

10.3 QUEENSLAND COMPETITION AUTHORITY REPORT INTO COMPETITIVE NEUTRALITY COMPLAINT – GREEN WASTE BIN SERVICE**REPORT OF:** Corporate Governance Manager**REPORT OVERVIEW****EXECUTIVE SUMMARY**

The Queensland Competition Authority (QCA) received a competitive neutrality complaint in October 2021 from The Rubbish Removers (TRR) about Council's introduction of its opt-in green bin service (the service) from 1 July 2021. The complaint alleged that Council has an unfair competitive advantage in being able to offer cheaper prices for green waste removal solely because of its government ownership.

The QCA provided its final report to Council on 1 July 2022 (Attachment 1). As required by the *Local Government Regulation 2012* (QLD), the final report is now provided to Council for review and to make resolutions regarding the implementation of the recommendations.

Criteria: Legislative - It is a legislative requirement that cannot be delegated

CORPORATE PLAN PRIORITY

High performing organisation (HP)

RECOMMENDATIONS**IT IS RECOMMENDED:**

1. That the following responses to the Queensland Competition Authority's recommendations regarding Council's green waste bin service be endorsed:
 - a. Recommendation 1 to be conditionally accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes, however the price it sets for the service will be considered in the context of the broader full cost pricing for its waste business unit and any decision to reset the green waste bin service price may be implemented incrementally over a number of years.
 - b. Recommendation 2 not accepted on the basis that the current gate fee for weighed self-haul green waste priced consistent with full cost pricing principles.
 - c. Recommendation 3 to be accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for marketing, promotion and staffing costs.
 - d. Recommendation 4 to be accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for its administrative and overhead cost allowances.
 - e. Recommendation 5 to be accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the relevant share of depreciation of the assets used in providing the service.

- f. Recommendation 6 to be accepted on that basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the share of the Logan Waste Services tax equivalents.
 - g. Recommendation 7 to be accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the Logan Waste Services equivalent for cost of funds.
 - h. Recommendation 8 to be accepted on the basis that Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the relevant return on capital used in providing the service.
2. That the Corporate Governance Manager be requested to advise The Rubbish Removers and the Queensland Competition Authority, of Council's response to the Queensland Competition Authority's recommendations, as detailed in the report of the Corporate Governance Manager dated 20 July 2022.
 3. That the Finance Manager be requested to include a review of Council's green waste bin service pricing in the Future Budgets Register for future consideration, along with other budget matters, as part of the 2023/2024 budget process.

REPORT DETAILS

INTERESTED PARTIES

The Rubbish Removers.com Pty Ltd (including Directors: Wendy Erhard and John Allan Erhard), a business with its current registered address in Kuraby.

PURPOSE OF REPORT/BACKGROUND

Competitive neutrality is a principle established since approximately 1995 and arising from the National Competition Policy (NCP). A key commitment of the NCP was that all levels of government would not make laws that restricted competition except where the benefit of the restriction to the community outweighed the cost.

Competitive neutrality, in simple terms, is the principle that a government business or agency, should compete with private business on an equal footing. The competitive neutrality principle areas are:

- **Financial**—for example, where a government business has an exemption from paying a tax or is charged a different rate of interest.
- **Regulatory**—for example, where a government business has an exemption from complying with a requirement in a regulation.
- **Procedural**—for example, where a government business does not have to supply the same information for a government approval process as a private sector business.

Council introduced its opt-in green waste bin service on 1 July 2021. The majority of other local governments in south-east Queensland (and nationally in most medium-large Council areas) have offered this same service for several years. The provision of this service provides a significant function in reducing waste to landfill, thereby reducing future waste levy costs as well as meeting waste reduction targets set by the State and Federal governments.

The complainant, TRR, first raised queries to Council in January 2021. They formalised their complaint in April 2021 and it was managed in accordance with Council's Competitive Neutrality Complaints Policy, with a response issued by Council in October 2021.

TRR subsequently lodged a complaint to the QCA on 15 October 2021 and Council were notified of a formal investigation on 22 October 2021. In the ensuing months the Health, Environment and Waste Branch, in consultation with the Corporate Governance Branch and Corporate Finance Branch, has assisted in providing responses to the QCA. QCA acknowledge that Council have fully cooperated with the investigation.

The QCA provided its final report to Council on 1 July 2022 (Attachment 1).

The QCA investigation concluded that Council intended to apply the competitive neutrality principle to its green waste bin service through the application of full-cost pricing to the service; however incorrectly allocated the following costs in its pricing methodology:

- collection costs;
- disposal costs; and
- marketing, promotion and staffing costs.

On that basis, QCA determined that the complaint had been substantiated. It should be noted that Council's initial green waste bin prices were set well before the actual commencement of the service in order to provide the community with adequate lead in time to pre-order their bins. A range of assumptions had to be made at the time in relation to uptake, associated contractual collection costs, volume of green waste received, processing costs, etc. As the service offering is now operational and these costs become clearer, service price adjustments can be considered by Council during future budget processes to reflect full cost pricing principles.

The QCA's modelling indicates that even if Council had correctly applied the above costs to its pricing, it is likely that the price of Council's green waste service would still be lower than that offered by TRR.

The QCA also offered a suite of recommendations for Council's consideration as to how Council should conduct its green waste service in a way that complies with the competitive neutrality principles. Table 1 lists each QRA recommendation, the proposed Council response and basis of that response.

Table 1 – QCA recommendations and proposed Council response

QCA Recommendation	Council Response
<p>1: Collection costs</p> <p><i>We recommend that the LCC reset the price of its green waste bin service to account for the full cost of collecting the bins.</i></p>	<p>Conditionally accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes. However, the price it sets for the service will be considered in the context of the broader full cost pricing for its waste business unit and any decision to reset the green waste bin service price may be implemented incrementally over a number of years.</p>
<p>Recommendation 2: Disposal costs</p> <p><i>We recommend that:</i></p> <ul style="list-style-type: none"> • <i>the LCC immediately lowers the disposal fee it charges to commercial operators for the disposal of green waste to \$27 per tonne, that is, the price it currently charges itself</i> 	<p>Not accepted.</p> <p>Consistent with the QCA's recommendations in relation to full cost price principles for the green waste bin service, the same principles should apply to self-haul green waste services.</p>

QCA Recommendation	Council Response
<ul style="list-style-type: none"> the LCC reviews its disposal fee to ensure that, if applicable, the disposal fee also satisfies the principles of full-cost pricing. If the LCC decides to adjust the disposal fee (from \$27 per tonne) after this review, it should ensure that it charges its green waste bin service and competing commercial operators the same disposal fee. 	<p>This results in the need for the weighed self-haul green waste service to absorb not just the direct “disposal fee” and processing cost alone, but recover its fair share of cost associated with:</p> <ul style="list-style-type: none"> Weighbridge and Waste Transfer Station operations and assets as they impact green waste services; Depreciation and return on capital for green waste specific assets; Centralised overhead costs; Cost associated with contamination and the need to landfill green waste; Adjustments for competitive neutrality; and Goods and Services Tax (GST). <p>The current Recommendation 2 wording that states ‘LCC immediately lowers the disposal fee it charges to commercial operators for the disposal of green waste to \$27 per tonne, that is, the price it currently charges itself’ only reflects a sub-set of full cost price of the self-haul green waste weighed service. With the application of full cost pricing principles, the current gate fee for weighed self-haul green waste is priced consistent with full cost pricing principles.</p>
<p>Recommendation 3: Marketing, promotion and staffing costs</p> <p>We recommend that the LCC reset the price of its green waste bin service to account for the full marketing, promotion and staffing costs.</p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for marketing, promotion and staffing costs.</p>
<p>Recommendation 4: Administrative and overhead costs</p> <p>We recommend that the LCC review the price of its green waste bin service and if appropriate, revise its administrative and overhead costs allowance.</p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for its administrative and overhead cost allowances.</p>

QCA Recommendation	Council Response
<p>Recommendation 5: Depreciation</p> <p><i>We recommend that the LCC review the price of its green waste bin service to account for the relevant share of depreciation of the assets used in providing the service.</i></p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the relevant share of depreciation of the assets used in providing the service.</p>
<p>Recommendation 6: Tax equivalents</p> <p><i>We recommend that the LCC review the price of its green waste bin service to ensure it accounts for the green waste bin service share of the Logan Waste Services tax equivalents.</i></p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the share of the Logan Waste Services tax equivalents.</p>
<p>Recommendation 7: Cost of funds equivalents</p> <p><i>We recommend that the LCC review the price of its green waste bin service to account for the green waste bin service share of the Logan Waste Services equivalent for cost of funds.</i></p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the Logan Waste Services equivalent for cost of funds.</p>
<p>Recommendation 8: Return on capital</p> <p><i>We recommend that the LCC review the price of its green waste bin service to account for the relevant return on capital used in providing the service.</i></p>	<p>Accepted.</p> <p>Council will review its full cost pricing methodology for the green waste bin service as part of future budget processes and, as part of that review, account for the relevant return on capital used in providing the service.</p>

ANY PREVIOUS COUNCIL DECISIONS

Not applicable.

FINANCIAL/RESOURCE IMPLICATIONS

There are no immediate financial or resource implications associated with the recommendations of this report. As part of future budget processes, Council can consider the future financial implications of green waste bin pricing options in the context of full cost pricing principles and the broader waste business budget.

RISK MANAGEMENT IMPLICATIONS

Council has a statutory obligation to comply with the *Local Government Regulation 2012* in respect of considering the QCA report and determining whether to accept, or not, the recommendations made within it. The key risks that exist include:

- Technical non-compliance with the Regulation if the standard timeframes mentioned (within section 55) are not complied with; and
- Public perception about the competitive nature of Council's waste business unit.

It should be noted that Council's initial green waste bin prices were set well before the actual commencement of the service in order to provide the community with adequate lead in time to pre-order their bins. A range of assumptions had to be made at the time in relation to uptake, associated contractual collection costs, volume of green waste received, processing costs, etc. As the service embeds and these costs become clearer, service price adjustments can be considered by Council during future budget processes to reflect full cost pricing principles.

LEGAL/POLICY

Competitively neutrality complaints are managed in accordance with Chapter 3, Part 3, Division 7 of the *Local Government Regulation 2012*. Relevantly, the Regulation provides as follows:

- Section 52 – The competition authority must prepare a report on the results of their investigation into a competitive neutrality complaint and provide that to the relevant local government. That report must state whether or not the complaint has been substantiated and if so, include recommendations.
- Section 53 – When a local government is given a report under section 52, they must ensure a copy of the report is available for inspection as soon as practicable after being given the report (a copy was made available for inspection on 4 July 2022).
- Section 55 – Council must:
 - decide, by resolution, whether to implement the report recommendations including reasons for the decision. That resolution must be made within one month after receiving the report, or if the local government does not ordinarily meet within that month, at the first meeting of the local government after that month.
 - Within seven days of making the resolution give notice to:
 - the complainant;
 - The QCA; and
 - The corporatised business entity.
- Section 55(5) – the corporatised business entity must implement the recommendations as soon as practical.

On 30 May 2017, Council adopted the 'Competitive Neutrality Complaints' Policy, together with an associated Competitive Neutrality Complaint Information Kit. The Policy has been complied with in response to the complaint by TRR.

COMMUNITY AND OTHER CONSULTATION

As noted in the QCA final report, Council has been cooperative throughout its investigation and consistently provided the information and documents requested within the timeframes set.

Internal consultation on this matter has involved officers from the following Council branches:

- Corporate Governance;
- Health, Environment & Waste; and
- Corporate Finance.

Council's Executive Leadership Team were provided a briefing on this matter at its strategic meeting in June 2022.

CONCLUSION

The QCA provided its final report to Council on 1 July 2022 in relation to a complaint it received from The Rubbish Removers about Council's introduction of its opt-in green bin service. In its final report, the QCA made recommendation on how Council conduct its green waste service in a way that complies with the competitive neutrality principles. These recommendations have been considered by Council and proposed responses provided for Council's consideration.

REPORT PROPERTIES

Report Attachments

Number	Attachment Title
Attachment 1	QCA – Final report The Rubbish Removers Competitive Neutrality Complaint.

Report Authorisations

Authorisation	Officer Names and Titles
Report Authors	<ul style="list-style-type: none"> • Michael Kohne - Integrity, Information & Registers Program Leader
Authorising Officers	<ul style="list-style-type: none"> • Anita White - A/Corporate Governance Manager • Kim Bryan - A/Director, Organisational Services
Branch and Directorate	Corporate Governance, Organisational Services