

---

<sup>2</sup> Now the *Competition and Consumer Act 2010* (Cth)

SCRC (April 2011a) states that SCRC's 'policy position is that domestic and commercial waste collection services on the Sunshine Coast are provided by its collection contractors is a valid exercise of a statutory function to ensure a number of outcomes that may not be achievable if that collection system was open to competition'.

The *Local Government (Operations) Regulation 2010* (Operations Regulation) establishes the terms on which a local government may make a law that contains an anti-competitive provision (a provision that creates barriers to competition or entry in a market).

The Authority was unable to find a SCRC law establishing a bulk waste service (or a bulk recycling) monopoly for its WRM business activity. SCRC (July 2011) advised that it could find no formal law or policy establishing the monopoly. However, SCRC advised that it approves an Annual Revenue Statement (ARS) that establishes rates and charges for waste management services levied on all domestic and commercial properties in their service collection areas.

The Authority considered that the Revenue Statement does not constitute a law establishing a bulk recycling monopoly that would bar the complainants from competing.

Further, the Authority is aware that there was a provision of the EPA that required waste management contractors to seek local council approval to perform waste management works in their territories. Exceptions included in that provision of the EPA may have allowed competition without local government approval for some waste management activities.

WCRAQ (July 2011) reported to the Authority that the complainants all had the necessary permits and SCRC council approvals to conduct their waste management activities and provided documents to support their claim.

Consequently, the Authority concluded that WCRAQ's members on behalf of whom the competitive neutrality complaint was made were (and are) at least potential competitors of SCRC.

The Authority's conclusion was confirmed when SCRC (September 2011) subsequently clarified its position and noted that rate payers are indeed free to use other waste management services providers to collect part or all of their waste and that it has taken steps to ensure that rate payers are not told that they cannot use other waste management services providers to collect their waste.

### **2.1.3 Adversely Affected**

The complainant must be adversely affected by alleged breaches of the principle of competitive neutrality or be able to show that it is likely they would be adversely affected in the future.

WCRAQ is not an affected person. WCRAQ is an industry association that is not itself seeking to compete with SCRC.

However, WCRAQ is acting as agent for some of its members who could potentially be in competition with the SCRC. WCRAQ provided the names of the specific members on whose behalf the complaint was filed.

The Authority requested details on how the complainants were adversely affected by SCRC actions. WCRAQ (April 2010) claimed that the entry by SCRC into the previously limited but open recycling sector made WCRAQ members unable to compete on the same terms as SCRC is offering.

WCRAQ (July 2011) asserted that the adverse effects on the complainants of SCRC's waste management practices are as follows:

- (a) WCRAQ members are prevented from offering more complete and flexible arrangements and holistic pricing for all of a potential customer's waste and recycling services (which include liquid and grease trap removal, sanitary services to washrooms, specialist industrial clean outs, bulk processing of manufacturing and product destruction, confidential paper destruction); and
- (b) prices in the market and member operating costs and business profit are negatively affected. For example, business capital returns on equipment are reduced. The ability of WCRAQ members to service state (Queensland) as well as national customers according to agreed and negotiated contracted arrangements put in place are impacted where these same businesses have operating branches in the full SCRC area.

Consequently, the Authority concluded that WCRAQ members were potentially adversely affected by the alleged violations of competitive neutrality requirements.

SCRC (January 2012a) has since responded to WCRAQ's assertion of adverse effects by noting that the services identified in (a) above are 'currently open for any private operator to provide to commercial properties across the Sunshine Coast region' and that 'they all require separate resourcing and equipment from the provision of general waste and recycling collection services'.

As such, SCRC contends that no economies of scope would exist in relation to the bundling of these other services with general waste and/or recycling collection services. Overall, SCRC claimed that it is unclear as to how WCRAQ members are in fact adversely affected outside of the broad principle of their desire to actively compete for collection services across the region.

The SCRC response to WCRAQ's claims of adverse effects does not persuade the Authority. WCRAQ members are unable to provide a full suite of services to customers because of the effect of the mandatory levy and this would undoubtedly impair their marketing efforts. Moreover, WCRAQ members serving areas adjacent to areas served by SCRC's designated contractors are unable to compete for business for which they may have capacity and a cost advantage, also because of the effect of the mandatory levy. More generally, WCRAQ members are ready, willing and able to compete for bulk recycling services, but are restricted from doing so by SCRC's use of the mandatory levy.

#### **2.1.4 Frivolous or Vexatious**

The complaint must not be frivolous or vexatious. There was no evidence that the complaint was frivolous or vexatious.

#### **2.1.5 Conclusion**

On the basis of the available information, the Authority accepted the SCRC referral to investigate the complaint by WCRAQ (as agent for a number of its members) against SCRC's Waste and Resources Management business activity.

### **2.2 Notice of Investigation**

Pursuant to the requirements of the Local Government Act, on 22 July 2011, the Authority provided a Notice of Investigation to SCRC and the WCRAQ.

The Investigation Notice invited both SCRC and WCRAQ to provide written submissions to the Authority on the matters relevant to the complaint, including two particular issues:

- (a) the right of the WCRAQ members to compete with the SCRC waste management business activity considering all local and State laws and policies, including the EPA and EPA regulations and policies (competition issues); and
- (b) compliance by the SCRC waste management business activity with the competitive neutrality requirements in the Local Government Act and associated regulations and policies including, but not limited to, the full cost pricing provisions (pricing and conduct issues).



### 3. COMPETITION ISSUES

#### 3.1 Relevance

The ability of a complainant to provide goods and services in competition with a Council is a key consideration in whether a Referee (in this case the Authority) will investigate a competitive neutrality complaint.

It is also a key element of the principle of competitive neutrality, which requires that 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 (Local Government Act s43(3)).

The complainant must be an actual or potential competitor with the local government in the supply of the goods or services that are the subject of the complaint in order for the complaint to be validly made. If a local or a state law establishes a monopoly for a good or a service or otherwise prevents competition, then there can be no actual or potential competition and hence no competitive neutrality violation.

Thus, there must be competition or the possibility of competition, for the principle of competitive neutrality to be breached.

#### 3.2 Legal Framework

As noted above, SCRC (April 2011a) stated that its ‘domestic and commercial waste collection services on the Sunshine Coast are provided by its collection contractors as a valid exercise of a statutory function to ensure a number of outcomes that may not be achievable if that collection system was open to competition’.

To effect this policy position, SCRC (September 2011):

- (a) advised its contractors, and at least one customer, that only the contractor designated by the SCRC is authorised to provide services in a specific area;
- (b) indicated that all businesses using an unauthorised contractor will be contacted and advised that they should use the SCRC contractor and will, in any event, be charged by the SCRC for the rateable waste service provided by another contractor; and
- (c) advised a contractor to work towards removing unauthorised bin services from regions outside their contracted region.

SCRC’s stated positions and actions in the market are consistent with WCRAQ’s claim that SCRC’s strategy is based on restricting the private sector in providing commercial waste services.

The Authority also reviewed the provisions of the Local Government Act as well as the EPA and EPA regulations and policies affecting waste management competition.

##### 3.2.1 Sections 9 and 92 of the Local Government Act

In its Waste Minimisation Strategy (2009), SCRC asserts that it has a monopoly on the management of wastes from commercial and tourist facilities and refers to efforts by the industry to remove the ‘monopoly’ on commercial wastes.

In the course of this investigation, SCRC confirmed that it has not passed a local law to establish a legal waste management or bulk recycling monopoly in its area.

The Authority also notes that there are no provisions in local or State laws and policies, including the EPA and associated regulations or policies that mandate or provide SCRC with a monopoly for its waste management business activity.

Indeed, SCRC (September 2011) subsequently clarified its position and noted that rate payers are free to use other waste management services providers to collect part or all of their waste and that it has taken steps to ensure that rate payers are not told that they cannot use other waste management services providers to collect their waste.

However, SCRC (January 2012a) asserts that ‘Council is not required to introduce a law to establish a monopoly given that it has the power to levy a waste management utility charge under the Local Government Act’.

The Authority does not contest that the Local Government Act and related regulations give SCRC the power to levy utility charges or make policies to further its environmental goals (or even make local laws with anti-competitive provisions provided it has properly conducted a public benefit assessment). However, the resultant pricing, if not compliant with the requirements of the full cost pricing reform, may still breach the competitive neutrality principle.

A finding by the Authority that the competitive neutrality principle has been breached does not of itself make the levy (in this case) or any relevant local law strictly invalid. However, the Business Activities Regulation envisages that SCRC will consider the Authority's recommendations on how the business entity can conduct the business activity in a way that complies with the principle of competitive neutrality and the reasons for the recommendation.

### **3.2.2 Section 369 of the EPA**

Section 369 of the EPA placed restrictions on persons allowed to perform waste management works in a local government's area. Waste management works could only be provided by or on behalf of the local government or by firms that applied for and received a permit from the local government under s369A (exceptions for certain categories of waste are discussed below).

SCRC did not use EPA Section 369 to limit competition in its area. SCRC had a policy that general waste contractors did not require SCRC permits as long as they complied with EPA requirements (SCRC September 2011).

The *Waste Reduction and Recycling Act 2011* (Waste Act), which came into force on 28 October 2011, repealed section 369 of the EPA subsequent to referral of the complaint. There is no longer a provision in the EPA that allows Councils to require permits for collecting general waste.

### **3.2.3 Section 368 of the EPA**

The EPA provided that the Chief Executive of DERM may, by written notice, require a local government to carry out waste management works. DERM did not provide SCRC with such a notice. The Waste Act also repealed this section of the EPA.

### **3.2.4 Section 68A of the Environmental Protection (Waste Management) Regulation 2000 (Qld) (Waste Management Regulation)**

Section 68A of the Waste Management Regulation devolved responsibility for administering Part 2A of the Waste Management Regulation to local governments. Part 2A deals with the

requirements for premises to have waste containers and the administration of waste removal by Councils, Council contractors or entities approved under 369A of the EPA. Section 68A did not give Councils any powers to restrict competition independent of any power they might have had under (the now repealed) Sections 369 or 369A of the EPA.

### 3.2.5 Strategic Waste Minimisation Plans

The *Environmental Protection (Waste Management) Policy 2000* (EPA Policy) required local governments to prepare and implement strategic waste minimisation plans. The plan developed by SCRC referred to the monopoly provision of certain waste management services in its territory, including commercial recycling (SCRC 2009). SCRC (January 2012a) also provided the Authority with *Sunshine Coast Waste Minimisation Strategy Discussion Paper* (2009), which describes the community consultation that was used to develop the Waste Strategy.

The Sunshine Coast Waste Minimisation Strategy required by the EPA Policy provided a vision for the delivery of waste management services in the area. The Waste Minimisation Strategy does not constitute a law.

The Waste Act repealed the EPA Policy and replaced it with similar requirements that local governments develop waste minimisation strategies.

### 3.2.6 Conclusion

The Authority concludes that there are no provisions in local or State laws, including the EPA and associated regulations or policies that mandate or provide SCRC with a right to establish a monopoly for its waste management business activity.

Therefore, there is no statutory monopoly in place for the waste management business (or any components of the business) and the complainants are legally entitled to compete with SCRC.

The passage of the Waste Act does not change this conclusion.

Indeed, SCRC (September 2011) has since clarified that each rate payer is free to use other waste management services providers to collect part or all of their waste.

SCRC also reported that it has taken steps to ensure that rate payers are not told that they cannot use other waste management services providers to collect their waste.

SCRC also stated that, while the term ‘monopoly’ is used at various points in the Waste Minimisation Strategy 2009-2014, that is a reference to SCRC (as a local government) having the exclusive right to levy utility charges for the collection of waste from rate payers in its local government area.

SCRC’s WRM business activity does not provide waste management services directly (as occurs in some other jurisdictions). SCRC’s WRM business activity uses a contractor to provide the service on SCRC’s behalf. This, however, does not alter the fact that the complainants are legally entitled to compete with WRM or its contractors.

## 3.3 Market Effect of the Mandatory Levy

The Local Government Act (s94) provides that each local government may levy utility charges for its local government area. Section 33 of the *Local Government (Finance, Plans and Reporting) Regulation 2010 (Qld)* provides that a utility charge (relevant to the

provision of waste management services) may be levied on any basis the local government considers appropriate.

SCRC's position (September 2011) is that if a Council decides to collect and dispose of commercial waste (either by itself or via its contractor) and levies a utility charge for the service, then the owner/occupier of the premises that produces the commercial waste must pay the utility charge regardless of whether or not they want to use SCRC's service. That is, there is no ability to 'opt-out' from the arrangement.

As SCRC's consultant (AEC 2011) explains:

*Commercial premises still have the option to utilise private sector service providers to collect and dispose of their waste, but are unlikely to pay a private sector operator on top of the utility charge levied by Council which reflects the suite of waste collection services deemed to be sufficient to deal with the level of waste being generated.*

*As such, Council is effectively the sole provider of waste collection services to commercial premises in the region via its collection contractor/s.*

The exercise of the levy power in this way gives SCRC a degree of market power, or *de facto* monopoly, because customers are unlikely to purchase a competitor's service in the presence of a mandatory levy with no ability to opt-out – as a customer contracting a competing service provider would have to pay both SCRC (via the levy) and its actual service provider.

Whether the use of the levy power (available due to public ownership) to attain such a competitive advantage constitutes a breach of competitive neutrality is addressed in the next section.

## 4. PRICING

### 4.1 WCRAQ Pricing Complaints

WCRAQ's specific complaints are that:

- (a) SCRC is offering to provide the bulk recycling services provided by WCRAQ members at no charge to their customers; and
- (b) WCRAQ members are unable to compete on the same terms as SCRC is offering.

### 4.2 SCRC's Pricing Practices

The SCRC ARS (June 2010) establishes charges for waste management services and sets the terms and conditions under which they are provided. The charge table at section 5.1.6 of the ARS lists the annual charges for 27 services ranging from provision of an 80 litre waste bin bundled with a 240 recycling bin to a 35/60 cubic metre cardboard compactor bin. Some of the services are only available in portions of the SCRC's area, reflecting the legacy bin types provided by the Councils that were amalgamated into SCRC.

Residential customers and smaller commercial customers are provided with 80, 140 or 240 litre general waste bin services bundled with a 240 litre recycling bin. Bulk and compactor waste and recycling bins are available to larger commercial customers.

The charge table does not specifically note that the bulk waste service includes a bundled recycling bin on request, but section 5.1.3 of the ARS provides that on application, for each bulk waste service provided to the premises, SCRC will make available a bulk recycling service of the same or similar capacity to the bulk waste bin service at no additional charge. The maximum size bulk recycling bin service provided for no additional charge is 3 cubic metres.

Annual charges range from \$131.50 for a residential service consisting of an 80 litre general waste bin and a 240 litre recycling bin to more than \$20,000 for the largest bulk compactor bins.

The waste management service charges in the ARS are mandatory for all residential and commercial ratepayers. Section 6.1.2 of the ARS states that 'charges shall apply to all lands and/or premises within the Regional Council area where waste services are, or **can** be made available' (emphasis supplied). In other words, customers must pay the charges whether or not they take the service.

Prices are determined by use of a costing model developed for SCRC by the AEC Group. The model estimates forward year costs for each of the 27 service categories based on SCRC budgets. Direct costs and an allocation of indirect costs are assigned to each of the service categories.

The total cost of providing each type of bulk waste bin service provided by SCRC is the cost of providing the general bulk waste bins plus the cost of providing the bulk recycling bins. The mandatory levy charge for each bin type is calculated to be equal to the total cost of providing the general waste bins plus the total cost of providing the recycling bins divided by the number of commercial customers for that size general waste bin. Thus the total cost of providing each type of bulk general waste and bulk recycling service is averaged over all commercial customers in order to provide a uniform charge. A portion of the cost of each type of bulk recycling service is paid by all the bulk waste ratepayers, even those that do not use the recycling service.

SCRC (January 2012a) also notes that ‘by taking up WRM’s (contracted) recycling service, commercial properties are able to potentially reduce the extent of their waste management utility charge if they reduce the size of their waste management services . . .’. By diverting recyclables from the general waste bin they can justify taking a smaller general waste bin at a lower price.

## 4.3 Competitive Neutrality Requirements

### 4.3.1 Local Government Act

As noted in section 1.3, the competitive neutrality principle in the Local Government Act is that

*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 (Local Government Act s43(3)).*

The competitive neutrality principle is applied:

*if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation (Local Government Act s43(2)).*

The Local Government Act s44 provides that the competitive neutrality principle may be applied by adopting one of a number of reform options for significant business activities. These reform options include:

- (a) commercialisation,
- (b) corporatisation, and
- (c) full cost pricing.

As discussed in section 1.3, SCRC purported to apply the full cost pricing reform option to WRM after conducting a Public Benefit Assessment (AEC 2010).

The full cost pricing reform option does not require structural change (e.g., commercialisation or corporatisation), but does require ‘pricing the significant business activity on a commercial basis’ (Local Government Act s44(4)).

Local Government Act s44(5) states that a regulation may provide for matters relating to full cost pricing.

### 4.3.2 Business Activities Regulation

*The Local Government (Beneficial Enterprises and Business Activities) Regulation 2010 (Qld) (Business Activities Regulation) s20 expands on the description of the full cost pricing reform in s44 of the Local Government Act as follows:*

*A local government applies full cost pricing to a significant business by charging for goods or services at the full cost of providing the goods or services, subject to the following –*

- (a) *the pricing provisions;*
- (b) *removing any competitive advantages or disadvantages due to the entity being in the public sector, whenever possible and appropriate; and*
- (c) *to the extent such a competitive advantage cannot be removed – the taking of the competitive advantage into account when pricing goods or services.*

The pricing provisions are found in Schedule 1 of the Business Activities Regulation.

The pricing provisions (s(2)) state that:

*In deciding charges to persons for goods or services provided in conducting a relevant activity, a local government must ensure the projected total revenue from conducting the activity is enough to cover the projected total costs of conducting the activity for*

- (a) if the relevant activity is an activity to which the code of competitive conduct applies—a period of more than 1 year but not more than 5 years; or*
- (b) otherwise—each financial year in which the activity is conducted.*

(The Code of Competitive conduct applies to a building certifying activity or certain roads activities (Local Government Act s47) and has no application to the WRM business activity).

The pricing provisions s3 state that:

- (1) A charge may be decided for providing **particular goods or services** in conducting a relevant activity that is, for commercial reasons, an appropriate charge for the goods or services provided. (emphasis supplied)*
- (2) For subsection (1), a charge is, for commercial reasons, an appropriate charge if it could reasonably be charged if the goods or services were provided by an entity conducting the relevant activity with the primary object of making a profit from conducting the activity.*

It is important to note the distinction between the full cost pricing reform and the concept of full cost pricing. The full cost pricing reform encompasses a number of elements, one of which is applying full cost pricing, which is a particular pricing and costing principle, to the business activity.

The full cost pricing principle means that the total costs of conducting a business activity, including direct costs, indirect costs, depreciation and a commercial rate of return, must be identified and then prices must be designed to recover those costs.

The full cost pricing principle when applied to a particular good or service provided as part of the wider business activity means that in addition to the direct costs associated with providing a good or a service, an allocation of indirect costs, depreciation and return on investment is included in the price so that the price fully reflects all relevant costs.

### 4.3.3 SCRC Position

SCRC (January 2012) claimed to have met the competitive neutrality principle by implementing the full cost pricing reform in respect of its WRM business activity after conducting a public benefit assessment in accordance with the Business Activities Regulation.

The Authority's investigation of the pricing issues raised by WCRAQ's complaint focused on:

- (a) removal of 'any competitive advantages or disadvantages due to the entity being in the public sector, whenever possible and appropriate' (Business Activities Regulation s20(b), and
- (b) compliance with the pricing provisions (Business Activities Regulation s20(a)).

## 4.4 The Mandatory Levy is the Source of the Competitive Advantage

The full cost pricing reform requires 'removing any competitive advantages or disadvantages due to the entity being in the public sector, whenever possible and appropriate'.



As noted in section 4.2, under SCRC's current waste management levy policy, if a customer purchases bulk recycling services from a competitor, the customer must still pay a levy for an equivalent SCRC service. There is no 'opt-out' provision under which a customer could purchase bulk recycling service from an alternative provider and not pay for the equivalent SCRC service.

The exercise of the levy power in this way gives SCRC a degree of market power, or establishes a *de facto* monopoly, because customers are unlikely to purchase a competitor's service in the presence of a mandatory levy with no opt-out for the provision of the same or a similar service.

Non-government waste management businesses do not have the ability to apply such a mandatory levy or charge customers for services they do not take.

In a competitive market a customer that does not require or desire a recycling bin would not be forced to pay a contribution to the cost of recycling services provided to other customers. Any attempt to charge customers who do not want a recycling service for even a portion of the cost of that service, or to require the purchase of a bundled general waste and recycling service, would not be sustainable. As long as it is economically feasible to provide a separate recycling service customers would seek a lower priced competitive alternative.

In summary, the mandatory levy with no 'opt-out' provision applied to all commercial ratepayers clearly provides SCRC with a competitive advantage only because the WRM business activity is owned by government.

Whether it is 'appropriate' to remove this advantage is discussed in Section 6. (The Authority considers that it is appropriate to remove the competitive advantage.) It is clearly 'possible' to provide unbundled pricing and an 'opt-out' provision in the circumstances considered here. Most Queensland local governments allow competition for bulk recycling services (see section 6.5).

The WCRAQ complaint that its members are unable to compete on the same terms as SCRC is offering is substantiated. They are unable to compete on the same terms because SCRC's use of the levy power (only available to the local government) to charge all bulk service customers whether or not they take the SCRC services provides a competitive advantage.

#### 4.5 SCRC's Implementation of the Full Cost Pricing Reform

The mandatory levy discussed in the previous section provides SCRC with a competitive advantage due to SCRC's government status. Assuming that it would be possible and appropriate for SCRC to remove the competitive advantage, this finding would be sufficient to show that SCRC has violated the principle of competitive neutrality. The Authority nevertheless also considered whether SCRC has complied with the costing and pricing requirements of the Local Government Act and the Business Activities Regulation.

SCRC (January 2012a) advised that it has sought to

*ensure compliance with the full cost pricing reform by ensuring that WRM revenues are sufficient to cover the full cost of collection, disposal and administration (including a commercial profit component) and disposal services revenue being sufficient to cover the full lifecycle cost of waste receipt, transfer and ultimate processing and disposal (including an appropriate return on capital in line with Waste & Resources Management's identified weighted average cost of capital).*

SCRC's view is that the full cost pricing reform is achieved if the business activity recovers its full costs and that there is no separate requirement for pricing individual components of the business activity.



In correspondence to the Authority, the Department of Local Government and Planning (DLGP, 2012) indicated that it does not believe that the ‘intent of the legislation is for full cost pricing principles to apply to each component of the service or each sub-service of the significant business activity.’ The Department submitted that the service referred to in s44 of the Local Government Act is ‘the broadly defined ‘service’ of the business unit’. This is consistent with the SCRC position.

SCRC also points to the *Department of Communication and Information, Local Government and Planning, Full Cost Pricing in Queensland Local Government, April 2000* (Full Cost Pricing Guide) and to a recent Productivity Commission competitive neutrality report to support its position.

#### 4.5.1 Full Cost Pricing Guide

The Full Cost Pricing Guide is referred to in Section 19 of the Business Activities Regulation. Section 2.1 states that

*FCP simply means that, on average, prices should fully recover all the relevant costs of supplying a product or service (this does not mean that prices must be set equal to the average cost of supply). In the private sector, the inclusion of all relevant costs is important for giving signals to suppliers and consumers about the true cost of the product or service in question. It is not possible to make the best decisions about investment, operations and the level and quality of products and services unless the true costs are clearly reflected in prices over time.*

The statement that ‘this does not mean that prices must be set equal to the average cost of supply’ is consistent with the pricing provisions, which allow particular prices to deviate from full costs for commercial reasons.

With respect to the issue of whether the total cost should be reflected at the overall activity or service level, the Full Cost Pricing Guide variously states that:

*Full cost pricing is effectively achieved if the total expected revenue from all sources, including subsidies and actual or deemed revenue from community service obligations, is sufficient to meet the expected total costs as defined in the Guide and relevant legislation (s2.1);*

and then

*Various pricing strategies could be appropriate depending on the circumstances of the business (s 3.6);*

and

*In many cases there will be a variety of different products or services that have to be priced. The legislation has no requirement about how such prices should be set. (s3.6)*

The Guide then goes on to say:

*It would generally be inefficient to set a particular price below the average variable cost of production but it may be appropriate for some prices to do little more than cover their average variable costs while other prices may show a substantial margin. The legislation only addresses the overall revenue requirement (s3.6).*

Based on statements such as these, SCRC’s April 2012 submission in response to the Draft Report asserts that the Full Cost Pricing Guide unambiguously supports the view that the only requirement of the Local Government Act is pricing the WRM business activity as a whole at its full costs.

However, the Authority considers that the language in the Full Cost Pricing Guide does not unambiguously support the SCRC's view. For example, the Full Cost Pricing Guide refers to appropriate and inappropriate pricing of individual goods and services.

A business '... conducting the relevant activity with the primary object of making a profit from conducting the activity' (as referred to in the pricing provisions, (s3) would generally not price a service below average variable cost. Moreover, 'the inclusion of all relevant costs to give proper price signals to consumers' (Full Cost Pricing Guide, s2.1) is important for particular prices as well as for the business activity as a whole.

More significantly, by focusing on the Full Cost Pricing Guide SCRC ignores the pricing provisions contained in the 2010 Business Activities Regulation as well as the requirement for pricing on a commercial basis in the Local Government Act itself. As discussed below, the Authority's view is that, consistent with the Business Activities Regulation, there must be a commercial basis for deviating from full cost pricing of individual services.

The Full Cost Pricing Guide is not part of the actual legislation, is only referred to in an explanatory note as 'a guide', and was actually issued (1996) before the current Local Government Act (2009) and Business Activities Regulation (2010) were enacted. In an earlier submission, SCRC recognised that 'the full cost pricing guide that you refer to is a guide only' (September 2011).

#### 4.5.2 Productivity Commission Decision

The SCRC submission in response to the Draft Report (April 2012) argues that a recent Productivity Commission decision discussed in the Draft Report supports the view that full cost pricing only applies at the activity level.

The Productivity Commission (PC) considered the question of whether full cost pricing under Commonwealth laws, regulations and policy applies only at the activity level or at the level of individual services in the context of evaluating a competitive neutrality complaint against the National Broadband Network (NBN). The PC Competitive Neutrality Investigation Report (2011) reached the following general conclusions:

- (a) it is not the price of any specific product or service that is at issue, but rather whether a commercial rate of return is achieved from the overall activities of a business; and
- (b) a pricing model that has adverse impacts on competition in particular market segments, therefore, would not represent a breach of competitive neutrality policy.

SCRC's submission in response to the Draft Report discusses the similarities between the Commonwealth and the Queensland approaches to competitive neutrality. However, SCRC does not discuss the clear differences. The SCRC discussion of the Productivity Commission decision ignores the pricing provisions and the requirement for pricing of goods and services on a commercial basis in the Queensland legislative framework.

The decision of the Productivity Commission is not, of itself, determinative of the correct interpretation of the Queensland legislation as the wording of the various legislation and policies is not identical. Therefore, the Authority considers that the PC NBN decision is not a precedent for Queensland in this matter.

### 4.5.3 Full Cost Pricing Policy for Significant State Business Activities

The Full Cost Pricing Policy developed for significant business enterprises by the Queensland Treasury Department (2010) for application to state owned enterprises also addresses the nature of full cost pricing as follows:

*Under the Full Cost Pricing Policy, the principle of competitive neutrality is met by ensuring prices charged by [Significant Business Activities] and [Commercial Business Units] reflect a similar cost structure to that faced by a private sector competitor so that it is subject to the same pressures from competition as its private sector equivalents. (1.3)*

And:

*The [Full Cost Pricing] Policy uses full cost to establish the cost benchmark for pricing decisions. However, the Policy recognises that [Significant Business Activities] and [Commercial Business Units] operate in a commercial environment and therefore, does not prevent the use of marginal cost or avoidable cost for specific pricing decisions, if appropriate. However, this must be within the established benchmark and must be consistent with achieving the required rate of return. (2.1)*

Thus, the Queensland Treasury's Full Cost Pricing Policy provides support for a general State government policy intention that in applying the principle of competitive neutrality full cost is the benchmark for pricing decisions, but that prices may be adjusted to reflect the same competitive pressures as private sector businesses in similar circumstances. The Authority notes that this policy statement was issued in the same time frame as the Business Activities Regulation.

### 4.5.4 Implications of Full Cost Pricing Only at the Level of the Business Activity

Applying the full cost pricing principle only at the business activity level, as SCRC proposes, would be inconsistent with the objectives of competitive neutrality policy.

Business activity is defined in Schedule 4 of the Local Government Act as follows: '**business activity**, of a local government, means trading in goods and services by the local government'.

That definition obviously does little to clarify how widely or narrowly a local government should define its business activities. The Business Activities Regulation does not contain any further definition or otherwise prescribe how local governments can define the scope of their business activities.

Consequently, the Authority considers that the Local Government Act and Business Activities Regulation leave it to the discretion of local governments as to how widely they define the scope of their 'business activities'. Therefore, the Authority accepts that the relevant business activity is the WRM business activity.

However, if Councils are able to bundle services into a business activity and price without regard to the costs of particular services, then market signals could be distorted. Councils could end up monopolising services that could otherwise be provided competitively by underpricing those services and overpricing monopoly services included within the activity. This would mean that the principle of competitive neutrality is breached even though there is full cost pricing when assessed purely at the business activity level.

For example, a local government using SCRC's interpretation of the competitive neutrality pricing requirements could charge profit maximising monopoly prices for a service not subject to competition (e.g., residential waste services) and charge below cost prices for services that are potentially competitive (e.g., bulk waste services) and still satisfy full cost

pricing when assessed purely at the business activity level. This is inconsistent with both the National Competition Policy and the policy intention of the full cost pricing reform.

Bundling commercial waste and recycling services does not necessarily enhance the profitability of the activity as a whole. But the bundled pricing does deprive commercial customers of the choice to purchase and pay for only the services they require and results in a cross-subsidy of one customer class by another. In addition, this practice is only possible in the current circumstances because of the existence of a mandatory levy for a bundled service, made possible only by the public ownership or control of the WRM waste management business.

#### 4.5.5 Authority Analysis of the Full Cost Pricing Issues

There is disagreement as to whether the reference in s20(1) of the Business Activities Regulation to ‘charging for goods or services at the full cost of providing the goods or services’ requires:

- (a) merely that collectively the goods or services supplied by the relevant business activity must be charged on a basis that recovers the aggregate full cost of providing all such goods or services (effectively being the view expressed by SCRC); or
- (b) in addition, that the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs absent a commercial basis for not doing so.

However, a more meaningful, and the Authority’s preferred, reading of s2 and s3 of the Business Activities Regulation pricing provisions is that:

- (a) collectively the goods or services supplied by the relevant business activity must be charged on a basis that recovers the aggregate full cost of providing all such goods or services; and
- (b) the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs absent a commercial basis for not doing so.

SCRC’s submission relies almost entirely on its interpretation of the Full Cost Pricing Guide to conclude that full cost recovery is only required at the business activity level. The Authority agrees that it is possible to interpret the Guide in this way. However, the Guide provides at best ambiguous support for SCRC’s position. The Authority believes that the Local Government Act and the Business Activities Regulation, which were enacted subsequent to the Guide and should be given precedence, clearly require commercially reasonable pricing of individual services. The full costs of individual services provide a benchmark. Deviation from the benchmark is allowed where appropriate for commercial reasons.

On the Authority’s preferred reading, pricing of the goods and services within the business activity ‘must’ be designed to recover the full costs of the business activity. That is, there can be no subsidy of the prices from other government funding sources. However, as long as the activity is recovering its full costs, prices for individual services ‘may’ deviate from the full cost of providing the particular good or service provided there is a reasonable commercial basis (i.e., such a pricing strategy could be reasonably followed by an entity with the primary objective of increasing the profitability of the activity as a whole).

Therefore, for purposes of evaluating the WCRAQ pricing complaints and the compliance of SCRC with the requirements of the full cost pricing reform, the Authority has proceeded on the basis that the proper interpretation is that the Local Government Act and the Business Activity Regulation require commercially reasonable pricing for individual goods and services that are supplied in conducting the wider business activity.

Full cost pricing is only one element of the full cost pricing reform. As discussed in section 4.3, removal (where possible and appropriate) of competitive advantages that arise due to government ownership is also necessary (s20(1)(b) Business Activities Regulation).

## **4.6 SCRC Compliance with the Pricing Requirements of the Full Cost Pricing Reform**

Having concluded that the full cost pricing reform requires commercial pricing for individual goods and services, this section discusses whether the specific SCRC pricing that WCRAQ complains about is in compliance with the full cost pricing reform requirements as detailed above.

### **4.6.1 Commercial Pricing**

The full cost pricing reform option requires that prices of particular goods and services are either based on the individual full cost of such goods or services, or where varied from individual full cost, have a reasonable commercial basis. The charges for the bundled bulk general waste and bulk recycling services do not recover the full costs of providing the bundle to the customers that take up recycling bins. The business activity recovers its full costs only because customers that do not take up bulk recycling bins subsidise those that do by paying a portion of the costs of providing bulk recycling.

Absent the mandatory levy, this pricing would not be sustainable in terms of profitability and is therefore not commercially reasonable. Without the mandatory levy, as discussed, customers that do not want a bulk recycling service would purchase the service from a stand-alone general waste competitor rather than pay a price that effectively subsidises bulk recycling services they do not use.

There is not a technical imperative to bundle the services without offering an opt-out. The infrastructure used to collect, transport and dispose bulk recycling and bulk general waste service is identifiable and distinctly separable. Different bins, trucks and facilities are required for bulk services and bulk recycling services. While there may be potential for sharing some facilities between recycling and general waste operations, there does not seem to be a technical or cost imperative for joint supply, as evidenced by experience in other jurisdictions where there is competitive provision of bulk general waste and bulk recycling (see section 6.5).

The Full Cost Pricing Guide provides examples of circumstances in which departures from pricing based on the full cost of particular goods or services would be economically justified on a commercial basis. The Authority has considered whether these circumstances may apply to SCRC's pricing of bulk recycling services.

### **Average Variable Cost Pricing**

The Full Cost Pricing Guide (s 3.6) notes that it may be appropriate for some prices to do little more than cover their average variable costs while other prices may show a substantial margin, but that it would generally be inefficient to set a particular price below the average variable cost of production.

Prices at or near average variable cost would generally be below full costs but would be commercially reasonable in cases where demand has fallen and it is impossible to recover all fixed costs. Pricing a particular service at, or just above, the level of average variable costs is generally not a profitable long run strategy if there are fixed costs associated with providing that particular service and there is adequate demand for that service. In the long run, a commercial business entity must recover the service-specific fixed and variable costs or it will be more profitable to abandon the service. Pricing a particular service below average variable cost is generally not commercially reasonable because shutting down the operation would be less costly even in the short run.

The Full Cost Pricing Guide also notes that ‘other pricing practices, such as two-part tariffs or setting different margins for different products, services, and/or customer groups, may also recoup the ‘full cost’ of service provision and be consistent with [full cost pricing]’ (s2.3). Two-part or multi-part tariffs with a fixed charge and low variable charges may be efficient in some circumstances because they allow full cost recovery while encouraging the use of capacity.

SCRC does not justify its pricing on the basis of any of these considerations.

### **Promotional Pricing**

There are circumstances when pricing a service below direct cost (or average variable cost) could enhance the profitability of the business activity as a whole. In a commercial marketplace, significant ‘sale’ discounts, loss leaders, and ‘two for the price of one’ offers are commonplace. However, these marketing tactics are generally designed to enhance the long term profitability of the enterprise by, for example, attracting new customers to the business. Such pricing schemes are typically of short duration. Selling below cost services to customers over a long period of time is generally not commercially profitable.

SCRC has not contended that its current pricing strategy involves such promotional pricing.

### **Complementary Goods**

Another possible example of pricing a particular service below cost to enhance the profitability of the business is the case of complementary goods – those that are used in tandem. The classic example is razors and razor blades – razors are often sold below cost – in the expectation that the losses would be made up through the subsequent sales of blades. This strategy may also be effective on a permanent basis.

SCRC does not justify its pricing on this basis.

### **Bundling**

Although not mentioned in the Full Cost Pricing Guidelines, bundling of two or more individual services and selling them for a single price is another example of a marketing tactic by commercial firms that can enhance the profitability of a business activity. Bundled services may be offered at a discount compared to purchasing the services separately. However, it should be generally expected that in a workably competitive market (except in the case of short term promotions) the price for the bundled service would be set to recover all direct costs and there would be scope to purchase the services separately (i.e., opt-out of purchasing the bundle).

SCRC’s bulk services are priced as a bundle and opting-out is not allowed.



## 4.6.2 Conclusions with Respect to Commercial Pricing

SCRC has not claimed any promotional pricing or any other commercial basis that could reasonably be adopted by a profit making entity to justify the current pricing strategy employed by SCRC. Indeed, SCRC concedes that it is not operating WRM in a commercial manner (see section 4.8) as required for competitive neutrality. Nor does the Authority consider that bundling waste and recycling services in the manner undertaken by SCRC enhances the profitability of the business activity as a whole, relative to the separate provision of these services.

Consequently, the Authority does not consider that SCRC has complied with the requirements of the full cost pricing reform option by pricing its goods and services on a commercial basis (as required by the Local Government Act and the Business Activity Regulation).

SCRC's charges for bulk recycling services are not provided at 'no charge' as alleged by WCRAQ. However, the charges to customers that take both bulk general waste and bulk recycling services are below the cost of providing those services. From the perspective of the customer the price of taking a bulk recycling bin from WRM is zero.

The Authority finds that SCRC has not complied with the competitive neutrality principle by its purported application of the full cost pricing reform.

## 4.7 Service Definition and Revenue Threshold

In its submission in response to the Draft Report SCRC makes two additional arguments in support of its pricing of bulk recycling services. First, SCRC maintains that even if full cost pricing does apply at the service level, WRM's pricing satisfies this requirement because the proper service under which this requirement should be evaluated is not bulk recycling by itself, but a broader 'best practice solid waste management' service to commercial customers.

Second, SCRC argues that the requirements of the Local Government Act apply to significant business activities, but that revenues from the bulk recycling service fall short of the significance threshold.

### 4.7.1 Service Definition

SCRC (January 2012a) maintains that it is providing a single 'best practice solid waste management' service to commercial customers:

*Council is providing a waste management service to commercial properties, with all properties having the same level of access to both general waste and recycling services. As more and more commercial properties take the recycling service (and reduce the size of their general waste bins) and adopt a servicing structure consistent with the region's Waste Minimisation Strategy, the extent of the charge levied on commercial properties will be more reflective of the cost of providing the combined general waste and recycling service.*

SCRC concludes from this that it is not cross-subsidising between two services but uniformly pricing a broadly defined single service. SCRC claims this is similar to charging all customers a uniform price for a service that might be used differently or more or less intensively by individual customers.

SCRC's submission in response to the Draft Report (April 2012) points out that as take up of bulk recycling services increases, total costs will increase and with 100% recycling take-up, each ratepayer would pay the full costs of the combined service. In these circumstances there would be no cross-subsidy.

However, data supplied to the Authority by SCRC (January 2012a) show that uptake of bulk recycling bins is only approximately 22%, three years after the introduction of the current pricing policy throughout SCRC's area. This suggests 100% penetration may never be reached, or at least will only be reached after many years.

There will be some averaging inherent in almost any rate structure. However, two separate services that can be provided by distinctly different infrastructure with identifiable and separate costs in a bundled service does not in substance make them part of a single service for competitive neutrality purposes.

Allowing a local government to define either a business activity (see section 4.5) or an individual service as it chooses and then allowing it to price particular goods and services without appropriate regard to costs or commercial considerations could result in a competitive advantage to the local government business activity that is possible only because it is in the public sector.

#### 4.7.2 Revenue Threshold

SCRC's Submission in response to the Draft Report (April 2012) states that the Authority '... proceeds on the incorrect (implicit) assumption that bulk waste recycling is itself a significant business activity to which competitive neutrality and full cost requirements apply.' SCRC argues that the collection of WRM services should be treated as the business activity – not recycling or bulk waste recycling services (and that not doing so fails to take account of the monetary thresholds in the legislation).

As discussed above, the Authority considers that the pricing provisions require commercial pricing for the particular goods and services that comprise the business activity. Moreover, the SCRC's position would seem to suggest that it would be appropriate for a Council to provide itself with a competitive advantage based on its government status as long as the particular goods or services do not meet the revenue threshold for a significant business activity.

In other words, a local government could structure the offerings of a business activity such that a variety of separate services are defined, each of which falls below the revenue threshold for a significant business activity, thus relieving itself of having to comply with the requirements that attach to a significant business activity. This is not a reasonable result given the policy intent of the competitive neutrality reform.

#### 4.8 Full Cost Pricing – Non-commercial Objectives

SCRC (January 2012a) submitted that:

*Council applied the Full Cost Pricing reform option to WRM instead of the Commercialisation or Corporatisation reform options given that it only intended to ensure that the activities undertaken were based on appropriate cost recovery. WRM is not intended to be a business unit with profit maximisation in mind and is instead considered a community-focussed function with the responsibility of implementing Council's (and the community's) Waste Minimisation Strategy and managing the array of contracts in place to achieve this outcome.*

The Authority notes that the Local Government Act states that full cost pricing involves pricing the significant business activity on a commercial basis.

The Full Cost Pricing Guide suggests:

- (a) that non-commercial objectives should be treated as community service obligations (s 2.5.9); and



- (b) where a community service obligation adjustment might give rise to a competitive neutrality complaint, the local government should consider whether the policy objective would be better achieved by making the payment available to all providers, or all consumers of the particular service (2.5.10).

The Local Government Policy Statement (1996) states that:

*Councils should note that full cost pricing will not prevent local governments from subsidising prices of goods and services, provided the subsidies are treated as explicit community service obligations [CSOs] which are separately funded by the parent local government with full disclosure in the council's annual report. In this manner, certain local government business undertakings may continue to be provided at less than the 'full' cost of their production, but the difference will be made transparent (i.e. it will need to be accounted for, and published, in a manner which allows for public scrutiny). (emphasis added)*

The provisions for CSOs and their treatment in the Queensland legislative and policy framework indicate that a CSO is more appropriate than an internal cross-subsidy within a business activity if a local government intends to pursue non-commercial pricing for goods and services. Public reporting requirements for CSOs ensure the transparency that is intended when non-commercial objectives are being pursued.

SCRC has not adopted any such explicit community service obligation for bulk recycling services. SCRC's submission in response to the Draft Report (April 2012) asserts that CSOs are unnecessary '... as full cost pricing is applied to WRM in the provision of collection services.' The Authority considers that a CSO rather than internal subsidisation of bulk recycling services is more appropriate for financing non-commercial objectives.

SCRC's decision to price WRM services to accomplish non-commercial objectives without establishing a CSO is considered to be inconsistent with Queensland competition policy, and has constituted a contravention of the competitive neutrality principle.

#### 4.9 Appropriate Use of the Levy Authority

The use of the mandatory levy authority in the Local Government Act would not automatically result in a competitive neutrality violation. There are applications of the mandatory levy authority that would not conflict with competitive neutrality requirements.

For example, a mandatory levy may be appropriate for charging households for waste collection services. The Productivity Commission (2006) found that the collection and transport of waste from households in a particular area may be most efficiently done by a single firm. The efficiencies are due to economies of density – collecting the waste from all households on a given street with a single truck is more efficient than using multiple trucks each owned by a separate company.

As a consequence, waste collection from households is considered a natural monopoly and is typically provided by local governments or by firms contracted to local governments. Therefore, it is unlikely that a mandatory levy to recover the full cost of the bundled basic bin residential service would violate competitive neutrality requirements – as no actual or potential competitors would be disadvantaged. WCRAQ (November 2011) agrees that the Council tender process provides the most cost effective solution for collection of domestic wheelie bins.

It is also possible to maintain a mandatory levy (with no opt-out clause) in order to fund CSOs or pay for Council or WRM administrative and policy development expenses.

SCRC's submission (April 2012) in response to this analysis in the Draft Report maintains that 'it is acknowledged by Council that it is able to maintain a mandatory levy with no opt-

out clause to fund WRM operations.’ For the avoidance of doubt, the conclusion of the Authority is that the mandatory levy can be used to fund the following activities without violating competitive neutrality:

- (a) Services for which competition is not feasible;
- (b) CSOs, and
- (c) administrative functions of the Council or WRM with regard to waste collection administration and policy development.

However, the mandatory levy currently applied to bulk waste services violates competitive neutrality requirements as explained in section 4.4.

#### 4.10 Conclusions

The mandatory levy with no opt-out provision provides SCRC with a competitive advantage only because WRM is in the public sector. No private sector service provider has the ability to mandate such a levy or apply such a charge to customers that do not use the service. Moreover, it is possible and appropriate to remove or modify the levy so that it does not cause a competitive neutrality violation (see section 6).

This conclusion holds even under the SCRC’s interpretation of the requirements of the full cost pricing reform option that full cost pricing applies only at the business activity level, due to the failure to remove a competitive advantage arising from public ownership where possible and appropriate.

Use of the mandatory levy to provide a competitive advantage due to government ownership is sufficient for a finding that SCRC has provided itself with a competitive advantage.

The Authority notes that use of a mandatory levy (with no opt-out clause) would appear to be justified in order to finance the provision of non-competitive services, fund CSOs, and fund SCRC’s general administrative waste management functions.

Although SCRC’s use of the mandatory levy by itself constitutes a competitive neutrality violation in these circumstances, the Authority investigated SCRC’s implementation of the costing and pricing requirements of the full cost pricing reform.

With regard to the question of the applicability of full cost pricing reform requirements to particular goods and services, the Authority has concluded that it is possible to interpret the legislation and related regulations and Full Cost Pricing Guide as either requiring:

- (a) merely that collectively the goods or services supplied by the relevant business activity must be charged on a basis to enable the total revenues to recover the aggregate full cost of providing all such goods or services; or
- (b) in addition, that prices for the individual goods or services supplied as part of that business activity should also reflect their appropriate individual full costs absent a commercial basis for not doing so;

In examining the requirements of the full cost pricing reform option, the Authority has proceeded on the basis that:

- (a) collectively the goods or services supplied by the relevant business activity must be charged on a basis that recovers the aggregate full cost of providing all such goods or services; and

- (b) the charging for particular goods or services supplied as part of that business activity should also reflect their appropriate individual full costs absent a commercial basis for not doing so.

Irrespective of which definition of full cost pricing is adopted, the Authority does not consider that SCRC's pricing occurs on a commercial basis (as required under the Local Government Act) because the mandatory levy provides a competitive advantage possible only due to SCRC's government status.

SCRC has not identified any valid commercial reasons to not apply full cost pricing to its bulk recycling service. SCRC has not claimed any promotional pricing, nor is there any evidence that bundling of the services in the manner undertaken by SCRC enhances the profitability of the business activity as a whole. There is, therefore, not a case for pricing the waste recycling service below its full cost; and

SCRC has not justified its pricing by adopting any explicit community service obligation.

In respect of the WCRAQ's specific complaints, the Authority concludes that:

- (a) SCRC is not offering to provide the bulk recycling services provided by WCRAQ members at no charge to their customers and in this respect WCRAQ's complaint is not substantiated. However, the Authority recognises that from the perspective of the customer, the recycling service is offered at 'no extra charge'.
- (b) WCRAQ members are unable to compete on the same terms as SCRC is offering as:
  - (i) The mandatory levy has no 'opt-out' provision and therefore provides WRM with a competitive advantage – only because WRM is in the public sector. A customer that does not require or desire a recycling bin could not be forced by a commercial service provider to pay a contribution to the cost of recycling services provided to other customers. Therefore, SCRC does not comply with the principle of competitive neutrality.
  - (ii) SCRC's charges to bulk recycling service customers are below the cost of providing those services to customers using those services;

Based on the Authority's interpretation of the requirements of the Business Activities Regulation, SCRC has not complied with the requirements of the full cost pricing reform.

The requirements for competitive neutrality cannot be evaded by defining the business activity or services in such a way that would allow results inconsistent with commercial reality in a competitive market.

WCRAQ's complaint that its members are unable to compete on the same terms as SCRC is offering is therefore substantiated, and SCRC's relevant conduct constitutes a breach of the principle of competitive neutrality.

#### **4.10.1 Ministerial Review**

As there would seem to be some perceived ambiguity about the full cost pricing requirements, the Authority suggests that the Minister for Local Government and the Treasurer review the competitive neutrality regime created by the Local Government Act, the Business Activities Regulation, and the Full Cost Pricing Guide with a view to clarifying their intent.

However, although there is disagreement about the application of full cost pricing to individual services, on any interpretation that is reasonably open, the SCRC mandatory levy does not meet the requirements for the full cost pricing reform and violates the principle of competitive neutrality.

Another potential ambiguity has been identified in the course of the Authority's review of the Business Activity Regulation. Part 3, s19(2) of the Business Activities Regulation, states that:

*This part applies whether the reform is done by—*

*(a) commercialisation; or*

*(b) corporatisation.*

This could be read to limit the application of the full cost pricing requirements to the commercialisation and corporatisation reforms. However, s44(4) of the Local Government Act expressly indicates that it was anticipated that the full cost pricing reform could be applied by itself.

The Authority considers the better interpretation is that Chapter 3 Part 3 of the Business Activities Regulation does apply in the absence of commercialisation or corporatisation and s19(2) is meant to make clear that the provisions of the full cost pricing reform also apply to where full cost pricing is occurring in conjunction with commercialisation and corporatisation. This Report proceeds on that basis. However, as discussed above, the Authority considers the alternative interpretation would not have altered the outcome in this particular investigation because the use of the mandatory levy to provide a competitive advantage derived from government ownership violates competitive neutrality requirements. As discussed elsewhere in this Report, it is both possible and appropriate to remove this competitive advantage (see section 6).

The Authority considers that clarification of the current ambiguity about the application of Chapter 3, Part 3 of the Business Activities Regulation is also a matter that requires early attention from the Minister for Local Government. Preferably this should be done before the Authority (or another referee) is required to investigate a competitive neutrality complaint where this issue may impact on the result of the investigation.

## 5. CONDUCT

The Authority's conclusions in the Draft Investigation Report regarding the conduct complaints raised by WCRAQ were not challenged by either WCRAQ or SCRC.

### 5.1 WCRAQ Conduct Complaints

The WCRAQ complaints regarding SCRC contacts with customers fall into two categories:

- (a) SCRC's descriptions of its services to customers being inaccurate; and
- (b) SCRC interfering with customers of WCRAQ members.

### 5.2 SCRC Service Descriptions

WCRAQ (April 2010) makes the following specific complaints related to the manner in which SCRC describes its services:

- (a) SCRC's bulk recycling service, which is offered to businesses as being free/no extra charge, falsely and dishonestly excludes the information that SCRC has in fact charged the property owner for the service in its SCRC rate structure;
- (b) customers are not informed that SCRC now incurs two new additional costs as a result of introducing bulk recycling services:
  - (i) SCRC's additional contractor cost for conducting the new service, and
  - (ii) SCRC's additional costs for having recyclables collected and processed; and
- (c) SCRC claims to offer a weekly, but only in fact offers a fortnightly, service.

SCRC (September 2011) has since clarified that 'if at any time employees used the words 'no additional cost' to describe the provision of recycling services to particular rate payers, the intention behind the use of those words was to clarify that the rate payer would not incur charges additional to the utility charges it already pays for its waste management services'.

Customers may or may not have an understanding that their rates are calculated to include both general waste and a portion of recycling costs, even if they do not take recycling service.

However, irrespective of the veracity of the claims, it is not clear how any failure to disclose these facts would constitute a competitive neutrality violation as false claims can be made by any entity (not just because of their public ownership). They may of course be attributed a particular status by some affected parties when made by a local government or government agency, however, in general, such perceptions are not universally maintained with many government and government agency claims now tested directly by stakeholders, the media or the courts.

In general, a stakeholder concerned that the claims made in customer contacts are anticompetitive or misleading has recourse through the Australian Consumer and Competition Commission (ACCC), State Fair Trading Offices or the Courts. More specifically, government businesses activities are subject to the *Competition and Consumer Act 2010* (Cth) including the scheduled Australian Consumer Law (which replaced the Trade Practices Act).

The claim that services are offered weekly when they are actually offered fortnightly would appear to fall into the same category. However, the Authority notes that the SCRC Revenue Statement does state that charges for the bulk services about which WCRAQ complains are for a minimum weekly service and that green bins and 240 litre recycling bins are serviced fortnightly. SCRC (January 2012a) has further confirmed that weekly service to commercial properties is available although if there is under-utilisation of recycling bin capacity then a fortnightly collection may only be warranted to save costs across the collection system. Thus it appears that WCRAQ's complaint was incorrect, at least with respect to the bulk services that were the subject of the complaint.

In any case, the Authority does not consider that these matters breach the principle of competitive neutrality. The behaviour about which WCRAQ complains does not flow from WRM being in the public sector.

### 5.3 Interference with WCRAQ Customers

WCRAQ makes the following specific complaints related to SCRC interfering with customers of WCRAQ members:

- (a) SCRC officers have actively encouraged customers to cancel their commercial recycling service on the basis that SCRC is offering a 'free bulk recycling service';
- (b) officers of SCRC working within WRM have been directed to write to numerous businesses encouraging them to breach their existing contracts; and
- (c) SCRC's repeated use of the phrase 'unauthorised contractor' when referring to WCRAQ members suggests that the conduct of those members is somehow improper and/or unlawful.

In one way or another, each of these specific WCRAQ complaints relate to claims that SCRC encouraged customers to drop services provided by independent contractors.

The Authority sought further information from both SCRC and WCRAQ concerning these customer contacts. A copy of a letter from WRM to a customer submitted to the Authority by SCRC (September 2011, Appendix 5) does state that the SCRC's offer of a separate bulk bin service without any additional charge can be very financially advantageous.

The letter also 'advises' the customer to cancel its existing service and contact WRM to reinstate the service with the authorised contractor.

Finally, the letter asserts that only SCRC contractors are authorised to provide service in the SCRC area and that customers should cancel their existing service. Indeed, the letter goes on to state that legislation under the Local Government Act exists to ensure that the rights of contractors and SCRC are protected from unauthorised waste contractors who have not won the waste tender for the specific contracted region. (SCRC September 2011, Appendix 5)

SCRC (September 2011) states that the letter was sent to only one customer. WCRAQ (September 2011) maintains that numerous letters were sent and that WRM made similar representations in face to face customer contacts. WCRAQ was unable to provide copies of additional letters. However, according to AEC (2011) over the past few years WRM has been active in advising commercial and industrial premises of their entitlement to take up recycling services as part of their waste collection service charge.

The Authority notes that SCRC has undertaken to ensure that customers will not be told in the future that competitors' services are unauthorised.

The Authority does not consider that these representations are a breach of the principle of competitive neutrality for the same reason that the statements referred to in section 5.2 of this report are not considered to do so. The conduct alleged is not necessarily related to government ownership.

This conclusion also applies to the matters of a similar nature raised by Elliot May (May 2011).

#### **5.4 Conclusion**

The Authority does not consider that SCRC has breached the principle of competitive neutrality in respect of the conduct related complaints. Any competitive advantage from the behaviour alleged would not flow from WRM being in the public sector. SCRC submits that any claims that competing or potentially competing services are unauthorised were limited, and in any event steps have been taken to remediate the issue. No further action is recommended.

The Authority concludes that WCRAQ's competitive neutrality complaints with respect to SCRC conduct are not substantiated.

## 6. COMPETITIVE NEUTRALITY CRITERIA

### 6.1 Matters to be Considered

Section 140 of the Business Activities Regulation identifies a set of competitive neutrality criteria for a referee to consider when investigating a competitive neutrality complaint. The consideration of the competitive neutrality criteria can assist the referee in establishing whether it is possible and appropriate to remove a competitive advantage.

The competitive neutrality criteria are as follows:

- (a) the need to ensure the competitive neutrality principle is complied with; and
- (b) any local government policies about the competitive neutrality principle, including, for example—
  - (i) directions the local government gives to the business entity conducting the business activity the subject of the competitive neutrality complaint;
  - (ii) arrangements between the local government and the business entity about a competitive advantage gained, or competitive disadvantage suffered, by the business entity
  - (iii) social welfare and equity considerations, including, for example, community service obligations, and the availability of goods and services to consumers
  - (iv) policies on economic and regional development issues, including, for example, policies on employment and investment growth; and
- (c) local government policies, or a law, about—
  - (i) ecologically sustainable development; or
  - (ii) industrial relations; or
  - (iii) occupational health and safety; and
- (d) the need to promote competition; and
- (e) the need to allocate resources efficiently.

The Authority may also consider ‘any other matter the referee considers is relevant to the investigation, including, for example, the interests of consumers or a class of consumer’. s140(4).

### 6.2 Relevance of the Competitive Neutrality Criteria when the Authority is the Referee

A Council can nominate the Authority as the referee for a complaint under Chapter 6, Part 2 of the Business Activities Regulation (with such a reference by SCRC being the trigger for this investigation).

However, Chapter 6, Part 2, Division 3, which requires the referee to take the competitive neutrality criteria into consideration, applies to all referees other than the Authority (s138(2) Business Activities Regulation). In addition, in reporting on the complaint under this



provision, the Authority is not specifically required to take into account the competitive neutrality criteria, in contrast to the requirements for other referees.

The Authority is specifically required to take the competitive neutrality criteria into account when a decision of another referee is referred to the Authority under Chapter 6, Part 3 of the Business Activities Regulation.

This lack of a specific requirement for the Authority to take into account the competitive neutrality criteria (under Chapter 6 Part 2 of the Business Activities Regulation) while other referees are required to, could potentially result in different outcomes according to which referee is appointed (although the Authority does not consider that this applies in the current investigation).

The competitive neutrality criteria effectively refer to matters that would need to be considered to determine if it was possible and appropriate to remove a competitive advantage under the full cost pricing reform. This in effect means that it is not possible to determine if the full cost pricing reform has been implemented correctly without considering the competitive neutrality criteria.

Moreover, Division 3 of the Business Activities Regulation refers the Authority, to the *Queensland Competition Authority Act 1997* (the QCA Act), parts 6 and 9 and sections 236 to 241 and 243, 'with necessary changes'.

Under Part 6 of the QCA Act, the Authority may inform itself on any matter relevant to the investigation in any way it considers appropriate.

SCRC (April 2011) referred this matter for the Authority to investigate 'to ensure a number of outcomes that not be achievable if [the] collection system was open to competition'.

On the basis of its interpretation of the requirements of the Local Government Act (s43), the Business Activities Regulation, and the QCA Act, the Authority has proceeded on the basis that it is free to consider the competitive neutrality criteria in its inquiry into whether it is possible and appropriate to remove competitive advantages due to the SCRC being in the public sector.

Given the ambiguities in relation to the Authority's scope to apply the competitive neutrality criteria, the Authority considers that the relevant requirements of the Business Activities Regulation need to be urgently reviewed by the Minister for Local Government.

### **6.3 Need to Ensure Competitive Neutrality is Complied With**

In commenting on the 'need to ensure the competitive neutrality principle is complied with' SCRC (September 2011) stated that it has complied with the competitive neutrality principles set out under the Local Government Act. As discussed in section 4, the Authority disagrees with SCRC's interpretation of the statutory requirements for compliance with the competitive neutrality principle and concludes that the full cost pricing reform has been purportedly implemented in a way that entails a significant competitive advantage for SCRC's WRM business activity, derived from its public ownership, and not being removed where its removal is both possible and appropriate.

Unless the principle of competitive neutrality is applied correctly, business entities owned by the public sector will be able to operate with a competitive advantage relative to the private sector when it would not be appropriate to do so. The need to prevent such an outcome is central to National Competition Policy.

SCRC's response to the Draft Report states that 'it would appear that the Authority is suggesting that Council should ensure competition exists for competition's sake.' This is incorrect.

The Business Activities Regulation requires local governments implementing the full cost pricing reform to ensure the competitive neutrality principle is complied with 'whenever possible and appropriate' (s20). The National Competition Policy requires that state and local governments rely on competition whenever possible and justify monopoly solutions with an assessment of public benefits (Queensland Government 1996). Further, as discussed in section 4.8, the Business Activities Regulation and state policy require non-commercial activities to be funded with a CSO and that CSOs be designed to allow competition for customers whenever possible.

As discussed below in section 6.5, SCRC's submission in response to the Draft Report rejects further consideration of any solution other than its own. It would appear that the Council is suggesting that its waste diversion goals should be promoted as an overriding objective irrespective of other social goals. The Authority recommends that SCRC give further consideration to policies that would encourage commercial recycling with a competitive market structure (see section 7).

The Authority understands that the SCRC Waste Minimisation Strategy was based on considerable community consultation and input as reflected in the Sunshine Coast Waste Minimisation Strategy Discussion Paper Consultation Report (SCRC 2009a). However, as the referee nominated by SCRC, the Authority is required to consider the need to ensure the competitive neutrality principle is complied with.

## **6.4 Local Government Policies about Competitive Neutrality**

### **6.4.1 Directions the Local Government Gives to the Business Entity Conducting the Business Activity that is the Subject of the Competitive Neutrality Complaint**

SCRC did not identify any directions regarding competitive neutrality provided to WRM (SCRC September 2011). However, SCRC recognises that competitive neutrality requirements are designed to prevent Council businesses from using their government status to price anti-competitively. For example, the WRM Operational Plan (SCRC June 2011a) states that:

*In considering the prices charged for Council's Waste Management services, relevant direct competitors include landfills or transfer stations operated by other councils or the private sector and/or waste collection services operated by the private sector.*

*Competitive neutrality aims to promote efficient competition between Council businesses and private sector businesses.*

Thus despite SCRC's contention that the full cost pricing reform was designed only to ensure full cost recovery and there was no intention to operate WRM in a commercial manner (see section 4.8), at some level SCRC recognises that application of the competitive neutrality principle is designed to allow for efficient competition.

### **6.4.2 Arrangements between the Local Government and the Business Entity about a Competitive Advantage Gained, or Competitive Disadvantage Suffered, by the Business Entity**

No arrangements between the SCRC and WRM about a competitive advantage gained, or competitive disadvantage suffered by the business entity were nominated by SCRC or identified by the Authority.

### **6.4.3 Social Welfare and Equity Considerations, Including, for Example, Community Service Obligations, and the Availability of Goods and Services to Consumers**

As noted above, AEC (2011) states that one of the objectives of organising waste management services under full cost pricing rather than commercialisation or corporatisation was to make it easier for the business unit to pursue non-commercial objectives.

The full cost pricing reform involves pricing the significant business activity on a commercial basis, but without creating a new business unit or new corporate entity (Local Government Act s44). CSOs are required for funding services that would not be provided on a commercial basis (see section 4.8). However, SCRC did not report any CSOs associated with bulk recycling services offered to commercial ratepayers.

### **6.4.4 Policies on Economic and Regional Development Issues including, for example, Policies on Employment and Investment Growth**

AEC (2011) assumes that with competition commercial waste will be diverted to landfill instead of being recycled and as a result there will be a net reduction of 7.3 full time equivalent employees by WRM contractors (additional employees at the landfill and fewer employees at recycling centres).

AEC also considers that if SCRC loses control over the commercial waste stream, investment and employment in an AWT facility will not occur and 42 full time equivalent positions will not be created as a result. As noted in section 1.2, an AWT facility would undertake advanced processing of waste using technology such as anaerobic digestion, composting, incineration, or conversion of waste to energy to reduce the amount of waste going to landfill. The feasibility of the AWT option on which the employment figure is based is discussed below.

WCRAQ (November 2011) maintains that competitors will offer more diverse recycling options than currently being provided by SCRC. This could lead to higher net employment in the sector.

The Authority notes that effective and efficient service delivery promotes sustainable employment creation in the industry being serviced and enhances the productivity and competitiveness of firms that rely on these services, which then leads to potentially higher levels of employment for those businesses.

### **6.5 Local Government Policies, or a Law, about Ecologically Sustainable Development**

SCRC has adopted a Waste Minimisation Strategy (SCRC December 2009). SCRC's vision for sustainable development is for the Sunshine Coast to become Australia's 'most sustainable region – vibrant, green and diverse'. SCRC has submitted that:

*the Waste Minimisation Strategy has clear waste diversion targets across all waste streams (including municipal (residential) solid waste, commercial and industrial waste, and construction and demolition waste) and a zero waste focus was a clear outcome of the significant community consultation undertaken as part of the development of the strategy (January 2012a).*

A central component of the SCRC waste management strategy is to control the waste stream with a view to directing waste to a facility that will assist in diverting waste from landfill. This could include new waste sorting, resource recovery, or AWT facilities.

SCRC has set a waste diversion target of 70% by 2014 (SCRC April 2011b). This is higher than the Queensland waste strategy target of 60% for recycling of commercial and industrial waste (DERM 2010).

SCRC (January 2012a) believes that unless it maintains control over the commercial waste stream through the mandatory levy it may not be able to meet its waste minimisation targets because the best new technology will not be economic if commercial operators divert waste from Council facilities.

SCRC is also concerned that with competition commercial customers will select the least cost option for disposing of waste, which will result in recyclable material being disposed of in general waste bins and sent to a landfill. This in turn will result in failure to meet the waste diversion targets that have been established in the Waste Strategy.

### 6.5.1 Competition and Market Failure

SCRC (January 2012a) states that it:

*levies a waste management utility charge on all premises within defined collection service areas of the region to achieve certain social environmental outcomes from its service provision and rating functions that would otherwise not be achieved in a market dominated by direct (rather than co-ordinated by WRM) private sector influences and a profit maximisation focus.*

SCRC goes on to note that this market driven behaviour:

*. . . is evidenced by the fact that most regions with open markets for commercial waste collection services feature a high incidence of bulk paper and cardboard recycling services but a very low incidence of commingled recycling services (and dedicated services for other more difficult, low value products such as glass and plastics).*

SCRC also notes that the same market forces will result in a situation in which smaller and more remote waste generators will be left with considerably higher servicing costs (and likely no option to take up recycling services).

SCRC (January 2012a) also maintains that commercial operators will not recycle the same volume of material as its own designated contractors. This is because commercial operators will be driven by market price signals to allow lower value recyclable products to be sent to landfill via the general waste bin:

*In reality, WCRAQ members will only be interested in high value, profitable products such as paper and cardboard and will generally leave all other recyclables to be landfilled given that companies will compete on the basis of least cost rather than the best triple bottom line outcome. Consequently, competition will interfere with, rather than drive, the achievement of waste diversion targets.*

The assumption that competition will reduce recycling is based on the claim that:

*private sector operators will only offer recycling services where profits can be gained and therefore will 'cherry pick' not only the customers to which services will be made available for a reasonable price, but also the recyclables collected (e.g. bulk cardboard) – services may also not be guaranteed on an ongoing basis given that profitability is inextricably linked to national and international market forces. (SCRC August 2011)*

With respect to the 'cherry picking' argument, WCRAQ (November 2011) notes that 'all major waste companies will provide competitively priced services to all commercial businesses in the SCRC area unless they are well outside the urban and town areas'.

Further, if commercial customers in rural areas are unwilling to pay for recycling, the cost of the service could be subsidised with an appropriate CSO (from ratepayers) regardless of who

provides the recycling service. Unwillingness to pay by customers in remote locations could also indicate that recycling is not justified from the perspective of net social benefits.

WCRAQ (November 2011) maintains that competition will further promote recycling and reduce costs because more flexible arrangements will be provided. SCRC's submission in response to the Draft Report disagrees, noting that 'in its own complaint from April 2010, WCRAQ confirmed that the recycling services undertaken by its members were 'limited'.

The Authority understands that WCRAQ in describing its members services as 'limited' was referring in part to the fact that the mandatory levy policy restricted the range of services that its members could provide. The Authority notes that a mandatory levy policy was in effect in the Maroochy area prior to consolidation. This limited WCRAQ's geographic role on the Sunshine Coast. Maroochy accounts for 68% of the total bulk general waste services provided in the SCRC area (SCRC January 2012c).

WCRAQ (November 2011) also maintains that the averaging inherent in SCRC pricing does not encourage special arrangements to encourage these firms to recycle. In other words, some high value recyclables may be placed in general waste bins because the current contracting arrangements specify only a single pick-up price with no scope for rewards to identify and recycle higher value material.

SCRC (January 2012) believes that 'WCRAQ is most likely making a generic comment based on the experiences of a handful of high value, highly profitable customers in mind with high volumes of bulk paper/cardboard.' SCRC's position is to 'average out higher profit recyclables with lower profit recyclables in the provision of the comingled recycling service to ensure the service can be provided on a consistent basis across the region, as well as ensuring that low value recyclables are able to be recovered rather than simply disposed to landfill'.

WCRAQ's main point is that customers may have specialised needs and that competitive providers of bulk services can be more responsive to customer requirements and result in higher and not lower rates of recycling (December 2011).

SCRC's submission in response to the Draft Report responds to the discussion of the incentives of competitive providers as follows:

*Council does not agree with WCRAQ's assertion that its members would be able to increase recycling levels given that all industry evidence points to the contrary without some form of government intervention being in place. More flexible arrangements will also likely mean changes in the servicing structure which will reduce the individual products being recovered (e.g. bulk paper and cardboard), and therefore lower diversion rates from what has been achieved under Council's policy position. In reality, there is limited competition in the market for comingled recyclables, only a desire for private operators to pick out the profitable recoverable products and profitable to service waste generators given a profit maximisation focus.*

However, allowing competitors to focus on high value recycling materials could in fact promote waste diversion.

- (a) A monopoly carrier has little incentive to scour the market to collect metals, paper and cardboard unless it receives the financial benefits from doing so. SCRC's collection contractors are compensated by the number of services provided irrespective of the recyclable value of the material collected.
- (b) Commercial customers with a high proportion of high value material receive no benefit when they recycle using the Council's comingled bins.

- (c) The SCRC collection contractors do not receive extra compensation for delivering high value material to the SCRC's MRF.

In these circumstances high value material that would be recycled by competitors may find its way into the general waste bins and then the landfill. The loss is two-fold. Valuable recyclable material is sent to the landfill instead of reprocessed and costs are incurred to provide landfill space. Allowing competitive market price signals to encourage diversion of recyclables from general waste bins could, as WCRAQ suggests, provide public benefits.

The composition of recyclable material found in general commercial waste bins suggests that this is a real concern. Industry data show that a high proportion of recyclable material included in commercial general waste bins is paper and paper board. Over 30 percent of the garbage stream in one survey consisted of paper and cardboard. (See APC 2007) This represented a substantial portion of the non wood and organic material in the garbage stream.

Using market incentives to increase the amount of this material collected may provide benefits even if some amount of lower valued material is not recycled. The Authority also notes that the lower valued material – e.g., glass and plastics – is inert material that does not contribute to carbon emissions from landfills.

The recycling of glass was used by AEC (2011) as an example of a low value recyclable material that will be diverted to landfill because that is the most economical market-based alternative. WCRAQ (January 2012) has provided data that show that recyclable glass is less than 10% of the commercial waste stream (APC 2007). Moreover, the Authority understands that a recycling business on the Sunshine Coast servicing businesses with high concentrations of recyclable glass has ceased operations due to SCRC's pricing policies (WCRAQ January 2012).

Other solutions for glass and container recycling in general are in place in other states. South Australia has had a successful container refund program in place since 1977. The Northern Territory implemented such a scheme this year, and this approach is being considered in New South Wales. It would likely be infeasible to implement such a program in a limited geographic area. However, these programs illustrate that pricing mechanisms can be used to encourage recycling without the need to limit competition.

In any event, the Authority does not disagree with SCRC's view that absent incentives it is likely cheaper to dispose of some recyclables in general waste than to recycle. To the extent that pricing signals do not reflect social costs, some government action may be appropriate. SCRC chose to rely on a government based competitive advantage rather than design pricing and incentive mechanisms that would encourage more recycling without limiting competition. The practicality of using CSOs or direct government requirements on commercial firms to recycle is discussed below in Section 7.3.

### **6.5.2 Cost Benefit Analysis**

A cost benefit analysis prepared for SCRC (AEC 2011) concludes that eliminating the mandatory levy and allowing commercial competition will impose net costs on the community. AEC argues that the failure to meet recycling targets will increase social costs because landfill usage, and the environmental costs associated with landfill, will increase. Environmental concerns related to vehicle emissions and road congestion are also addressed in the cost benefit analysis.

Although the WCRAQ complaint is directed to bulk recycling services, the scope of the AEC cost benefit analysis covers the implications of removing the mandatory levy for both the commercial general waste and commercial recycling services. SCRC (January 2012a)

maintains that if commercial recycling is open to competition, that will be ‘a wedge to open commercial solid waste to competition’.

Therefore, the cost benefit analysis was undertaken on the assumption that if WCRAQ’s complaint on the bulk waste recycling issue were successful, the mandatory levy for commercial waste would ultimately be removed as well, and SCRC would be subject to competition for all of its commercial waste services. This is considered to be a reasonable assumption given the requirements of the Local Government Act.

SCRC ‘is currently investigating the appropriateness of an Alternative Waste Technology (AWT) facility to process general waste and extract all recyclables and stabilise/recover the organic fraction’ AEC (2011). Therefore costs and benefits of ending the mandatory levy are considered under two scenarios:

- (a) Without the introduction of an Alternative Waste Technology (AWT) facility; and
- (b) With the introduction of an AWT facility.

AEC’s assumption is that if SCRC loses control over the waste stream as a result of competition, then the amount of waste processed at a hypothetical AWT would fall because competitors would choose lower cost disposal options. The facility would have higher per unit costs and uncertain demand and as a result would not be built. The ‘with AWT’ case, as represented in the AEC cost benefit analysis, then represents the loss of any net benefits that such a hypothetical facility would provide.

The AEC estimates of the unit cost of processing waste and the percentage of waste diverted from landfill with the hypothetical AWT are based on a specific thermal technology option that has been evaluated for SCRC by Queensland Treasury Corporation (QTC).

AEC concluded that there is a significant net cost associated with a move from the current policy position to the alternate policy position under both scenarios. AEC finds that the net present values (NPVs) of moving away from the mandatory levy are - \$63.4 million (without the AWT) or - \$161.2 million (with the AWT) over a twenty year period.

AEC considered both quantitative and qualitative impacts. Table 2 describes the categories of costs and benefits that were considered. Table 3 reproduces the results of the quantitative analysis. The results in Table 3 were reported in terms of the base year only. The AEC study did not report the full cash flows for the ‘with AWT’ case.

**Table 2: Explanation of Costs and Benefits in AEC Model**

	<i>Without AWT</i>	<i>With AWT</i>
<b>Costs</b>		
Lost Resource Value	Reduced take-up of recycling services by business will result in recyclable material with a resource value being disposed of in landfill	The additional resource value of resources that an AWT would extract from the waste (e.g., metals and energy)
Landfill Consumption	Life cycle costs associated with additional landfill consumption	Life cycle costs associated with additional landfill consumption
Carbon Emissions	Greenhouse gas emission cost from commercial and industrial waste	Greenhouse gas emission cost from commercial and industrial waste
Leachate and other gases	Leakage from landfill of toxic liquid produced by decomposing waste	Leakage from landfill of toxic liquid produced by decomposing waste
Community Impact from New Landfill	Difference between a low cost AWT option and the cost of disposal to landfill scrapped as a result of community pushback	Difference between a low cost AWT option and the cost of disposal to landfill scrapped as a result of community pushback
Amenity Cost from More Waste Trucks	Additional traffic cost associated with waste collection in urban areas (noise, congestion, accidents, carbon emissions)	Additional traffic cost associated with waste collection in urban areas (noise, congestion, accidents, carbon emissions)
Higher Cost to Process Domestic Recyclables	Higher per unit costs from excluding commercial and industrial waste stream from existing recycling processing facilities	Higher per unit costs from excluding commercial and industrial waste stream from existing recycling processing facilities
Higher Cost to Process Domestic Waste via AWT	n.a.	Higher per unit costs from the commercial and industrial waste stream being excluded from any AWT facility (lost contribution to fixed costs)
Lost Contribution to Fixed System Costs	Higher per unit costs of WRM operations from excluding the commercial and industrial waste stream from existing recycling processing facilities	Higher per unit costs of WRM operations from excluding the commercial and industrial waste stream from existing recycling processing facilities
<b>Benefits</b>		
Recycling Cost Savings	Reduced recovery and reprocessing costs of recycled material	Reduced recovery and reprocessing costs of recycled material
AWT Cost Savings	n.a.	Cost savings from not building AWT
Amenity from Fewer Recycling Trucks	Reduced traffic cost associated with waste collection in urban areas (noise, congestion, accidents, carbon emissions)	Reduced traffic cost associated with waste collection in urban areas (noise, congestion, accidents, carbon emissions)

Note: Authority does not consider (a) that higher per unit costs due to reduced demand are appropriately included because if the AWT does not exist the fixed costs are not incurred or (b) that the 'with AWT' case is relevant. See below.



**Table 3: AEC Cost Benefit Analysis – Base Year Quantitative Impacts**

<i>Council</i>	<i>Without AWT</i>	<i>With AWT</i>
<b>Costs</b>		
Lost Resource Value	(\$802,270)	(\$4,584,510)
Landfill Consumption	(\$1,088,795)	(\$6,221,835)
Carbon Emissions from Landfill	(\$289,963)	(\$1,656,973)
Leachate and other gases	(\$11,461)	(\$65,493)
Community Impact from New Landfill	(\$804,562)	(\$4,597,600)
Amenity Cost from More Waste Trucks	(\$529,395)	(\$529,395)
Higher Cost to Process Domestic Recyclables	(\$305,912)	(\$305,912)
Higher Cost to Process Domestic Waste via AWT	(\$0)	(\$1,895,549)
Lost Contribution to Fixed System Costs	(\$2,090,198)	(\$2,090,198)
<b>Benefits</b>		
Recycling Cost Savings	\$1,285,351	1,285,351
AWT Cost Savings	\$0	8,926,086
Amenity from Fewer Recycling Trucks	\$36,191	36,191
<b>Net Benefit/(Cost) in Base Year</b>	<b>(\$4,601,014)</b>	<b>(\$11,699,844)</b>

The qualitative impacts identified by AEC are reproduced in Table 4. Note that there is substantial overlap between the qualitative and quantitative impacts.

**Table 4: AEC Cost Benefit Analysis -- Qualitative Impacts**

<i>Council</i>	<i>Without AWT</i>	<i>With AWT</i>
Inability to achieve waste diversion targets/sustainability agenda	Medium Cost	Very High Cost
Extended noise impacts from varied collection times	Medium Cost	Medium Cost
Waste collection noise during higher impact times	Medium Cost	Medium Cost
Congestion in narrow streets and tourist 'hot spots' in high impact times	Medium Cost	Medium Cost
Reduced availability of cost effective recycling for many waste generators	Medium Cost	Medium Cost
Reduced service offering for smaller waste generators and outlying areas	Medium Cost	Medium Cost
Higher aggregated service cost due to inefficiencies and compliance needs	Medium Cost	Medium Cost
Additional funding mechanism to cover lost contributions to fixed costs	Medium Cost	Medium Cost
Reduced economic diversity from reduced investment in resource recovery	Low Cost	Medium Cost
Risk of employment transferring to landfills outside of the region	Low Cost	Low Cost
Reduction in avoided emissions from the replacement of virgin materials	Low Cost	Low Cost
Sustainability impacts from unnecessary truck movements	Low Cost	Low Cost
Increased Traffic at WRM's waste facilities due to more collection trucks	Low Cost	Low Cost
Risk of AWT not being viable for domestic waste without commercial waste	n.a.	Low Cost
Changes in the structure of servicing and charging – smaller generators	Low Cost	Low Benefit
Ability to choose whether or not to pay for a recycling service	Low Benefit	Low Benefit
Larger waste generators leveraging off national servicing arrangements	Low Benefit	Low Benefit
Changes in the structure of servicing and charging – larger generators	Low Benefit	Medium Benefit

The Authority requested review of the AEC analysis from Synergies Economic Consulting (Synergies January 2012). Synergies identified several issues with the AEC Cost Benefit Analysis that collectively suggest that the AEC cost benefit analysis does not prove that there are benefits from restricting competition for commercial recycling. SCRC was provided with a copy of the Synergies Report and commented on the Report in its response to the Authority's Draft Report.

The issues with the AEC cost benefit analysis raised by Synergies relate to:

- (a) methodology;
- (b) assumptions regarding diversion rates, the viability of the AWT option studied, landfill alternatives, and public amenity and carbon emissions;
- (c) the implications of evidence from other jurisdictions; and
- (d) the rejection of alternative policy options.

### 6.5.3 Methodology

Synergies (2012) concluded that the methodology used by AEC is appropriate in general terms but noted that there are several concerns with the AEC analysis.

For example, Synergies notes that there are cases where AEC treats income transfers between groups as costs:

- (a) The Waste Act provided for a levy of \$35/tonne on commercial and industrial waste delivered to landfills. The levy is designed to encourage recycling by making it more expensive to dispose of recyclable material to the landfill. AEC treats the levy as a cost of disposing waste when it is actually a transfer from landfill users to the state government programs funded by the levy. The levy is effectively a tax designed to encourage recycling by increasing the cost of disposing of waste. In terms of a social cost benefit analysis there is no significant additional deadweight social loss from collection of the levy;
- (b) AEC treats anticipated lost contributions to fixed costs of existing WRM recycling and disposal facilities resulting from competition as costs. In reality the result will be a transfer of cost responsibility from commercial waste customers to municipal waste customers.

Synergies note that income transfers are usually identified separately to inform the equity implications of economic policy changes.

SCRC's response to the Draft Report (April 2012) states that:

*AEC Group has confirmed that there will in fact be additional costs incurred by the Sunshine Coast community and region (the frame of reference or 'catchment' from which the impact identification and cost-benefit analysis is undertaken) in aggregate and that the commentary in the draft report from the Authority and Synergies fails to take into account these additional costs. The identified, fixed service costs will remain and will need to be funded by the Sunshine Coast community.*

The Authority agrees that true fixed costs – those costs that would be invariant to changes in the demand for SCRC facilities – must be funded by the Sunshine Coast Community. The most likely source of funding would be from the domestic sector where any deadweight efficiency loss is likely to be very low (and was assumed by Synergies to be zero). If the Council decided to increase domestic rates to cover the shortfall, the efficiency implications would most likely be minimal.

Moreover, the absolute size of any additional funding required from municipal customers would likely be small. WRM could make its disposal and recycling facilities available to the new competitors, who would then help pay for the fixed costs. Over time WRM could reduce fixed costs by restructuring its operations to reflect its smaller size. Finally, any fixed costs related to expenses SCRC incurs in its waste policy-making and regulatory role could be recovered through a mandatory levy on all ratepayers – municipal and commercial (see section 4.9).

Finally, SCRC's discussion of these points raises the issue of income transfers outside the region. The SCRC response to the Draft Report clearly states that the cost benefit analysis relates only to the Sunshine Coast region and any impacts outside that area are ignored. This point is particularly relevant to the issue of the state waste disposal levy and whether it should be included as a cost in the cost benefit analysis or as an income transfer.

SCRC has assumed that little if any of the levy payments would be returned to the region by the State and hence are considered to be costs in the analysis. (The Authority notes that the

new government determined to eliminate the state waste levy subsequent to the completion of the AEC analysis and the Synergies review.)

If the analysis is being restricted geographically in this way, and if the assumption regarding the flow of levy revenues is correct, then AEC's treatment in the original analysis would be appropriate. The point to be made here is that the council needs to be consistent. Any benefit or cost accruing to 'external' parties should be excluded.

#### 6.5.4 Diversion Rates

AEC (2011) states that, since SCRC expanded its bulk recycling business, there has been considerable growth in the number (and capacity) of recycling services provided to commercial premises across the region. AEC data indicate that the volume of waste diverted from landfill from commercial premises appears to have almost doubled between 2008-09 and 2010-11.

AEC assumes that the diversion of waste from landfill to recycling facilities will be dramatically lower with competition. The AEC analysis of the 'without AWT' scenario assumes that diversion rates will fall from 17.4% to 4.4% as a result of competition. Reduced diversion rates would result in higher landfill costs and are a significant driver of the overall AEC results.

Synergies points out that:

*This decrease in diversion rates is of course a function of the elasticity of demand for non-domestic recycling waste collection services. The estimated large reduction in this parameter implies either an inelastic demand and a very large price increase, or a more elastic demand and a moderate price increase. We consider the latter is a more likely outcome given our understanding of the market for commercial waste collection services. Either way, no evidence has been provided to support such a change in diversion rates.*

SCRC (January 2012b) provided data based on experience in its area to support its diversion rate assumptions. SCRC notes that prior to amalgamation in 2009, the Maroochy, Noosa and Caloundra councils each had their own waste management service and pricing policies:

- (a) Maroochy followed the same policy now adopted by SCRC – commercial wheelie bin and bulk recycling services were available as part of the waste management utility charge;
- (b) Noosa included wheelie bins in the waste management utility charge but did not provide bulk bins; and
- (c) Caloundra did not offer bulk recycling service and charged separately for wheelie bin recycling services.

After amalgamation and the formation of WRM, bulk and wheelie bin recycling services were included in the levy throughout the area.

SCRC (January 2012b) provided data that show significant uptake of bulk recycling services between 2009 and 2012 in the Noosa and Caloundra areas. By 2012, the number of bulk recycling services as a proportion of the number of bulk general waste services was 32% in Caloundra and 26% in Noosa. AEC assumes that with competition this growth will be completely reversed.

However, the extent to which this growth in recycling reflects new services as opposed to replacement of commercially provided services is unknown. SCRC (2012b) reports that

*In the majority of instances where these recycling services have been taken up, they have not replaced services provided by private sector operators and are in fact new services resulting in increased waste diversion outcomes. In other instances, previously held bulk paper and cardboard services have been augmented by commercial properties to comingle recycling services to capture additional recyclables (e.g. glass) destined for resource recovery*

Therefore, SCRC concedes that some portion of the growth reflects replacement of competitively supplied services with SCRC services – not additional diversion.

Demographic and economic factors obviously influence recycling performance in the three parts of what is now the SCRC area. However, the Authority does not dispute that SCRC's bulk recycling pricing (at zero incremental cost to the user) contributed to increased uptake of the service in Caloundra and Noosa.

The Authority notes that the Maroochy area has had a mandatory levy for commercial recycling services in place since 2004. The ratio of bulk recycling to bulk general waste services in Maroochy was 18% in 2012, which is less than the ratio in either Caloundra or Noosa, despite the mandatory levy policy being in place for a longer period in Maroochy (SCRC January 2012c). The number of bulk recycling services in the Maroochy area more than doubled between 2009 and 2012. Therefore, rapid growth in bulk recycling services occurred both where the mandatory levy was already in effect (Maroochy) and where it was recently introduced (Caloundra and Noosa).

The Authority's Draft Report suggested that this evidence from the Maroochy area demonstrates that factors other than the introduction of the mandatory level influenced the growth of bulk recycling services. If the mandatory levy policy is responsible for the growth of recycling, then much higher recycling take up should have been observed in Maroochy by the beginning of the period.

SCRC's submission in response to the Draft Report (April 2012) disputes the Authority's conclusions concerning diversion rates and the historical evidence:

*The growth in recycling services in the Maroochy area has been due to a number of factors that have changed in recent years, including Council having a dedicated resource advising commercial premises of their ability to take up a recycling service in addition to actively promoting the recycling service, as well as the offering of new low noise bulk bins only being introduced in recent years (noting that in a number of areas plastic bins are necessary to control noise impacts).*

Key questions are what growth of recycling service might have occurred without the mandatory levy, and more importantly, what growth may have occurred under alternative policies to encourage commercial recycling that would not involve the restriction of competition.

The Authority agrees that actively promoting the bundled commercial recycling service likely contributes to increased uptake. This raises the question of whether promotion of commercial recycling could encourage significant diversion without the mandatory levy. Moreover, SCRC's statement concedes that factors in addition to pricing, such as the availability of low noise bulk bins, influenced the growth of bulk recycling services. There has been increased promotion of commercial recycling at the state level during this time.

DERM is actively promoting business recycling with a variety of projects: 'the Queensland Government's waste reforms include a strategy that sets new directions for waste and resource recovery, support programs to help business and local government, and a levy on landfill operators for industrial waste sent to them for disposal' (DERM 2011). Specific programs are designed to:

- support small and medium enterprises, including the reThink Business Waste program

- develop new products and expand markets for recovered materials
- offer grants to support the introduction of new resource recovery options
- support research and development to develop processes and innovative solutions to boost resource recovery [and]
- create waste reduction and avoidance initiatives for business.

The impact of a levy on waste delivered to landfill is of particular note. An analysis of the waste levy for DERM documented experience in New South Wales, which has had a waste levy in place since 1993, and reported that:

*the recycling rates currently being achieved in New South Wales, in relation to C&I and C&D, are significantly higher than those achieved in Queensland (44% and 67% compared to 17% and 22%), indicating the potential for growth in recycling rates for these waste streams. (Synergies 2011)*

The Authority understands that the Queensland state government will stop collecting the levy beginning July 1, 2012. This provides an opportunity for SCRC to establish its own levy in its place and retain 100% of the revenue to encourage waste diversion and provide revenue for funding programs to further encourage domestic and commercial recycling.

SCRC's insistence that diversion rates will fall all the way back to 2009 levels without the pricing made possible by the mandatory levy, does not seem reasonable. Moreover, as discussed further below, the Authority continues to believe that at least some of the incentives to recycle provided by the current cross-subsidy can be replaced by a properly designed CSO system or by pricing signals that do not violate competitive neutrality comments. Finally, as discussed above, it is possible that competition could do a better job of ensuring that high value recyclables are in fact recycled.

### 6.5.5 Viability of an AWT

AEC (2011) assumes that 78.7% of waste will be diverted from landfill if an AWT is built. The diversion leads to large landfill savings that would not be realised if the AWT were not built. An underlying AEC assumption of the cost benefit analysis is that an AWT will not be built without the mandatory levy and the guaranteed commercial waste stream it provides. This explains the large calculated negative present value from competition in the 'with AWT case'.

The Authority understands that there are three basic forms of AWT under consideration by the waste industry generally (Lloyd Consulting, 2009):

- (a) biogas technology is designed to modify the existing approach to landfills by using technology that allows methane to be extracted from the decomposing material;
- (b) composting facilities separate waste material mechanically or by hand and then process the remaining organic and inorganic material to create compost that can then be sold. The remainder from this process goes to landfill; and
- (c) thermal technologies effectively use the waste material as fuel to create energy.

The economics of these three alternatives appear to be quite different. Thermal technologies are heavily capital intensive and likely do exhibit a large minimum efficient scale.

A Report for the South Australia Environment Protection Agency (Maunsell 2003) estimates indicative costs for various technologies. Mass burn incineration was at that time the most expensive alternative. Bioreactor landfill (a technology rejected by SCRC due to community opposition) and various AWT composting technologies were significantly less expensive.

Data supplied in the SCRC response to the Draft Report show similar relationships among technology alternatives.

Composting facilities appear to be a much more scalable technology. For example, the Western Metropolitan Regional Council (WMRC) operates a resource recovery facility near Perth. WMRC has contracted to construct a DiCOM bioconversion waste processing system that will allow waste to be processed on-site and divert a significant proportion from landfill at a long term predictable price. The facility is being privately financed by a private equity firm. (See AnaeCo 2012a).

AnaeCo, the firm that developed the DiCOM technology, reports that between 70% and 85% of household waste can be diverted from landfill while producing net energy without generating greenhouse gas emissions (2012b).

The DiCOM technology is modular. Capacity can be expanded from 50,000 tonnes per annum to 300,000 tonnes per annum or more. The WMRC facility is being built to 55,000 tonnes capacity. Local governments have contracted to deliver 55,000 tonnes of municipal household waste per annum to the site on a take or pay basis (WMRC 2011). According to WMRC, any excess capacity in the early stages of operation will be available for use by other local governments and commercial operators.

Other AWT facilities that compost and thereby divert waste from landfill are operating in Australia. These facilities operate at various capacities. For example, SITA Environmental Solutions operates 'Advanced Resource Recovery Technology' facilities at capacities ranging from 15,000 to 125,000 tonnes per annum (SITA 2012).

The Authority notes that a high proportion of both municipal (residential) and commercial waste consists of organic compostable material. Focusing on recovering this material from the waste stream may provide substantial waste diversion benefits.

With respect to the viability and throughput of the thermal AWT facility under consideration by SCRC, it is clear that, even at high utilisation rates, processing costs are significantly higher than other disposal methods. SCRC's submission in response to the Authority's Draft Report indicates that the cost of processing and disposal is \$350/t for the AWT facility compared with the current \$100/t cost for disposal to landfill. Based on these figures, the net present value of the thermal facility assumed by AEC may itself be negative and impose a high cost burden on Sunshine Coast ratepayers. A tripling in the cost of disposal, as would be in prospect with the AWT may not be acceptable to the community.

This also raises the issue of the relevance of the 'with AWT' scenario for the assessment of the competitive neutrality complaint. SCRC's response to the Draft Report states that:

*Council is currently undertaking an evaluation of a range of AWT options for potential implementation to achieve waste diversion targets. The thermal example has been provided as the potential best case waste diversion scenario and is intended to provide outcomes under this technology.*

However, the thermal example is likely the most sensitive to the volume of waste processed and, as noted above, may itself exhibit a significant negative net present value from an economic perspective. It is suggested that the SCRC should undertake a rigorous analysis of the social costs and benefits of a range of potential AWT alternatives and avoid assuming that there is a net social benefit from them irrespective of the cost.

Further, if an AWT facility would be economical only with delivery of a substantial portion of the commercial waste stream, there are ways to encourage this result in a competitive bulk

waste and recycling market (including the subsidisation of gate fees paid by all service providers).

For example, SCRC could view itself as being in the business of competing for waste supply by providing a cost-effective alternative to landfills located elsewhere. However, as noted, if an AWT alternative is not cost effective compared to landfill disposal, the benefits of building the AWT are questionable.

Moreover, AEC (2011) reports break-even gate costs for an AWT technology that is preferred by the Queensland Treasury Corporation over the thermal technology used in the AEC modelling. With this technology, adding commercial and industrial waste to the domestic curb side waste plus self-haul waste stream results in a reduction of break-even costs per tonne from \$179 to \$165). However, \$165 is still significantly higher than the current cost of disposal to landfill of \$100/tonne and thus even this option would result in an increase in the cost of waste disposal.

Building a highly capital intensive AWT that exhibits large economies of scale might best be undertaken on a regional basis, which would be a better way to take advantage of economies of scale from incineration technology.

SCRC (January 2012a) does not believe that opening an AWT to competing waste collectors is a viable alternative because:

- (a) an AWT facility cannot be built on the basis that waste may be received given the significant cost of ensuring additional spare capacity is made available (i.e. inappropriate to adopt an 'if we build it, they will come' approach);
- (b) some AWT facilities (in particular composting facilities) need to ensure that incoming waste is of a certain quality with no contaminants to avoid plant issues and potential quality implications of end products (impacting on saleability and the ability to meet specified quality standards); and
- (c) waste may actually be from waste generators located outside of the Sunshine Coast region, and Sunshine Coast region ratepayers should not be forced to subsidise the diversion of waste from landfill for waste produced in other jurisdictions.

Notwithstanding that the case of an AWT is not yet proven, the Authority notes that:

- (a) SCRC could allow commercial AWT providers to build a facility with guarantees for certain levels of waste from municipal sources while allowing the commercial provider to decide whether to build extra capacity for waste from commercial operators. Commercial firms can and do take such investment risks;
- (b) Loads can be monitored at the facility and competitors delivering contaminated waste can be excluded from making future deliveries; and
- (c) the Authority accepts that Sunshine Coast region ratepayers should not subsidise other regions' waste. However, if the revenues from sale of processed waste and energy exceed the cost of the disposal of waste that cannot be sold, then there will be no subsidy required. In any event, it is accepted that if disposal is subsidised or results in a net cost, then the origin of the waste would require monitoring.

It is evident that:



- (a) the viability of the AWT technology used in the AEC cost benefit analysis is clearly in doubt and therefore the claimed costs of moving from the current policy position under the ‘with AWT’ option may not be relevant; and
- (b) the removal of the no-opt-out provision of the current policy, or indeed moving away from a mandatory levy, does not necessarily jeopardise the adoption of an AWT, provided the associated risks are appropriately managed and all available AWT options are considered.

### 6.5.6 The Landfill Alternative

SCRC (April 2012) also cites additional ‘costs incurred by commercial premises in the transportation and disposal of waste in landfills outside of the region’. To the extent SCRC makes its disposal and recycling facilities available to competitors at reasonable prices, such transfers will only take place if they are efficient – that is, transferring waste outside the region may be the least cost option. External effects will be limited if fuel costs and heavy vehicle road user charges reflect external costs.

One of the reasons SCRC cites for the need to build an expensive AWT facility is the shortage of landfill capacity in the Sunshine Coast. However, there appear to be other sites available for this purpose. The Lloyd Consulting report prepared for SCRC (2009) notes that:

*SE Qld has two of Australia’s best landfills in the private sector Swanbank and Ti-Tree facilities which both have accelerated degradation and landfill gas supplying power generation. The companies involved are operating these landfills at a higher standard than any of the Local Government landfills and are cost competitive in their gate prices.*

Moreover, according to the same report:

*Landfill and not incineration, is seen as ‘better practice’ disposal in Australia though many would argue that incineration with re-use of the bottom ash is more ‘sustainable’. However, considerable opinion says that a well designed rapid degradation landfill is a sensible, safe and cost-effective solution, given that a disposal option is required for residuals or potential AWT breakdown anyway. They would argue that the relative cheapness of landfill allows saved funds to be spent further up the waste hierarchy to increase reduction or recycling. It is not an argument to be dismissed lightly.*

SCRC’s submission in response to the Draft Report points out that ‘this view is clearly inconsistent with the Queensland Waste Reduction and Recycling 2010-2020 Strategy which aims to reduce waste disposal to landfill and landfill gas emissions by 50 per cent by 2020.’ However, the Queensland Waste Strategy does not require this goal to be met at any cost. Moreover, the development of gas capture landfills contributes to reaching the goal of reducing emissions from landfills.

The Queensland Waste Strategy specifically points out that:

*While well-designed and engineered landfills that capture landfill gas for re-use can be operated with reduced environmental and social impact, many landfills do not meet this standard, and burying resources and useful materials is not an optimal use of resources. However, there is an opportunity to reduce the environmental impact of landfilling by optimising the capture and re-use of landfill gas wherever practicable.*

The Ti-Tree facility mentioned above does in fact meet high environmental standards. But the point is that optimal public policy development requires trade-offs to be made. Setting a goal for reducing waste to landfill does not mean that all other public policy priorities must be sacrificed for the achievement of that goal.

The SCRC submission in response to the Draft Report suggests that ‘the draft report should also note that the introduction of a carbon price will impact the cost of landfill in Australia.’ The Authority agrees and also notes that to the extent the effect of the carbon tax is to raise the cost of landfill operations, the resulting higher costs for disposal, when passed through to commercial firms, will provide an added incentive for recycling in a competitive market.

SCRC has taken the position that it does not want to ship waste outside its area, citing traffic congestion and other environmental concerns. Nevertheless, waste is shipped over significant distances in Australia. For example,

*The Woodlawn Bioreactor is located 250km south of Sydney, near Goulburn in New South Wales. Previously a copper, lead and zinc open-cut mine, the void is now used as an in-situ bioreactor, since 2005. Over this time, the bioreactor has taken in over 2.2 million tonnes of waste from the Sydney metropolitan area and Goulburn surrounds; as well as producing up to 3MWh of green electricity using the methane created by the resultant waste. (Viola 2012)*

Waste is transferred to the Woodlawn facility by rail from Sydney.

According to Veolia, the Ti-Tree facility mentioned above is:

*served by excellent transport links, including the adjacent existing rail infrastructure. Its location makes it ideally suited to provide technically-advanced waste management solutions to the expanding population of south-east Queensland. (Veolia 2012)*

According to SCRC the ‘proximity principle’ of the Waste Act ‘. . . **requires** that waste and recovered resources should be managed as close to the source of generation as possible.’ (emphasis supplied) However, the Act does not ‘require’ adherence to the proximity principle. Waste Act s4(2) states that ‘the achievement of the objects of this Act must **if practicable** be **guided** by . . .’ inter alia the waste and resource management principles, which include the proximity principle. (emphasis supplied) Principles are not laws.

Shipping waste to Swanbank or Ti-Tree may not be consistent with the proximity principle, but it might be consistent with cost effectively disposing waste without building a new landfill or expensive AWT while at the same time reducing landfill carbon emissions (because these facilities convert gas emissions to usable energy). The Sydney–Woodlawn example provides a demonstration that long distance shipment of waste is not only feasible, it has in fact been done. The evidence it provides should not be rejected because it happens to be from another state.

Finally, SCRC’s response to the Draft Report states that ‘Council has an obligation under the Waste Reduction and Recycling Act 2011 to manage the waste produced on the Sunshine Coast and this obligation would not be met by transporting the waste to Swanbank and Ti-Tree.’ The Authority was unable to find any provision of the Waste Act that prohibits disposing of waste in the most economical fashion, even if that would require disposal outside of a Council’s territory. Indeed, WRM ships some recycling material to Petrie, which is outside its territory. (See SCRC May 2012.)

There is, of course, an economic trade-off between transportation costs (which include carbon emissions costs) and landfill cost savings. SCRC is concerned with the externalities associated with truck movements, including traffic congestion and carbon usage (see the next section). But that does not mean that these alternatives should be written off or excluded from a proper cost benefit analysis.

### 6.5.7 Public Amenity and Carbon Emissions

SCRC (August 2011) maintains that the current system enhances public safety and amenity by minimising truck movements on the road network, reducing the number of trucks

accessing small or busy streets, and reducing the extent of truck noise (particularly in the early hours of the morning). SCRC also argues that the coordination of waste and recycling services in the most efficient manner also prevents unnecessary duplication in truck runs, which reduces the consumption of fossil fuels and the production of carbon emissions.

AEC estimates that competition will result in net amenity and carbon pollution cost from additional waste collection trucks of \$529,395. This estimate is derived from two key assumptions.

The first key assumption is that the cost of waste collection in terms of traffic congestion, noise, accidents, pollution and green house gases is \$3/tonne of waste collected. However, the Productivity Commission (2006) which reported this external cost of waste collection also noted that:

*...these estimates, while not large, may overstate the external costs of waste collection. This is because the estimates do not account for all of the measures taken to internalise the externalities associated with road transport, such as legal liability, insurance and vehicle emissions standards....*

Moreover, the Productivity Commission notes that the estimates for these costs range from \$1/tonne in rural areas to \$3/tonne in urban areas. Therefore, even if the \$3 estimate were correct, the weighted average cost for the SCRC area would be less than \$3/tonne.

The second key assumption made by AEC is that multiple suppliers will lead to logistical inefficiencies resulting in the possibility of three times as many truck runs. The costs of moving to a competitive market are then calculated as \$6.00/tonne (two additional truck runs times \$3.00/tonne).

The AEC assumption that truck runs would triple is based on an estimate provided by WRM. However, the total amount of waste (which includes both bulk waste and recycled waste) to be collected and transported remains constant. Logistics requirements dictate that trucks will generally arrive at the landfill or processing facility as full as possible.

WCRAQ (November 2011) submits that the small increase in additional waste and recycling vehicles and their fuel usage if the SCRC area was opened to competition would be offset to a large degree by the reduction in service hours of the WRM contractors.

SCRC's submission in response to the Draft Report (April 2012) maintains that '... WRM provided this estimate based on industry experience and is not 'excessive' as indicated by the Authority.' However, SCRC did not produce evidence in support of its claim. Its position carries no more weight than WCRAQ's statement to the contrary. The Authority continues to believe that a threefold increase in truck runs is most unlikely given that the size of the task will not increase and competing operators will have incentives to minimise cost by ensuring that their trucks are used efficiently.

The Authority agrees with SCRC (April 2012) that there may be specialised recycling services picking up particular recyclable material (such as glass or paper and cardboard) and this may lead to additional truck runs. What SCRC has not demonstrated is that its estimate of the number of truck runs is any more than a guess of a maximum effect.

The Authority also notes that separating recyclables at the source does not occur under the current arrangements given the nature of the contracts but would occur with competition because of the profit potential from sourcing particular recyclable material. This benefit was not recognised by SCRC and should be included in a complete cost-benefit analysis.

AEC also considers the qualitative costs of competition, including extended noise impacts, early morning pick-ups in residential areas and congestion in tourist areas. These potential impacts are mitigated by the fact that a significant portion of bulk commercial waste is not generated in residential areas. Moreover, to the extent residential areas are impacted, some of these qualitative costs may be addressed by regulation. For example, SCRC could adopt rules to limit pick-up times for all competitors (including itself) by regulation.

WCRAQ (November 2011) notes that all of the major capitals in Australia have competition for commercial recycling services. Amenity issues are addressed by service time restrictions in these cities. Moreover, WCRAQ points out that commercial customers are not usually located on small streets. Finally, WCRAQ argues that many commercial transport delivery vehicles service commercial and industrial areas daily and that a marginal increase in waste and recycling trucks will have a minor impact.

The Authority considers that AEC has not demonstrated that the quantitative and qualitative costs associated with additional truck movements that may result from competition cannot be managed through regulation.

SCRC could decide to limit competition in certain precincts after undertaking an appropriate public benefit assessment including consideration of options that do not restrict competition. However, it does not follow that an across the board prohibition on competition would be appropriate.

SCRC's submission in response to the Draft Report points out that 'a number of other interstate cities have been in contact with Council to consider the adoption of a similar policy in urbanised areas to mitigate these significant impacts, suggesting that the adoption of regulations is not as effective in practice as the Authority claims would be the case.' SCRC then asserts that 'the very fact that some other jurisdictions do apply some level of restriction and that others are interested in applying a similar policy verifies that the Authority's conclusion would appear inappropriate.' The Authority assumes that other jurisdictions would base their decisions on circumstances in their own areas and, to the extent within Queensland, comply with Local Government Act provisions for operating significant business activities.

The Authority also notes that the very fact that no other Queensland jurisdiction restricts competition throughout its entire area to address this issue, as shown by AEC (2011) supports a conclusion that SCRC's position is untenable.

### 6.5.8 Qualitative Impacts

The Synergies review of the AEC discussion of qualitative impacts notes that:

*The qualitative impacts are restating some of the quantified impacts and some of the costs repeat the same impact with different descriptions. For example, the inability to achieve waste targets, noise impacts and impacts of truck movements appear to be captured in the quantitative assessment.*

The Authority agrees with this assessment by Synergies and notes that impact assessments in the qualitative analysis are inevitably subjective. For example, the ability of larger waste generators to leverage off national service arrangements is assessed as a low benefit by AEC. However, for those large national firms with such contracts, the cost of the policy is likely to be significant.

Similarly, the benefits to smaller commercial customers of competitive supply of waste services could be substantial. For example, hotels and other businesses in the Sunshine Coast region experience variable demand. A 'one size fits all' collection service may not

suit their needs, but competitors that are not hampered by collection contracts or local government designed protocols would be likely to tailor services that would suit their needs.

SCRC (January 2012a) advises that on-demand pick up is available from its designated contractors, but competition is likely to better ensure that all of a commercial customers requirements are met.

AEC (2011) notes that WRM is taking steps to consult with commercial customers in order to identify requirements currently not being met. The point of competitive supply is that to have their demands met customers typically need only to consult the Yellow Pages and make a few calls. They do not need to engage in consultations with a monopoly supplier that at the end of the day may or may not decide that what the customer wants is in its best interest.

In sum, it is not reasonable to assume that SCRC waste management services could perform better than competition, particularly when there is the possibility of technological or market change and the benefits to consumers of ending the monopoly over all waste services<sup>3</sup> could be significant.

### 6.5.9 Experience in Other Jurisdictions

The absence of a mandatory waste levy (alone) for all commercial ratepayers in other jurisdictions provides *prima facie*, but only *prima facie*, evidence that the net benefits of restricting commercial competition are not as large as SCRC claims.

According to AEC (2011), SCRC is the only Council that restricts all commercial general waste and recycling competition in its area. Some Councils do restrict competition in certain high density areas or for certain services while others allow unlimited commercial competition with the Council provided or designated contractors. Some Councils leave the entire bulk waste market to private contractors.

The fact that to date no other Council in Queensland has imposed a mandatory commercial levy over its entire area provides convincing evidence that it is possible to remove the competitive advantage imposed through SCRC's reliance on its government status.

SCRC (January 2012a) notes that the Gold Coast City Council restricts competition for the majority (but not all) of its population and business centres. SCRC (January 2012a) also claims that the effect of open competition in other areas is to increase the amount of recyclable materials finding their way to landfills.

However, comparative data on commercial waste and recycling of different councils and jurisdictions to allow a comparison of the effectiveness of different approaches is not readily available and has not been provided by either SCRC or WCRAQ to support their propositions.

### 6.5.10 Alternative Policy Options

AEC has assigned low benefits or high costs of implementation to a number of alternative policy tools available to encourage commercial recycling in a market with commercial competition. These alternatives include:

- (a) WRM competing directly with private sector operators for commercial waste collection services;

---

<sup>3</sup> The cost benefit analysis is based on the assumption that the monopoly over all waste services and not just the recycling services is removed.

- (b) WRM acting as a service provider of last resort should private sector operators fail to offer such a service;
- (c) mandating purchase of recycling services by commercial ratepayers without requiring monopoly provision of recycling services;
- (d) placing a ban on recyclables within general waste bins;
- (e) acting purely in a facilitation role by providing advice as to where to access recycling services;
- (f) requiring the preparation of solid waste efficiency management plans;
- (g) establishing controls over the disposal of collected waste;
- (h) adopting differential prices for the disposal of collected waste;
- (i) altering the management charging structure; and
- (j) controlling waste collection service amenity impacts.

AEC considers and rejects these alternatives as being costly or difficult to implement. Synergies (2012) points out that the assessment of options to encourage recycling does not provide sufficient analysis to support the rejection of alternatives:

*The analysis has not considered the costs and benefits of more administered arrangements such as the payment of CSO's to private waste companies that would potentially mimic the operation of the current subsidy arrangements. While these mechanisms may be more administratively costly and vary in effectiveness, the analysis would be substantially improved by their inclusion as additional alternate case scenarios.*

In its submission in response to the Draft Report SCRC continues to dismiss alternatives without any real analysis. SCRC refuses to consider administrative options. For example, all commercial ratepayers could be required to purchase a recycling service from the Council or competitors (unless they were allowed an exemption). Alternatively bulk recycling services could be subsidised in a way that allows customers to choose among competing suppliers.

In its rejection of alternatives SCRC relies on principles to guide decision-making regarding waste policy that are contained in the Waste Act. These include:

- (a) The polluter pays principle – all costs associated with the management of waste should be borne by the persons who generated the waste. (s10)
- (b) The user pays principle – all costs associated with the use of a resource should be included in the prices of the goods and services (including government services) that result from the use. (s11)
- (c) The proximity principle – waste and recovered resources should be managed as close to the source of generation as possible. (s12) (The proximity principle was discussed above).

For example, SCRC (January 2012) considered that the CSO approach would:

*place the burden of meeting waste diversion targets for the commercial waste stream across the community rather than on those actually generating the waste in the first place (i.e. is inconsistent*

*with the polluter pays approach), and fails to provide an effective price signal to meet the objectives of the Waste Minimisation Strategy.*

To the extent that the waste minimisation strategy is intended to reflect broader community benefits it would be appropriate for the community to transparently subsidise such an initiative through an appropriate CSO. Under current arrangements the price signal could result in commercial customers that generate no, or very little, recyclable waste subsidising other commercial customers that generate large amounts of such waste. This would also seem to violate the polluter pays approach.

In its submission in response to the Draft Report, SCRC maintains that:

*The question as to whether a CSO should exist depends on whether the polluter pays principle should be applied. The Authority does not appear to have considered the appropriateness of this principle at all within the draft report, nor the implications for pricing from the proximity principle (i.e. Council's responsibility to manage the waste generated within its jurisdiction as close to the source as possible).*

First, the Authority considers that the Council has not recognised that a subsidy can be justified by recognition of wider social benefits. In this respect the Authority is noting that the waste diversion target used by the Council to justify the use of significantly more expensive methods of processing and disposal is based on the perceived high non-market and external benefits of reduced landfill use. Hence, given the nature and source of these benefits, a subsidy could be justified to help achieve certain waste management targets and based on the principle of transparency should be clearly identified in the pricing regime for the various services involved.

Second, the 'polluter pays' and 'proximity' principles are objectives and not requirements. Their adoption by Queensland government does not mean that other policy objectives, e.g., those established by Queensland's agreement to implement and enforce the National Competition Policy by requiring removal of competitive advantages, where appropriate, have been repealed. While the SCRC seems to believe that these environmental principles must be adhered to regardless of the cost, the Authority considers a more balanced approach can address both important environmental concerns and competition.

The Authority's view is that if the SCRC is considering a thermal technology AWT that would likely impose substantial costs on the community, it ought to give further consideration to competitive alternatives to encouraging the diversion of commercial waste.

A report prepared for the Pratt Foundation merits quoting at length:

*Market based instruments (MBIs) can be used to harness market forces in meeting a desired sustainability goal, for example, the increased recovery of resources. The range of MBIs includes charges, fees and taxes, market creation (such as the establishment of tradeable permits/certificates), subsidies, deposit/refunds and improving the operation of the market through non financial means such as information provision.*

*– Charges, Fees and Taxes - attempt to change the actions of companies and individuals to achieve a desired outcome. In general, environmentally related taxes are based on the 'polluter pays principle' where pollution costs are factored into manufacture and production costs. One issue to resolve is whether to charge the consumer (consumption price signal) or the producer (targets pollution abatement at source).*

*– Market Creation - Tradeable Permits and Certificates – a tradable 'property right' is assigned to items that previously had no direct financial value. This action can be used to create markets in tradeable permits or certificates for damage control/reversal of environmental pollution, stewardship of natural resources and restoration of ecosystem services (Hyder Consulting 2005). Australian examples include Renewable Energy Certificates (RECs) and NSW Greenhouse Gas Abatement Certificates (NGACs). An international example directly related to resource recovery*



is the UK Landfill Allowance Trading Scheme (LATS) that will dramatically reduce Biodegradable Municipal Waste disposed of to landfill.

– *Subsidies* - include tax concessions, low or no interest loans and exemptions from fees and charges to improve the financial viability of organisations undertaking desired actions intended to bring about an environmental improvement. Also involved is the elimination of perverse subsidies, those mechanisms that actively accelerate environmental deterioration; for example, any subsidies that promote the use of fossil fuels like coal, or provide an incentive for increased primary production.

*Deposit/Refund Schemes* - apply the principle of Extended Producer Responsibility to products and packaging by including a deposit in the purchase price of the product such as beverage containers, but can also be applied to chemical drums, paint tins or mobile phones and computers. The deposit is redeemable when the container is returned either to collection depots. A well known example is container deposit legislation (CDL) such as the 5 ¢ deposit on beverage containers in South Australia, in addition to the streamlined Californian model.

– *Market Friction Reduction* - addresses forms of market distortion through non-financial means such as reducing transaction costs and improving information flows. Examples include ecolabelling, information and technology transfer and research programmes to facilitate market exchanges.

*Total Environment Centre (2008) (citations omitted). Also see OECD 2010.*

To the extent some of these approaches may be outside the scope of its Authority, the proposed solutions could be taken up with the Queensland Government for action.

### 6.5.11 Alternative Calculation of Costs and Benefits

Synergies (January 2012) re-calculated costs and benefits to take account of the income transfer issues as well as other methodological issues it identified. Synergies concluded that net costs of the change under each of the scenarios investigated by AEC will be reduced to -\$18.8 million and -\$29.8 million for the without AWT case and the with AWT case respectively. The NPV as calculated by Synergies is still negative. However, the Synergies analysis did not make adjustments regarding key issues – in particular, AEC’s diversion assumptions and the rejection of policy alternatives.

At the Authority’s request Synergies performed additional modelling to respond to SCRC’s submission in response to the Authority’s Draft Report. Synergies (June 2012) used the basic AEC cost benefit methodology with appropriate adjustments for key inputs. The main differences between AEC’s original analysis and the Synergies assessment are:

- *the inclusion of a possible efficiency or value added dividend resulting from continuous incentives associated with competition and a profit motive*
- *the maintenance of the base state landfill diversion rate due to the payment of a subsidy to encourage the collection of recyclables;*
- *the inclusion of capital costs incurred by new entrants as they achieve market share; and*
- *the inclusion of subsidy scheme administration costs.*

The potential efficiency or value added gains come from three sources:

- (a) increased cost and technological efficiency from competitive supply;
- (b) an increase in value from competitors being more efficient at extracting valuable recycling from general waste bins (as discussed above), and



- (c) efficiencies realised by commercial customers, who receive a higher quality and increased variety of waste services from competitive suppliers.

The Synergies base case cost benefit analysis results in a slightly negative NPV of -\$56,865. Synergies notes that

*only relatively small changes in any of the parameters e.g. an increase in the quantity of paper and cardboard recycling due to the improved incentives that competition provides would result in a positive outcome.*

In fact, the Synergies analysis is conservative in a number of respects. Market based incentives to divert recyclable material from general waste bins have the potential to raise SCRC's diversion rates to levels above the state-wide average.

Table 5 shows the results of a sensitivity analysis of the Synergies results.

**Table 5: Sensitivity analysis of joint values for potential efficiency gains and diversion rates in a deregulated environment (\$000)**

Efficiency or Value Added Gains	Diversion Rates				
	4.4%	12.5%	15%	17.5%	20.0%
2.5%	-15,271.18	-13,293.34	-12,544.00	-11,794.67	-11,045.34
5.0%	-9,477.61	-7,049.77	-6,300.43	-5,551.10	-4,801.77
7.5%	-3,234.04	-806.20	-56.86	692.47	1,441.80
10.0%	3,009.53	5,437.37	6,186.70	6,936.04	7,685.37
12.5%	9,253.10	11,680.94	12,430.27	13,179.61	13,928.94

If alternative market-based policies are able to raise diversion rates above 20%, then positive net benefits will be achieved with relatively small efficiency gains. A combination of significant efficiency gains and high diversion rates would result in substantial net benefits. The incentive to collect more high value recyclable materials under competitive arrangements is likely to lead to a higher diversion rate than the base case of 15 per cent and contribute to an efficiency or value added gain of more than 7.5 per cent.

### 6.5.12 Conclusion on Ecologically Sustainable Development Issues

The Authority accepts that SCRC is seeking to implement an environmental policy that will help it to accomplish its environmental vision, but in doing so it must also consider its obligations under National Competition Policy. All local governments face competing goals. Reasonable trade-offs must be made and statutory requirements must be met when designing policies to achieve the goals.

Although the basic approach in the AEC cost benefit analysis is methodologically correct, the benefits of imposing the mandatory levy appear to be overstated. The alternatives to the mandatory levy are dismissed without sufficient analysis. Only one AWT option was considered, and it appears to be a high-cost and inflexible option. The waste diversion assumptions underlying the AEC analysis of the cost of moving from the current policy framework are not persuasive.

## 6.6 Policies or a Law about Industrial Relations or Occupational Safety and Health

According to AEC (2011), if SCRC is forced to abandon its current policies it would have ‘to establish a regulatory framework and monitoring processes to ensure public safety and amenity impacts from waste collection are minimised.’ The nature of any such framework, and the need for changing it, would depend upon the alternative approach adopted. This is discussed further below in section 7.3.

## 6.7 The Need to Promote Competition

SCRC (January 2012a) makes three arguments concerning the competitive neutrality criteria related to competition. These three arguments are:

- (a) open competition will not accomplish the SCRC’s environmental objectives (discussed above in section 6.5);
- (b) in any event, the benefits of competition are captured through its competitive tendering process, and
- (c) free entry into commercial bulk recycling will not result in effective competition.

### 6.7.1 Competitive tendering

SCRC (January 2012a) maintains that the majority of WRM’s collection and disposal operations are already provided by private sector operators through contractual arrangements based on a competitive tendering process.

The Authority notes that competition for the right to be a monopoly provider through a tender process can promote efficient provision of services where the activity is considered to be a natural monopoly. Competition within the market, where it is feasible, rather than competition for the market through a one-off tender process, is typically more effective. Competition within the market is more likely to encourage efficient pricing, respond to customer needs and promote more rapid introduction of technological advances.

One of the reasons that competition in a market is preferred to monopoly contracts is the difficulty in writing and enforcing long term contracts, including those that can capture changes in technology over time. In addition, the extent to which competition for the market is effective also depends on ensuring that there is a sufficient number of bidders and procedures for the auction planner to preclude explicit and implicit collusion.

WCRAQ (November 2011) also points out that the tender process occurs only once every seven to ten years and that the contracts are inflexible in nature. WCRAQ maintains that this may prevent SCRC’s contractor from offering the latest solutions available for collecting, recycling, processing and disposing of commercial and industrial waste over the life of the contract. SCRC (January 2012a) notes that changes to reflect technology have been made with the current contracts.

SCRC (January 2012a) submit that:

*WRM has always been able to easily amend and augment its suite of services within contract periods, as long as it does not negatively impact the contractor from a financial perspective. For example, even though the contracts to service the Caloundra and Noosa service areas were struck a long time ago, new bulk recycling services have been introduced in these areas in response to a change in the servicing structure.*

SCRC also notes that:

*the length of any collection contract is generally reflective of the life of the plant and equipment required to effectively undertake the collection services in a least cost manner – i.e. contract periods are tied to the optimal working life of the fleet of collection trucks to ensure an appropriate return of capital and return on capital can be achieved by the successful contractor;*

*technological advancement in waste collection is generally limited to fuel efficiency and levels of truck compaction which are currently best practice – therefore any technological advancement would be negligible when compared to introduced logistical inefficiencies (particularly given that fuel is a minor cost component when compared to equipment and labour costs); and*

*technological advancement in waste processing is generally limited to recyclables sorting and distribution (with WRM already having a large-scale, low cost materials recycling facility (MRF) targeted at maximum resource recovery) and additional levels of processing of general waste via a composting facility or AWT facility (which are not commercially viable for private operators when compared with disposal to landfill on a pure financial basis).*

Notwithstanding the merit of these arguments, the Authority notes that competition plays a key role in the rapid diffusion of technology, and will inevitably be able to diffuse the benefits of such developments most effectively. Moreover, service providers will in such markets take actions that seek to ameliorate related risks.

In support of the proposition that SCRC waste management services are being provided efficiently without competition, AEC 2011 reports that SCRC's 2010-2011 base wheelie bin rates are below the median for 15 Queensland Councils. A bulk service price comparison was not provided by AEC. However, SCRC (2012a) provides analysis to support the position that the bulk bin collection tendered rates will be relatively similar across each region when compared to the wheelie bin collection tendered rates (in terms of cost multiples).

The relevance of this result is questionable. A great number of variables influence prices, including economies of scale for Councils in higher population areas. Whether joint provision of bulk and wheelie bin services on a monopoly basis reduces costs through realisation of economies of scope is an empirical question that could be addressed in a public benefit assessment required to implement an anticompetitive provision. However, the Productivity Commission (2006) finding that commercial waste competition is feasible suggests that economies of scope between residential and commercial waste are not significant.

Finally, SCRC (January 2012a) asserts that given the economies of scale and scope associated with Council's collection services, in addition to its processing and disposal services, Council does not believe that stand-alone waste customers would be able to locate cheaper waste services than what is currently applied. Instead, Council is likely to be able to offer enhanced services for the same average cost of service provision than what could be offered by the market.

WCRAQ (July 2011) states that members are prevented from offering more complete and flexible arrangements and holistic pricing for all of a potential customer's waste and recycling services (which include liquid and grease trap removal, sanitary services to washrooms, specialist industrial clean outs, bulk processing of manufacturing and product destruction, confidential paper destruction). The ability of WCRAQ members to service state (Queensland) as well as national customers according to agreed and negotiated contracted arrangements put in place is impacted where these same businesses have operating branches in the full SCRC territory.

The experience of other jurisdictions and their lack of implementation of such a model would seem to confirm the merits of WCRAQ's submissions. Moreover, the Authority has noted above that CSOs could be used where it is considered that waste recycling services

need to be provided to achieve the targets of the waste minimisation strategy. CSOs should be provided in a manner that allows all service providers to take advantage.

### 6.7.2 Degree of Competition

AEC (2011) argues that there will be a lack of commercial competition, which could lead to an anticompetitive result if the market were opened up. The Authority does not consider that barriers to entry into the bulk waste market are high.

SCRC's submission in response to the Draft Report states that 'the Authority identifies the Productivity Commission's 2006 finding that the collection and transport of waste may be most efficiently done by a single firm to achieve economies of density.' This was not the finding of the Productivity Commission. The Productivity Commission noted that competition is appropriate for firms that produce large amounts of waste or have specific requirements as to the frequency of waste collection. This conclusion reflects the experience of other jurisdictions where the commercial market is open to competition.

WCRAQ (January 2012a) reports that multiple recycling operators are available to provide bulk recycling services, including commingled recycling bins, in the SCRC area.

Finally, if SCRC's contractors remain in the commercial market and price on the basis of full costs, they will set an effective price ceiling for services.

## 6.8 The Need to Allocate Resources Efficiently

SCRC makes two arguments related to resource allocation that have not previously been addressed.

### 6.8.1 Reallocation of Fixed Costs and Loss of Economies of Scale

AEC (2011) maintains that any loss in contributions to the fixed costs of SCRC's waste disposal and resource recovery facilities, resulting from competition, will require an increase in residential rates.

SCRC (January 2012a) notes that the 'lost contribution' refers to the portion of the waste management utility charge that reflects the fixed costs associated with the disposal of general waste to landfill, that is WRM's gate fee for waste disposal per tonne at its waste facilities across the region.

Depending on the arrangements that are put in place, the Authority notes that even without a mandatory commercial recycling levy, WRM could compete for commercial business (if it so chooses) and thereby retain contributions to fixed costs. AEC (2011) identifies several Councils that do compete with independent operators for such commercial business.

SCRC (January 2012a) maintains that it would be impractical to compete given that it uses private sector contractors rather than in-house labour and equipment.

The Authority notes that a contractor providing municipal landfill services would be well placed to compete with other private sector operators. In addition, if it chooses, WRM can compete at the landfill and MRF level by encouraging competing bulk service providers to use its facilities (although the Authority notes that SCRC indicates that the landfill facility is near capacity so it may actually prefer competitors to use other facilities).

Further, provided an appropriate (scalable) technology is adopted, in the long term, if SCRC does experience a loss of throughput, proposed augmentations can be resized to reduce fixed costs.

It is also important to recognise that the current policy restricts the ability of competitors to take advantage of providing services under contracts with national customers. That is, competitors are prevented from realising economies of scale and scope in the Sunshine Coast region.

### 6.8.2 Provider of Last Resort

SCRC (August 2011) maintains that it effectively has a statutory obligation to be the service provider of last resort. The implication is that the viability of its business would be reduced because competitors would take the business of low cost or more profitable customers, leaving customers who are difficult and costly to serve to SCRC.

As noted above, a CSO-based subsidy available to all service providers could be set at the level necessary for the purpose of ensuring service is available in outlying areas. The Authority notes that provider of last resort problems are usually associated with residential, and not commercial, customers. According to WCRAQ (November 2011), some Councils in Queensland offer commercial and industrial services on this basis to meet the community expectation, but without mandating that the customers must use the Council service.

### 6.9 Consumer Benefits

The discussion of the consumer interest to this point has focused on the level of prices. Service quality and variety are also significant consumer issues. SCRC (January 2012a) believes that it is at least able to provide the same service as the private sector.

WCRAQ (November 2011) maintains that competitors will offer more flexible services to cater to the particular needs of individual customers. WCRAQ points out that on-demand pick-up, less frequent (and consequently, lower cost) service for customers that do not generate significant quantities of recyclable material, and rapid introduction of new technology without the need to modify a contract based on the tender are examples. As discussed above, on demand pick-up is an especially useful service for hotels that experience fluctuations in occupancy.

As noted earlier, SCRC (January 2012a) advises that on-demand pick up is available from its designated contractors and is taking steps to consult with commercial customers in order to identify requirements currently not being met. However, it is not reasonable to assume SCRC waste management services could perform better than competition, particularly when there is the possibility of technological or market change.

A similar point regarding the benefits of competition was made by Lloyd Consulting (2009):

*Some of the larger private waste companies have already instituted waste minimisation as part of the waste services that they offer. This distinguishes them from their competitors and allows them to 'add value' and charge accordingly rather than basing their business model on maximising the waste volumes collected.*

WCRAQ (June 2011) points out that some large commercial customers are disadvantaged by the mandatory levy because its members are not able to service locations in SCRC's area under national contracts.

WCRAQ (November 2011) also notes that the locations for disposal and processing of waste are fixed under contracts parallel to the collection contracts. Therefore, SCRC's waste contractors are afforded no opportunity to use alternate privately (or public) operated facilities that can take business waste at far more competitive prices.

Finally, the Authority notes that s140(4) of the Business Activities Regulation provides that “the referee may consider any other matter the referee considers is relevant to the investigation, including, for example, the interests of consumers or a class of consumer.” Commercial customers that do not generate significant amounts of recycling and could meet their recycling requirements with a wheelie bin are clearly disadvantaged relative to other commercial customers that use subsidised bulk bins.

## 6.10 Conclusion on Competitive Neutrality Criteria

After considering the submissions on these matters, and reviewing available information, the Authority’s view is that a case for exempting SCRC pricing from competitive neutrality requirements based on consideration of the competitive neutrality criteria has not been proven. That is, SCRC has not demonstrated to the Authority that it is appropriate to retain the competitive advantage that the use of the government mandatory levy provides.

The Authority recognises that, in the absence of detailed convincing information, the most appropriate balance of these considerations is not possible to establish with absolute certainty.

However, the practices of other councils and jurisdictions, the questionable benefits and appropriateness of the AWT (and therefore the more marginal the estimated cost of moving from the current policy framework), the benefits of competition, and the ability of commercial providers to take advantage of economies of scale and scope, suggest that the mandatory levy with no opt-out capability is not appropriate and should be removed.

Moreover, the Authority is cognizant of the *Competition Principles Agreement – 11 April 1995 (As amended to 13 April 2007)*:

*The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:*

*(a) the benefits of the restriction to the community as a whole outweigh the costs; and*

*(b) the objectives of the legislation can **only be achieved by restricting competition**. (emphasis supplied)*

The question that remains is how SCRC’s reasonable environmental objectives can be cost-effectively achieved in a manner consistent with the principle of competitive neutrality.

## 7. RECOMMENDATIONS AND PROCEDURAL REQUIREMENTS

The Business Activities Regulation s145(3) sets out detailed requirements for the referee's report:

*If the referee decides the business entity has a competitive advantage, the report must include —*

- (a) recommendations on how the business entity can conduct the business activity in a way that complies with the competitive neutrality principle; and*
- (b) the reasons for the recommendations.*

As discussed in section 4, the Authority has determined that SCRC has a competitive advantage due to the specific application of the mandatory levy that is only possible because of its government status. The Authority concludes in section 6 that it would be appropriate to remove this competitive advantage.

### 7.1 Recommendations

There is a wide range of possible technical options and local and administrative considerations. Therefore, it is not possible for the Authority to be prescriptive as to each element of how to conduct the business activity in a way that complies with the principle of competitive neutrality.

Moreover, the Authority observes that many other strategies have not been subject to sufficiently detailed scrutiny by SCRC (Synergies 2012).

The Authority considers that the following are the key elements of a strategy that would allow WRM to conduct a bulk waste recycling service in a way that complies with the principle of competitive neutrality (and achieves SCRC's environmental objectives):

- (a) remove bulk waste recycling services from the scope of the mandatory arrangements associated with bulk waste services (to eliminate the competitive advantage);
- (b) ensure that bulk waste recycling services are provided on a commercial basis unless there are good reasons not to do so, in which case any subsidy should take the form of a CSO that allows all service providers to compete on a similar basis;
- (c) allow competitive collection of bulk waste for recycling purposes;
- (d) allow competitive disposal of bulk recycled waste; and
- (e) ensure appropriate differential pricing of landfill and alternatives for recycling and disposal of bulk waste, including consideration of imposition of a landfill levy to replace the state levy that is being repealed in order to directly encourage commercial recycling and fund recycling programs or enforcement activity.

### 7.2 Reasons

The Authority considers that the recommendations effectively:

- (a) take account of SCRC's commitment to its Waste Minimisation Strategy;
- (b) recognise that services provided below cost will be taken up at a more rapid rate;
- (c) recognise the limited local options for further landfill and the uncertainty associated with an AWT solution (at least of the technology and size being contemplated);

- (d) realise the benefits of a more competitive framework for service delivery as it relates to collection and disposal – noting that this will most effectively access more of the economies of scale and scope and promote greater innovation in service delivery (not necessarily only by current service providers);
- (e) respond to SCRC’s concern about potential lack of servicing of some customers (market failures) where profitable recycling may not be possible due to the costs involved;
- (f) respond to SCRC’s concerns about the costs of implementing a law to impose a commercial waste management monopoly;
- (g) respond to SCRC’s concerns about the cost of implementing a CSO regime and its potential to result in the local community subsidising waste disposal by other communities; and
- (h) respond to SCRC’s concerns about the costs of implementing and enforcing regulations to require commercial uptake of recycling services

Recommendations (a) and (b) would ensure that the competitive advantage that SCRC enjoys because it is in the public sector is removed.

Recommendations (c) and (d) would reduce the costs of collection and disposal to the minimum practicable. To the extent that this occurred the benefits of competition would be maximised. For this purpose, the mandatory levy on commercial customers, which requires that they pay for the service whether they use the service or not, should be removed, as per recommendation (a).

Recommendation (e) would increase the costs of local landfill disposal (to reflect environmental cost), and provide commercial incentives for the adoption of other more cost-effective disposal solutions. To the extent that a thermal technology based AWT facility is still considered appropriate, ‘right sizing’ of that facility should take into account the quantum of diversion being sought by SCRC and the commercial opportunities such a facility could provide to secure other councils’ waste.

The Authority does not consider that landfill, MRF or AWT options in other jurisdictions should be excluded from consideration as these are adopted with apparent success in other jurisdictions.

The timing of collections can be made subject to regulatory restriction. Regulations should be applied to all waste management providers, including WRM.

Should the removal of the mandatory levy increase recycling costs beyond the level that achieves SCRC’s waste minimisation targets, a CSO (element (e) above) could reduce those costs and could be raised from imposts (such as general rates) placed over the entire SCRC community. The CSO could be paid for bulk waste recycling in areas or for product types not collected by commercial service providers, or in the setting of charges for reducing the cost of the use of alternatives to landfill.

CSOs should be implemented in a way that is compatible with competition. This typically means subsidising all competitors or subsidising customers who can then make a choice of competitive supplier.



### 7.3 Implementation Issues

AEC questions the practicality of using CSOs to encourage recycling. It is not difficult to conceive of cost-effective arrangements. For example, a CSO voucher could be provided to those groups considered not to have a sufficient incentive to recycle their bulk waste and redeemed by the collection service provider at an SCRC disposal site (including AWT). This would also ensure waste stream control.

The Authority understands that widespread subsidy mechanisms can be complicated and difficult to administer. It is for this reason that open and competitive markets typically provide the most cost effective solution. Nevertheless, it is not necessary to establish a CSO for each and every waste generator. It would only need to be established where SCRC considers it necessary to do so in the light of its own targets.

SCRC (January 2012a quoting AEC 2011) states that

*if Council loses control of the general waste and recycling services from commercial properties in the region, 'then it would need to re-consider the targets in its regional strategy that apply to commercial and industrial waste. It would also have to plan for increased volumes sent to landfill (irrespective of whether disposal will occur at WRM's waste facilities or not given supplier of last resort role of Council) and reduced recyclables processed at its MRF and/or AWT facilities. Consequently, the community would then need to be advised as to why such a shift in the targets had to occur'.*

The Authority notes that the proposed CSO arrangements, if provided to all service providers, should help achieve SCRC's desired outcomes.

Further, SCRC (January 2012a) stated that 'the Authority needs to make its recommendations with full consideration for the implications of the waste stream as a whole rather than attempting to merely focus in on the bulk recycling service.' The WCRAQ complaint relates to bulk waste recycling services and recommendation (a) above reflects the complaint. However, the Authority notes SCRC's (January 2012) concern that addressing the competitive neutrality complaint on recycling will necessarily impact the entire commercial waste stream. Recommendations (d) and (e) reflect this concern.

The bulk waste recycling service is quite independent of other components of the general bulk waste service in terms of bin sizes, trucks, and disposal (including their prospect for resale) and the impact of the recommendations on other components of the service do not seem overly untoward. SCRC's main concern seems to relate to the quantum of waste estimated to be required for the economic sizing of the AWT facility – the prospect for which is not certain (indeed given the high cost of the AWT cited in SCRC's submission in response to the Draft Report the NPV of the initiative considered in the AEC appears to be highly negative from an economic perspective). The factors to be taken into account in 'right sizing' that facility, if it is to proceed, have been addressed above. Indeed, a regional facility may provide the most appropriate solution.

AEC (2011) expressed concerns that alternatives to the current monopoly approach would require the establishment of a local law and that making local laws can be 'arduous', require new regulatory and charging frameworks, and require consideration of all disposal options.

The Authority does not envisage that local laws are required to introduce all of the elements identified above. To the extent that new regulatory and charging frameworks and consideration of all disposal options do require SCRC to make laws, in depth examination of the costs and benefits of these alternatives, with input from the public, the industry and State government could result in an alternative framework for waste management on the Sunshine Coast that could assist to meet waste minimisation goals with greater benefit to the whole community.

Such an outcome would result in a more competitive framework consistent with the National Competition Policy and be consistent with the tip levy initiative of the Waste Act.

AEC also noted that some of the alternatives would require costly regulation to enforce and assesses the benefits as being low. The Authority recognises that there may be regulation and enforcement expenses. The potential offsetting benefits are those that a competitive market usually brings – lower consumer prices, more rapid implementation of technological advances, and a diversity of services to cater to the diversity of customer needs. The Authority also notes that WRM must expend resources in enforcing its no opt-out provision.

One of the problems with adopting competition for bulk recycling identified by SCRC (January 2012a) is the difficulty distinguishing between commercial and residential customers in situations such as residential multiple unit dwellings, mixed use developments and hotels and resorts with residential living components.

The Authority notes that multiple unit dwellings and mixed use properties could be excluded from the arrangements by the nature of the distribution of CSO vouchers. Alternatively, if it were desired, they could be categorised as commercial. The Council could also look to how this issue is handled in other communities in Queensland or Australia more generally where commercial competition is allowed.

SCRC (January 2012a) is also concerned that there are adverse impacts for other local government with similar policy positions, particularly given the decision on recycling being a wedge to open commercial solid waste to competition. The Authority considers that each local government situation must be considered on its merits, but notes that the only Council in Queensland that restricts all commercial competition throughout its area is SCRC.

The Authority understands that SCRC (January 2012a) is also concerned about the impact that removal of the mandatory levy might have on its existing collection contractors. The Authority acknowledges the possibility that contractual issues might be raised by changing policies and procedures to comply with competitive neutrality requirements. Such issues may indeed impede any move towards more competitive arrangements and would need to be taken into account as part of such a transition towards any ultimate implementation of the Authority's recommendation. The Authority notes that the cost (if any) of resolving any contractual issues in the limited remaining life of the contracts must be assessed against the long term benefits associated with the application of competitive neutrality in the current circumstances.

If the community objects to the imposition of a levy at the landfill to replace the state levy that is being repealed, this would be consistent with the community not accepting the cost of meeting SCRC's vision for waste diversion.

For its part, the WCRAQ submission in response to the Draft Report (April 2012) asserts that

*the WCRAQ remains firmly of the view that there are many options available to Council for it to meet and exceed its Waste Management objectives and service delivery. Council has chosen to ignore these and has failed to explore them with industry operators choosing instead to remain focussed only on a single AWT option.*

#### **7.4 WCRAQ Position on Recommendations**

WCRAQ's April 2012 submission in response to the Draft Report:

*requests the Authority to make specific provisions in its final recommendations of actions that Council be required to immediately cease its anti-competitive conduct to ensure that WCRAQ members (and others) are able to operate in a competitive environment on an equal footing with*

*all participants, including Council. We also believe it appropriate for the Authority to prescribe the penalty under the local Government Act that will apply to Council should it continue to conduct its activities in an uncommercial and anti-competitive manner.*

WCRAQ also requests

*the Authority to outline in its report the legal obligations imposed on Council given its contravention of the principle of competitive neutrality and steps the Council is required to take to ensure it conducts itself in a manner that is commercial, competitive and in compliance with the [Local Government] Act.*

Competitive neutrality investigations under the Local Government Act and Business Activities Regulation do not, of themselves, result in penalties – even if there is a finding that the local government contravened the principle of competitive neutrality. However, independently of any competitive neutrality complaint, the same conduct may create the potential for pecuniary penalty under the *Competition and Consumer Act 2010 (Cth)* – but that is not within the realm of the Authority's jurisdiction.

The Authority notes that the SCRC is required to consider the Authority's recommendations but that it can adopt them at its discretion as described in the next section.

## 7.5 Next Steps

SCRC's obligations are set forth in the Business Activities Regulation. For convenience, the relevant provisions are reproduced here:

### **146 Public access to report**

*A local government to whom the referee's report is given must ensure the public can inspect a copy of the report at the local government's public office as soon as practicable after the referee gives the local government the report.*

### **147 Information to persons given an investigation notice**

*The referee must give the following documents to any other person to whom the referee gave an investigation notice—*

- (a) a copy of the recommendations in the report;*
- (b) notice that the person may inspect the report, including recommendations, at the local government's public office.*

### **148 Local government response to referee's report**

- (1) The local government must decide, by resolution, whether to implement the recommendations in the referee's report.*
- (2) The resolution must state the reasons for the local government's decision.*
- (3) The local government must make the resolution—*
  - (a) within 1 month after the referee gives the report to the local government; or*
  - (b) if the local government does not ordinarily meet within that month—at the first meeting of the local government after that month.*
- (4) The local government must, within 7 days after making the resolution, give notice of the resolution to—*
  - (a) the complainant; and*
  - (b) if the referee is QCA—QCA*

It is clear that under the Local Government Act, the adoption, or not, of the Authority's recommendations is a matter for the SCRC.

SCRC will be provided with a copy of this Final Investigation Report. WCRAQ will be provided with a copy of the recommendations section in the report and a notice that it may inspect the report, including recommendations, at the local government's public office. The

Authority suggests that SCRC make a copy of the Report available on its public web site for ease of public inspection.

The Authority also plans to provide a copy of this report to the Department of Environment and Heritage Protection, Department of Justice and Attorney General, Department of Local Government, and Department of Treasury and Trade and to publish a Notice on its web site that the investigation has been completed and that a copy of the report has been provided to SCRC.

---

## REFERENCES

AEC Group, Public Benefit assessment of Reform Options for Waste management Activities, (10 June 2010)

AEC Group, Cost-Benefit Analysis of Levying Waste Utility Charges on Commercial Premises (September 2011)

AnaeCo, Dicom<sup>tm</sup> System FAQs,  
[http://www.anaeco.com/index.php?option=com\\_content&task=view&id=17&Itemid=19](http://www.anaeco.com/index.php?option=com_content&task=view&id=17&Itemid=19)  
(viewed February 2012a)

AnaeCo, WMRC Project (viewed February 2012b)  
[http://www.anaeco.com/index.php?option=com\\_content&task=view&id=14&Itemid=16](http://www.anaeco.com/index.php?option=com_content&task=view&id=14&Itemid=16)

APC Environmental Management, Commercial and Industrial Waste audit for Central Queensland Local Government Association (March 2007)

Department of Communication and Information, Local Government and Planning (Queensland), Full Cost Pricing in Queensland Local Government – A Practical Guide (April 2000).

Department of Environment and Resource Management (Queensland), Queensland's Waste Reduction and Recycling Strategy 2010-2020 (2010)

Department of Environment and Resource Management (Queensland), Rethinking waste in Queensland businesses (2011)

Department of Local Government and Planning (Queensland), National Competition Policy Guidelines to Assist Local Governments Identify Possible Anti-competitive Provisions in Proposed Local Laws and Proposed Local Law Policies (28 November 1997)

Department of Local Government and Planning (Queensland), Letter re Investigation of Competitive Neutrality Complaint (5 January 2012)

Elliott May Lawyers, Re: Interference with contractual relations, (30 March 2011)

Elliott May Lawyers, Letter of Complaint to the Authority (18 April 2011)

Lloyd Consulting, Report for Sunshine Coast Regional Council Waste Taskforce Background Paper: 'Better practice' Solid Waste Innovations, 2009.

Maunsell Australia Pty Ltd, Alternatives to Landfill: Cost Structures and Related Issues (2 September 2003)

Organisation for Economic Co-operation and Development, Environmentally Related Taxes in OECD Countries (2001)

Productivity Commission, Waste Management, Inquiry Report (20 October 2006)

Queensland Treasury, Full Cost Pricing Policy: A Queensland Government Policy Statement (2010)

Queensland Government, National Competition Policy and Queensland Local Government: A Queensland Government Policy Statement (July 1996)

- 
- SCRC, Sunshine Coast Waste Minimisation Strategy Discussion Paper Consultation Report (2009)
- SCRC, Waste Minimisation Strategy 2009-2014 (December 2009)
- SCRC, Revenue Statement 2010-2011 (29 June 2010)
- SCRC, Annual Report 2009-2010 (November 2010)
- SCRC, Referral of Competitive Neutrality Complaint (14 April 2011a)
- SCRC, Waste Minimisation Strategy Implementation Up-Date (April 2011b)
- SCRC, Waste and Resources Management Operational Plan 2011/2012 (6 June 2011a)
- SCRC, Response to Follow-Up Questions from the Queensland Competition Authority (7 June 2011b)
- SCRC, Further Response to Follow-Up Questions from the Queensland Competition Authority (8 July 2011)
- SCRC, Submission to Queensland Competition Authority in Response to Investigation Notice (9 August 2011)
- SCRC, Response to Queensland Competition Authority's Draft Analysis and Follow-up Questions (14 September 2011)
- SCRC, Comments On Preliminary Draft Report on Investigation of Competitive Neutrality Complaint (10 January 2012a)
- SCRC, Briefing Paper – Available Information on the Take Up of Recycling Services in the Noosa Service Area (18 January 2012b)
- SCRC, Additional Information in Relation to the Take up of Recycling Services (19 January 2012c)
- SCRC, Advanced Waste Treatment Options for the Sunshine Coast (undated)
- SCRC, Submission on the draft Report on Investigation of Competitive Neutrality Complaint (2 April 2012)
- SITA Australia, Resource Recovery & Advanced Resource Recovery Technology Credentials,  
[http://www.sita.com.au/media/general/ARRT\\_Credentials\\_6pp\\_A4\\_Online.pdf](http://www.sita.com.au/media/general/ARRT_Credentials_6pp_A4_Online.pdf)  
(viewed January 2012)
- Synergies Economic Consulting, Cost Benefit Analysis of an Waste Disposal Levy in Queensland (October 2010)
- Synergies Economic Consulting, Review of the AEC Group Report Cost-Benefit Analysis if Levying Waste Utility Charges on Commercial Premises (January 2012)
- Synergies Economic Consulting, Deregulating C&I Waste Collection on the Sunshine Coast, (June 2012)
- Total Environment Centre, State of Waste series: Victoria (2008)
-

Veolia Environmental Services, <http://www.veoliaes.com.au/recycling-services/resource-recovery-facilities/bioreactor-landfills> (viewed January 2012)

WCRAQ, Letter to Sunshine Coast Regional Council (April 2010)

WCRAQ, Response to Questions (July 2011)

WCRAQ, Response to Investigation Notice (August 2011)

WCRAQ, Response to Additional questions (November 2011)

WCRAQ, Commercial and Industrial Business Waste Composition Audit Report January 2012)

WCRAQ, Response to Draft Report February 2012 (April 2012)