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## Competitive neutrality complaint by The Rubbish Removers about Logan City Council

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Final report – July 2022

We wish to acknowledge the contribution of the following staff to this report:

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## Contents

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EXECUTIVE SUMMARY	III
1 INTRODUCTION	1
1.1 The competitive neutrality principle	1
1.2 TRR's competitive neutrality complaint	1
1.3 The QCA's role in investigating competitive neutrality complaints	2
1.4 Structure of the report	2
2 LEGAL AND POLICY FRAMEWORK	3
2.1 What is competitive neutrality?	3
2.2 How does competitive neutrality apply to local governments?	4
2.3 How are competitive neutrality complaints assessed?	6
3 GREEN WASTE SERVICES IN LOGAN	8
3.1 Logan City Council	8
3.2 Logan Waste Services	8
3.3 The LCC's green waste bin service	8
3.4 Private businesses offering green waste services	9
3.5 Collection of green waste	10
3.6 Disposal of green waste	10
3.7 The process after green waste is deposited at a waste facility	12
3.8 Summary of the green waste process	12
4 ASSESSING THE COMPLAINT	14
4.1 Assessing competitive neutrality concepts	14
4.2 Investigating the application of full-cost pricing principles	16
5 OPERATIONAL COSTS	18
5.1 Overview	18
5.2 Collection costs	18
5.3 Disposal costs	19
5.4 Marketing, promotion and temporary staffing costs	23
5.5 Impact of applying estimated operational costs	26
5.6 Summary of findings on operational costs	30
6 CAPITAL AND OTHER COSTS	31
6.1 Overview	31
6.2 Administrative and overhead costs	32
6.3 Cost of resources used in conducting the activity	33
6.4 Depreciation	34
6.5 Tax equivalents	35
6.6 Equivalents for cost of funds	36

6.7	Return on capital	37
6.8	Summary of recommended implementation process	38
7	GOVERNMENT POLICIES AND COMPETITIVE DISADVANTAGES	39
7.1	Introduction	39
7.2	Competitive disadvantages	39
7.3	LCC policies	42
	ABBREVIATIONS AND DEFINITIONS	46
	APPENDIX A: COMPETITIVE NEUTRALITY COMPLAINT PROCESS	48
	What is a competitive neutrality complaint?	48
	Making a competitive neutrality complaint	48
	Investigating a competitive neutrality complaint	48
	Reporting on a competitive neutrality investigation	49
	Process followed in investigating the TRR complaint	50
	REFERENCES	53

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## EXECUTIVE SUMMARY

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### Background

We received a competitive neutrality complaint in October 2021 from The Rubbish Removers (TRR), a Logan-based small business, about the Logan City Council (LCC). We are the authority who receives, investigates and reports on competitive neutrality complaints.<sup>1</sup> Under the competitive neutrality principle, the LCC's green waste bin service should not enjoy a net advantage over its private sector competitors (such as TRR) only because the LCC, being in the public sector, may have advantages (or disadvantages) that arise solely due to government ownership.

TRR offers a green waste bag collection service to residents for the disposal of their garden waste. In July 2021, the LCC introduced a green waste bin service to its ratepayers, which competes with the green waste removal services TRR offers. In its complaint, TRR alleged that the LCC's green waste bin service has unfair competitive advantages, in being able to offer cheaper prices for green waste removal services solely because of its government ownership. TRR alleged therefore that the LCC failed to conduct its own green waste bin service in accordance with the competitive neutrality principle.

This report provides the results of our investigation into TRR's complaint against the LCC. Our investigation and reporting have been carried out in accordance with relevant provisions of the Local Government Act 2009 (Qld) and the Local Government Regulation 2012 (Qld). We consider that the complaint has been substantiated.

We note the LCC has been cooperative throughout our investigation and consistently provided the information and documents we requested within the timeframes we set. We would like to thank the LCC for its assistance in this matter.

### Findings

**We found that the LCC has not conducted its green waste bin service in accordance with the competitive neutrality principle.**

Our investigation shows the LCC intended to apply the competitive neutrality principle to its green waste bin service through the application of full-cost pricing to the service. Full-cost pricing of a service is a means by which a local government can apply the competitive neutrality principle to a service. When a local government uses full-cost pricing, it should price the service such that it can (among other things):

- recover the full cost of providing the service, including a normal risk-related return on any capital employed
- appropriately account for any competitive advantage (or disadvantage) the local government may have over private sector competitors.

We found the LCC incorrectly applied the principles of full-cost pricing to the service—in particular, through incorrectly allocating the following costs:

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

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<sup>1</sup> More information about our role in competitive neutrality can be found on [our website](#).

The LCC's green waste bin service therefore has a net competitive advantage, in terms of the price of the service, over private sector competitors. As a result, we consider that the LCC has not complied with the competitive neutrality principle in conducting its green waste bin service.

However, our modelling indicates that even if the LCC had correctly applied full-cost pricing and complied with the competitive neutrality principle in relation to the green waste bin service, it is likely that the price of the LCC service would still be lower than that offered by TRR.

## Recommendations

Our recommendations on how the LCC can conduct its green waste bin service in a way that complies with the competitive neutrality principle are summarised in Box 1. For context, these recommendations are best read as part of our analysis of each issue.

### Box 1: The QCA's recommendations to the Logan City Council

#### **Recommendation 1: Collection costs**

We recommend that the LCC reset the price of its green waste bin service to account for the full cost of collecting the bins.

#### **Recommendation 2: Disposal costs**

We recommend that:

- 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
- 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.

#### **Recommendation 3: Marketing, promotion and staffing costs**

We recommend that the LCC reset the price of its green waste bin service to account for the full marketing, promotion and staffing costs.

#### **Recommendation 4: Administrative and overhead costs**

We recommend that the LCC review the price of its green waste bin service and if appropriate, revise its administrative and overhead costs allowance.

#### **Recommendation 5: Depreciation**

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.

#### **Recommendation 6: Tax equivalents**

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.

#### **Recommendation 7: Cost of funds equivalents**

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.

#### **Recommendation 8: Return on capital**

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.

## Next steps

This report will be given to the LCC, which must decide, by resolution, whether to implement our recommendations. This resolution must usually be made within one month after we provide the report to the LCC. Within seven days after making the resolution, the LCC is required to notify us and TRR of its resolution.<sup>2</sup>

The LCC must ensure that the public can inspect a copy of this report at its public offices.

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<sup>2</sup> The steps described in this section are mandated by the Local Government Regulation 2012 (Qld).

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# 1 INTRODUCTION

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## 1.1 The competitive neutrality principle

Competitive neutrality is the principle that a public sector entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors (or potential competitors) in a particular market only because that entity is in the public sector. In other words, a public sector business should compete with private sector businesses on a level playing field (or competitively neutral basis).

The underlying objective of competitive neutrality is to remove distortions in resource allocations arising out of public ownership. For example, if a government business has a net competitive advantage, it may be able to price below more (or equally) efficient competitors, and this may promote economic inefficiency and reduce community welfare. If a less efficient government business is able to take business from a more efficient firm, the resources of society are not being put to their best use.<sup>3</sup>

In Queensland, a person may make a competitive neutrality complaint relating to a failure by the state government or a local government (including their relevant agencies<sup>4</sup>), to conduct a business activity in accordance with the competitive neutrality principle.<sup>5</sup>

A detailed discussion of the legal and policy framework surrounding competitive neutrality follows in Chapter 2.

## 1.2 TRR's competitive neutrality complaint

The Rubbish Removers (TRR), a small rubbish removal business based in Logan, submitted a competitive neutrality complaint to us on 15 October 2021. The complaint alleges that the Logan City Council (LCC) failed to conduct its green waste bin service in accordance with the competitive neutrality principle.

TRR operates a rubbish removal business that includes the provision of green waste removal services.<sup>6</sup> TRR provides garden bags to its customers for disposal of their green waste. TRR then collects the customers' garden bags once every month (or two months) and disposes of the waste at the LCC's waste and recycling facilities. More information about TRR and green waste removal services is provided in Chapter 3.

The LCC started providing its own green waste bin service to Logan residents and businesses on 1 July 2021. This service enables customers to 'opt in' and order a maximum of two green waste

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<sup>3</sup> FG Hilmer, MR Rayner & GQ Taperell, *National Competition Policy Review*, Australian Government Publishing Service, Canberra, 1993, p. 297. For example, if a government business can price below its competitors because, in the absence of competitive neutrality provisions, it is exempt from tax obligations (solely because it is owned by the government), then its competitors cannot compete on an equal basis, even though they may be producing goods or services more efficiently than the government business.

<sup>4</sup> In Queensland, competitive neutrality complaints can only be made against state government business activities that are on the 'list of significant business activities' available on the [QCA website](#), as prescribed under s. 39 of the *Queensland Competition Authority Act 1997* (Qld).

<sup>5</sup> Subject to requirements set out within relevant legislative provisions, as discussed in Chapter 2 and Appendix A.

<sup>6</sup> Green waste refers to organic waste that can be composted and typically includes refuse from gardens such as tree branches or grass clippings.

bins.<sup>7</sup> Customers dispose of their green waste in the green bins, and the LCC collects the bins fortnightly. The LCC then disposes of the waste at its waste and recycling facilities—the same facilities that Logan residents and businesses (such as the TRR) use. More information about the LCC's green waste bin service is provided in Chapter 3.

TRR's green waste removal service competes with the LCC's green waste bin service. TRR claims that the LCC has a competitive advantage, in that the LCC is not operating its green waste bin service in accordance with the competitive neutrality principle. TRR alleges that it has been adversely affected by this competitive advantage through the loss of customers and revenue.

After we received the complaint, we commenced an investigation under section 46 of the Local Government Regulation 2012 (Qld). More information regarding the process of investigating and reporting on the complaint is provided in Appendix A.

### 1.3 The QCA's role in investigating competitive neutrality complaints

We are the agency responsible for receiving, investigating and reporting on competitive neutrality complaints arising in Queensland. Our [website](#) sets out information on making a competitive neutrality complaint. Once a complaint has been received, we follow the process for investigating and reporting on such a complaint as set out in the relevant legislation. As TRR's complaint is against a local government, the legislation that applies in this case is the *Local Government Act 2009* (Qld) and Local Government Regulation 2012 (Qld).

### 1.4 Structure of the report

The report sets out the findings of our investigation of the complaint and consists of the following chapters:

- Executive summary
- Chapter 1: Introduction
- Chapter 2: Legal and policy framework
- Chapter 3: Green waste services in Logan
- Chapter 4: Assessing the complaint
- Chapter 5: Operational costs
- Chapter 6: Capital and other costs
- Chapter 7: Government policies and competitive disadvantages
- Appendix A: Competitive neutrality complaint process.

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<sup>7</sup> Three different sizes are available: 140 L, 240 L and 360 L.

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## 2 LEGAL AND POLICY FRAMEWORK

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### 2.1 What is competitive neutrality?

#### 2.1.1 Background

Competitive neutrality policy arises most notably out of the Competition Principles Agreement of 1995 (CPA), in which the Commonwealth, state and territory governments agreed to implement a range of reforms in relation to competition policy in the Australian economy. These reforms were based on the idea that free and open competition promotes efficiency and is the only sustainable means of delivering the productivity improvements and innovation necessary for economic growth and job creation.

The Queensland Government's policies on competitive neutrality and local governments are set out in policy statements.<sup>8</sup> The objective of competitive neutrality policy, as stated in the CPA, is:

the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.<sup>9</sup>

The Queensland Government policy statement further explains the objective of competitive neutrality policy:

This objective is based on the premise that, if Government business activities have unfair advantages (or disadvantages), this could promote inefficient production and pricing practices. This would cause an excess flow of resources to the public sector, limiting resource availability to the private sector and increasing the overall costs of service provision to the community.

For example, if a Government business is able to price below its competitors because it does not have to face the same cost structure solely because it is a Government entity, then its competitors are effectively being 'penalised' even though they may be producing the good or service more efficiently and in reality more cheaply.

Efficient resource allocation requires these distortions to be removed.<sup>10</sup>

#### 2.1.2 The competitive neutrality principle

The competitive neutrality principle means that an entity conducting a business activity in competition with the private sector should not enjoy a net advantage over its competitors only because the entity is in the public sector.<sup>11</sup> The competitive neutrality process is concerned with identifying and, where appropriate, removing any advantages or disadvantages that may accrue to a public sector entity because it is owned or operated by government. Such advantages (or disadvantages) are likely to fall into the following categories:

- **Financial advantages** include examples where a local government business does not have to pay a tax, does not have to earn profits, or achieve a commercial return on capital, or is charged a lower rate of interest on a loan because of an implicit or explicit guarantee by the government.

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<sup>8</sup> Queensland Government, *Competitive Neutrality and Business Activities*, policy statement, July 1996 and *National Competition Policy and Local Government*, policy statement, July 1996.

<sup>9</sup> Queensland Government, *Competitive Neutrality and Business Activities*, policy statement, July 1996, p. 8.

<sup>10</sup> Queensland Government, *Competitive Neutrality and Business Activities*, policy statement, July 1996, p. 8.

<sup>11</sup> LG Act, section 43(3).

- **Regulatory advantages** include examples where a local government business is exempt from certain regulations that apply to private sector businesses.
- **Procedural advantages** include examples where a local government business is able to access more information for government approval processes than a private sector business or does not have to provide as much information as a private sector business for a government approvals process.

Competitive neutrality policy seeks to remove or neutralise these advantages. However, it is only concerned with advantages or disadvantages that arise due to public sector ownership. It is not aimed at removing advantages that could be gained equally by private and public firms (such as advantages due to size, assets, skills, experience and/or reputation). Superior performances of different firms (whether privately or publicly owned) that are operating within the same legal and regulatory framework are the hallmark of a competitive market economy.<sup>12</sup>

## 2.2 How does competitive neutrality apply to local governments?

As the complaint relates to a local government, this report discusses the operation of the competitive neutrality regime with respect to local governments in Queensland. This regime is set out in the *Local Government Act 2009* (Qld) (LG Act) and *Local Government Regulation 2012* (Qld) (LG Regulation).

Among other matters, this legislation sets out several key concepts in the application of the competitive neutrality regime to local governments, as discussed in the following sections.

### 2.2.1 A business activity

The competitive neutrality principle only applies to business activities of a local government. A business activity of a local government means trading in goods and services by the local government.<sup>13</sup>

### 2.2.2 A significant business activity

Although the competitive neutrality principle applies to business activities operated by a local government in competition with the private sector, the LG Act and LG Regulation contain additional provisions that apply only to 'significant business activities'.

A significant business activity is a business activity of a local government that is conducted in competition (or potential competition) with the private sector and meets the threshold prescribed under the LG Regulation.<sup>14</sup> At the time of writing, this threshold is a business activity with expenditure of at least \$9.7 million for the financial year ending immediately before the current financial year.<sup>15</sup>

Once an activity is identified as a significant business activity, the LG Act provides that a local government may apply the competitive neutrality principle by:

- (a) commercialisation of a significant business activity, or

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<sup>12</sup> Adapted from Queensland Government, *Competitive Neutrality and Business Activities*, policy statement, July 1996, p. 10.

<sup>13</sup> LG Act, schedule 4 (dictionary).

<sup>14</sup> However, section 43(5) of the LG Act sets out specific business activities that are *not* considered significant business activities.

<sup>15</sup> LG Regulation, section 19. A different threshold applies specifically in relation to combined water and sewerage services.

- (b) full-cost pricing of a significant business activity.<sup>16</sup>

### 2.2.3 Commercialisation

Commercialisation involves creating a new business unit, which is part of the local government, to conduct the significant business activity on a commercial basis.<sup>17</sup> Commercialisation is a reform process whereby the local government charges for the goods and services it produces and adopts to varying degrees other features of the commercial environment. These features could range from minor cost recovery and simple 'user charging' through to full competition on equal terms with the private sector.<sup>18</sup>

A commercial business unit is one that conducts business in accordance with the key principles of commercialisation, which are set out in section 28 of the LG Regulation.<sup>19</sup> These key principles include:

- (a) clarity of objectives for the commercialised business unit, such as setting specific financial and non-financial performance targets for the significant business activity
- (b) management autonomy and authority, such as that the unit remains at arms-length to the local government in day-to-day operations
- (c) accountability for performance, such as that the local government monitors the unit's performance against its targets
- (d) compliance with the competitive neutrality principle, such as through removing any competitive advantage or disadvantage (arising through government ownership) whenever possible and appropriate.

### 2.2.4 Full-cost pricing

Full-cost pricing involves pricing the significant business activity on a commercial basis, but without creating a new business unit.<sup>20</sup> As its name suggests, full-cost pricing involves charging for goods or services at the full cost of providing the goods or services.

In the private sector, prices are typically set to recover the full costs of the provision of all goods and services, taxes and similar charges, plus a suitable return on the owner's investment.<sup>21</sup> In the context of government-owned businesses, the purpose of a full-cost pricing policy is to assist in achieving competitive neutrality between these businesses and their private sector counterparts, where the two types of firms compete with each other in providing the same service. Significant business activities of a local government can achieve full-cost pricing by charging prices which reflect a cost (including a normal risk-related return on any capital employed) that is similar to that faced by a private sector competitor.<sup>22</sup>

Under the LG Regulation, full-cost pricing is applied if the total projected revenue from providing all of the activity's goods and services is enough to cover the projected total costs of conducting

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<sup>16</sup> LG Act, section 44(1).

<sup>17</sup> LG Act, section 44(2).

<sup>18</sup> Queensland Government, *Competitive Neutrality and Business Activities*, policy statement, July 1996, p. 17.

<sup>19</sup> LG Regulation, section 27.

<sup>20</sup> LG Act, section 44(3).

<sup>21</sup> Queensland Government, *Full Cost Pricing Policy*, policy statement, Queensland Treasury, 2010, p. 7.

<sup>22</sup> Queensland Government, *Full Cost Pricing Policy*, policy statement, Queensland Treasury, 2010, p. 3.

the activity.<sup>23</sup> The LG Regulation also contains specific provisions regarding how full-cost pricing may be applied to a significant business activity by a local government.<sup>24</sup>

## 2.3 How are competitive neutrality complaints assessed?

A competitive neutrality complaint is a complaint that relates to the alleged failure of a local government to conduct a business activity in accordance with the competitive neutrality principle. The QCA is the agency responsible for receiving, investigating and reporting on competitive neutrality complaints.

After commencing a competitive neutrality investigation, the QCA is required to follow the procedures set out in the LG Regulation. This can include issuing certain statutory notices to inform the parties to the complaint of certain events or to request information from the parties. The process for receiving, investigating and reporting on complaints against local governments, including the process that has been followed in this investigation, is discussed in detail in Appendix A.

### 2.3.1 Competitive neutrality criteria

In addition to the procedural requirements of the complaint process, the QCA is also required to consider certain substantive matters when investigating a competitive neutrality complaint. These matters are known as the 'competitive neutrality criteria' and are:

- (a) the need to ensure the competitive neutrality principle is complied with
- (b) any policies of the relevant local government relating to the competitive neutrality principle, including, for example—
  - (i) directions the local government gives to the business entity conducting the business activity that is the subject of the competitive neutrality complaint; and
  - (ii) arrangements between the local government and the business entity about a competitive advantage gained, or competitive disadvantage suffered, by the business entity; and
  - (iii) social welfare and equity considerations, including, for example, community service obligations, and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues, including, for example, policies on employment and investment growth;
- (c) policies of the relevant local government, or a law, about—
  - (i) ecologically sustainable development; or
  - (ii) industrial relations; or
  - (iii) occupational health and safety;
- (d) the need to promote competition;
- (e) the need to allocate resources efficiently.<sup>25</sup>

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<sup>23</sup> LG Regulation, section 22(2).

<sup>24</sup> LG Regulation, sections 21–25.

<sup>25</sup> LG Regulation, section 51(2).

The QCA can also consider any other matters it considers relevant when investigating a competitive neutrality complaint.<sup>26</sup>

The application of the legal and policy framework to the facts of TRR's complaint is set out in Chapter 4. The application of the competitive neutrality criteria to our investigation of this complaint is discussed in Chapters 5 to 7.

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<sup>26</sup> LG Regulation, section 51(3).

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## 3 GREEN WASTE SERVICES IN LOGAN

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### 3.1 Logan City Council

The LCC is the local government responsible for the city of Logan in south-east Queensland. Logan has a population of approximately 327,000 people.<sup>27</sup> A local government is an elected body that is responsible for the good rule and government of a part of Queensland<sup>28</sup> and, relevantly for our investigation, operates under the LG Act and LG Regulation.

### 3.2 Logan Waste Services

Logan Waste Services is the LCC entity responsible for the provision of the green waste bin service, which is the business activity that is the subject of the complaint. Logan Waste Services is managed by the Health, Environment and Waste branch of the LCC, which sits within the Strategy and Sustainability directorate.<sup>29</sup>

According to the LCC, Logan Waste Services is responsible for all city waste activities, which include:

- collection of household waste
- kerbside clean-ups
- servicing of litter bins
- bulk disposals at landfills
- waste transfer stations
- municipal bulk solid waste collection
- maintenance and environmental monitoring of current and former waste disposal facilities.<sup>30</sup>

### 3.3 The LCC's green waste bin service

The LCC introduced its green waste bin service in July 2021. This service allows residents to dispose of green garden waste—including garden prunings, grass clippings and plant material—in a bin (a 'wheelie bin') similar to bins for general and recyclable waste.

The green waste bin service is an 'opt in' service for LCC residents and businesses, with the charges per bin per year based on bin size:

- 140 litre bin—\$46 per year
- 240 litre bin<sup>31</sup>—\$51 per year

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<sup>27</sup> LCC, *About Logan City*, LCC website, 2022, accessed 6 April 2022.

<sup>28</sup> LG Act, section 8(1).

<sup>29</sup> LCC, *Organisation structure*, LCC website, 2022, accessed 6 April 2022.

<sup>30</sup> LCC, *Annual report* [Consolidated annual financial statements 30 June 2021], LCC website, 2022, accessed 6 April 2022, p. 10.

<sup>31</sup> According to the LCC, 240 L is the standard size for general waste, recycling and green waste bins.

- 360 litre bin—\$76 per year.<sup>32</sup>

Residents can request a maximum of two green bins per property. Green bins are collected on a fortnightly basis.

The LCC's annual report for 2020–2021 provides the following information regarding the introduction of the LCC's green waste bin service:

#### **About**

A component of the 2021 waste collection contract was the introduction [sic] an optional green waste bin service. This service provides an opportunity for residents to divert their garden waste away from the landfill bin and into a dedicated green waste bin where the garden waste will be turned into compost.

#### **Actions**

Preparations ahead of the green waste bin roll-out included:

- establishing a dedicated web page for expressions of interest in the service on Council's website
- conducting a significant promotional campaign that incorporated promotion via the Our Logan magazine, brochures delivered with kerbside clean-up flyers, social media and promotion at Council facilities and Customer Service Centres.
- establishing corporate property system architecture for the service.

#### **Outcome**

We received approximately 8,500 green waste bin applications, and we delivered the bins by 30 June 2021 ready for commencement from July 2021.<sup>33</sup>

## 3.4 Private businesses offering green waste services

### 3.4.1 TRR's business

TRR is a business, based in Logan, that offers rubbish removal services and 'garden bag' green waste removal services in the LCC and surrounding council areas (including Ipswich, Brisbane southside and some Brisbane northside locations). TRR's garden bag green waste removal service is similar to the LCC's green waste bin service.

TRR provides its customers with a large bag and frame for collection of green waste.<sup>34</sup> The capacity of the bag is approximately 720 litres (L). The bags are collected on a monthly or two-monthly basis. TRR charges customers \$20 per 720 L bag collected (including GST). At the time of writing, TRR had around 800 customers and averaged a turnover of around \$14,000 per month over the previous six months.<sup>35</sup>

### 3.4.2 Other businesses

A number of small businesses appear to offer green waste removal services within the Logan area similar to the services TRR provides. According to TRR, these other small businesses were TRR's 'usual competitors', and these businesses have competed in terms of service, reliability and

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<sup>32</sup> LCC, *Order green waste bins*, LCC website, 2022, accessed 7 March 2022.

<sup>33</sup> LCC, *Logan City Council Annual Report 2020/2021*, n.d., p. 189.

<sup>34</sup> TRR assembles this bag and frame in the customer's garden.

<sup>35</sup> TRR, *Sale of Businesses*, TRR website, 2022, accessed 7 March 2022.

efficiency in the market for a number of decades. TRR stated that its biggest competitor now is the LCC.

### 3.5 Collection of green waste

#### 3.5.1 Green waste from LCC green waste bins

The LCC contracts with a private company, Cleanaway Pty Ltd (Cleanaway), for the collection of green waste (along with general and recyclable waste) within the LCC area. Cleanaway supplies the green waste bins given to LCC ratepayers. It also supplies and operates the trucks that collect the green waste from the bins. After Cleanaway has collected the green waste, it transports the waste to various waste and recycling facilities that are owned and operated by the LCC.

#### 3.5.2 Green waste from private businesses

In general, private commercial operators, such as TRR, own their own trucks and equipment, which they use to collect green waste from their customers. Collection frequency is agreed with the customer and can be on a weekly, fortnightly or monthly basis. TRR garden bags are collected on a monthly or two-monthly basis. After collection, TRR takes the waste to the LCC's waste and recycling facilities for disposal.

### 3.6 Disposal of green waste

#### 3.6.1 Green waste from LCC green waste bins<sup>36</sup>

The Cleanaway trucks that collect green waste from the green waste bins use the LCC's Browns Plains Waste and Recycling Facility (BPWRF) and the Carbrook Waste and Recycling Facility (CBWRF) to deposit the waste.

When a Cleanaway truck carrying green waste arrives at BPWRF, it proceeds to the automated calibrated weighbridge. The driver presents a tag that is unique to the vehicle and provides the vehicle ID and tare weight. The weighbridge software system records the mass of the vehicle on entry. The truck enters the site and proceeds to the green waste pad and deposits its green waste. The truck then leaves the site, with no need to weigh off, as the truck's tare weight is already recorded on the system and identified at the point of entry. The truck operator does not have to complete any documentation throughout this waste disposal process.

If the automated system at the BPWRF is not in operation, then a truck carrying green waste proceeds to the staffed weighbridge. At the CBWRF, there is no automated weighbridge, so the truck proceeds onto the staffed weighbridge. At both sites, the weighbridge operator identifies the vehicle from its unit number and records the mass on entry. As the vehicle tare mass is already in the system, the truck does not need to be weighed again on its departure. All transactions of the Cleanaway green waste trucks at BPWRF and CBWRF are recorded automatically on the LCC's electronic software system.

#### 3.6.2 Green waste from private businesses

Private commercial operators can dispose of green waste at the LCC's waste facilities. The LCC owns and operates two types of waste disposal facilities for the disposal of commercial green waste.

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<sup>36</sup> The information in sections 3.6.1 and 3.7 was provided to the QCA by the LCC.

The first type is a waste site without a weighbridge, such as the Greenbank and the Logan Village waste and recycling facilities. At this type of site, the LCC charges commercial customers seeking to dispose of green waste the following fees based on the size of waste load:

- small load, equivalent to a 240 L wheel bin: \$9
- medium load, up to 1 cubic metre: \$14
- large load, up to 2 cubic metres: \$23.

Commercial waste that exceeds the large size is not accepted at these sites—the customer is instead redirected to a waste site with a weighbridge.<sup>37</sup>

The second type is a waste site with a weighbridge. These sites include CBWRF and BPWRF. Commercial customers are charged based on the actual weight of waste, as measured by the weighbridge. The weighbridge measures the weight of the vehicle on entry and exit. The difference between the two weights is the weight of the rubbish, to which the disposal fee is applied.

The LCC charges a disposal fee of \$75 per tonne for commercial green waste. If the green waste is contaminated (mixed) with any other waste, such as cardboard, plastics or general waste, the fee for commercial general waste of \$207 per tonne is charged.<sup>38</sup> Each transaction (disposal of waste) is recorded in the LCC's software reporting system. Customers receive a tax invoice that includes the weight of the vehicle at entry and exit, the vehicle registration, the disposal fee per tonne charged and the price charged, both including and excluding GST. Commercial green waste customers are not required to complete any other documentation.

### 3.6.3 Green waste from households/domestic users

Logan residents or ratepayers can take green waste from their residential property (domestic green waste) to any LCC waste facility.<sup>39</sup> However, waste is not classified as domestic waste if it is taken from a residential property under a commercial arrangement; in this case, it is classified as commercial waste (see section 3.6.2).

There is no charge to Logan residents for the disposal of green waste. Domestic users who reside outside of the Logan council area can also take green waste to the LCC's waste facilities; in this case, the following charges apply (the same at all facilities):

- small load: \$9
- medium load: \$14
- large load: \$23.<sup>40</sup>

LCC ratepayers with a bin service are given four waste vouchers each year. These can be used to dispose of domestic general, construction and demolition waste for free. Domestic green waste from LCC residents can already be disposed of at a LCC waste facility for free, without a voucher.<sup>41</sup>

At the time of writing, LCC waste vouchers cannot be used by commercial operators. For example, an LCC resident cannot give a waste voucher to a green waste business to dispose of green waste

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<sup>37</sup> LCC, *Logan City Council Waste Fees, 1 July 2021 to 30 June 2022*, n.d. p. 3.

<sup>38</sup> LCC, *Logan City Council Waste Fees, 1 July 2021 to 30 June 2022*, n.d., p. 5.

<sup>39</sup> Including Beenleigh, Greenbank, Logan Village, Browns Plains and Carbrook waste and recycling facilities.

<sup>40</sup> LCC, *Logan City Council Waste Fees, 1 July 2021 to 30 June 2022*, n.d., p. 2. The definitions of small, medium and large are the same as discussed in section 3.6.2.

<sup>41</sup> LCC, *Waste vouchers*, LCC website, 2022, accessed 7 April 2022.

that was collected from the residence under a commercial arrangement. Such green waste is considered to be commercial green waste and is charged at commercial rates (see section 3.6.2).

### 3.7 The process after green waste is deposited at a waste facility

After the green waste is deposited at a LCC waste facility, it is put into a green waste stockpile. Green waste from the Cleanaway trucks (that is, green waste collected from the LCC's green waste bins) is put into the same stockpile as the green waste from private commercial operators and domestic users. Green waste in this stockpile is then processed by an independent commercial contractor.

The LCC pays a fee to the commercial contractor that provides onsite processing and removal of green waste. This fee is a price per tonne rate that varies depending on the service provided by the contractor. Services include:

- onsite grinding and removal of green waste
- removal of unprocessed green waste
- onsite grinding and removal of timber waste.

The processed green waste is then removed from the site by the contractor and transported to an authorised composter or soil conditioner. The processed green waste is not sold back to the LCC, and the LCC does not receive any revenue from the contractor that provides the processing and removal service.<sup>42</sup>

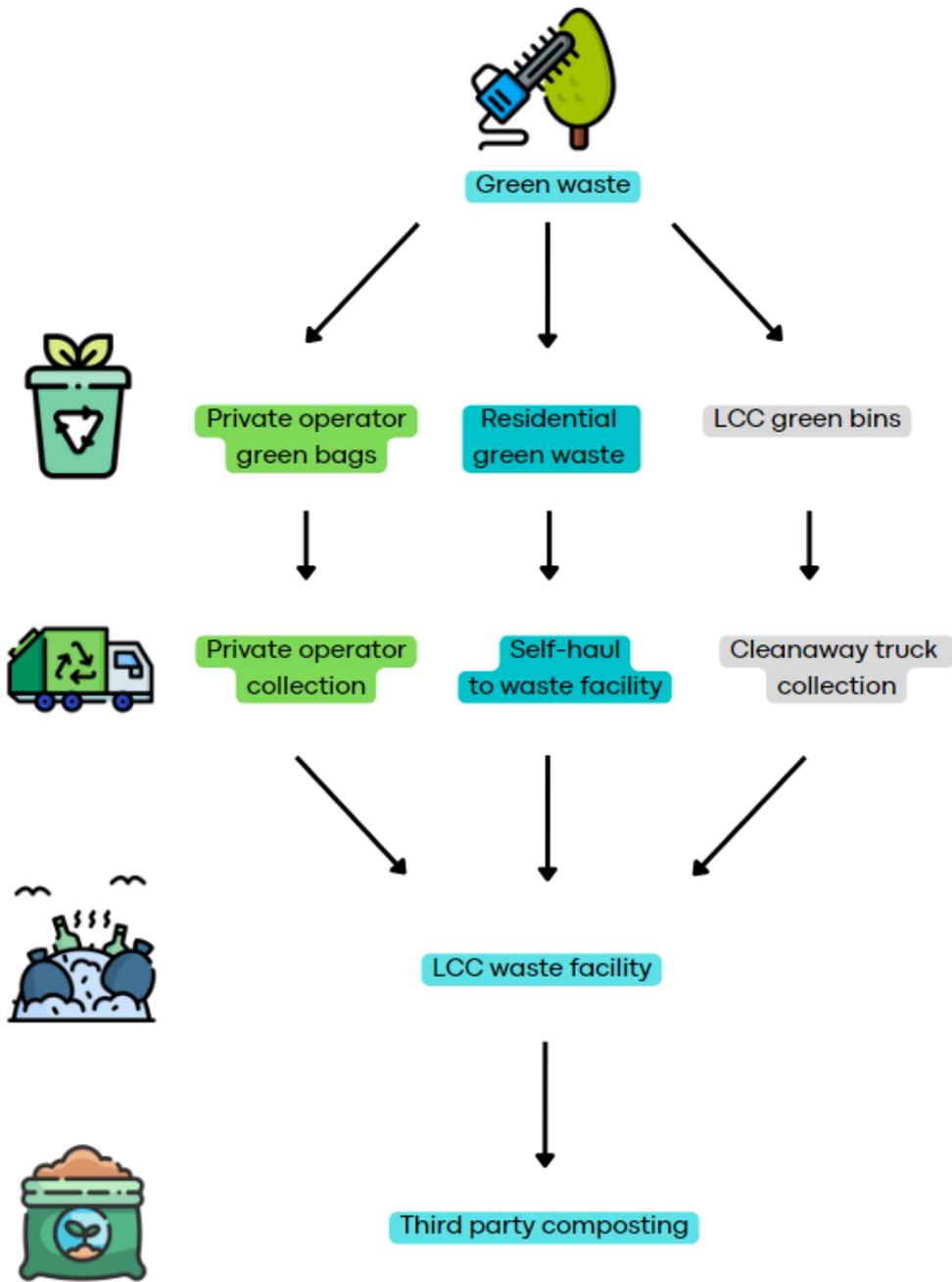
### 3.8 Summary of the green waste process

Figure 1 provides a summary of the process for the collection and disposal of green waste in Logan.

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<sup>42</sup> For example, revenue from the on-selling of compost or processed green waste. According to the LCC, fire ant management regulations prevent it from selling or even giving away processed green waste material at its waste facilities to residents or others. The processed green waste must be removed and given to an authorised composter. This is because, according to the LCC, a regulated and monitored composting process should generate sufficient heat to reduce the risk of fire ants.

Figure 1 Summary of green waste collection and disposal process in Logan



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## 4 ASSESSING THE COMPLAINT

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### 4.1 Assessing competitive neutrality concepts

TRR's complaint alleges that the LCC failed to conduct its green waste bin service in accordance with the competitive neutrality principle. The first step in assessing the complaint is to consider a number of competitive neutrality concepts in relation to the green waste bin service. In particular, we must assess whether:

- the green waste bin service is a business activity of the LCC
- Logan Waste Services is a significant business activity of the LCC
- the LCC applied commercialisation to Logan Waste Services
- the LCC applied full-cost pricing to the green waste bin service.

#### 4.1.1 A business activity of the LCC

The competitive neutrality principle applies to a 'business activity' of a local government that is conducted in competition with the private sector.<sup>43</sup> The provision of a green waste bin service by the LCC is a business activity of the council, as it involves trading in services in exchange for a fee.<sup>44</sup> The LCC's provision of a green waste bin service is operated in competition with private sector businesses, such as TRR. As such, we consider the competitive neutrality principle applies to the green waste bin service operated by the LCC.

#### 4.1.2 A significant business activity of the LCC

The green waste bin service is carried out under the auspices of Logan Waste Services. The business activities of Logan Waste Services are designated as a 'significant business activity' within the meaning of section 43(4) of the LG Act, as these activities:

- are conducted in competition, or potential competition, with the private sector—there are private sector businesses providing waste removal services, including specialised services for removal of recyclable and green waste, and
- meet the threshold currently prescribed under the LG Regulation, which is that the business activity has incurred expenditure of at least \$9.7 million for the financial year ending June 2021.<sup>45</sup>

In its annual report and financial statements for 2020–2021, the LCC describes the business activities of Logan Waste Services as a significant business activity:

Council's Water and Sewerage Services, and Waste Services, are significant business activities under the Local Government Regulation 2012 for National Competition Policy (NCP) purposes, accounted for as separate business units.<sup>46</sup>

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<sup>43</sup> LG Act, section 43(3).

<sup>44</sup> More information about business activities of a local council is provided in Chapter 2.

<sup>45</sup> Total expenditure for Logan Waste Services in that year was approximately \$42.76 million. See LCC, *Consolidated Annual financial statements, 30 June 2021*, n.d., p. 11.

<sup>46</sup> LCC, *Consolidated Annual financial statements, 30 June 2021*, n.d., p. 10.

The LCC is therefore required to apply certain competitive neutrality reforms to the activities of Logan Waste Services, as set out in the LG Act and LG Regulation, such as commercialisation or full-cost pricing.

#### 4.1.3 Commercialisation

The LG Act provides that the competitive neutrality principle may be applied by a local government through:

- commercialisation of a significant business activity, or
- full-cost pricing of a significant business activity.<sup>47</sup>

The LCC has applied commercialisation reforms to the business activities of Logan Waste Services. Commercialisation involves ensuring that the significant business activity is conducted by a commercial business unit within the local government.<sup>48</sup> Logan Waste Services is a commercialised business unit of the LCC and is part of the Health, Environment and Waste branch of the LCC.<sup>49</sup>

As part of its commercialisation, the Waste and Recycling Program Business Unit makes a dividend payment to the LCC annually. This is consistent with the commercialisation of the business unit. According to the LCC's policy:

The Waste and Recycling Program Business Unit's dividend will be:

- a) determined annually as part of the recurrent budget process;
- b) based on actual operational performance of the Waste and Recycling Program Business Unit;
- c) calculated in accordance with the methodology included in the Waste and Recycling Program Business Unit Dividend Procedure; and
- d) returned to Council by financial year-end, with remaining funds transferred to the Community Assets Reserve for future operational and/or capital expenditure in the Waste and Recycling Program Business Unit.<sup>50</sup>

Chapter 2 contains a more detailed discussion of the legal and policy framework surrounding the concept of commercialisation.

#### 4.1.4 Full-cost pricing

The LCC has chosen to apply full-cost pricing to the activities of Logan Waste Services for the 2020–21 financial year. The LCC's accounting policy statement for 2020–21 states:

The Council resolves that in the 2020/2021 financial year, the Council will apply full-cost pricing for the Commercialised Business Units, in accordance with the Local Government Regulation 2012.<sup>51</sup>

Although LCC's green waste service only commenced in 2021, our investigation shows that within the business activities of Logan Waste Services, the LCC decided to apply the principles of full-cost pricing to the green waste bin service and to operate the service on a full-cost recovery basis

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<sup>47</sup> LG Act, section 44.

<sup>48</sup> LG Regulation, section 26.

<sup>49</sup> LCC, *Logan City Council Annual Report 2020/2021*, n.d., pp. 183, 188.

<sup>50</sup> LCC, *Waste and Recycling Program Business Unit Dividend Policy*, 2021.

<sup>51</sup> LCC, *Accounting Policy Statement 2021/2022*, 2021.

(discussed in Chapter 5).<sup>52</sup> Full-cost pricing for the green waste bin service involves pricing the service such that the total projected revenue from providing the service is enough to cover the total projected costs, including a normal risk-related return on any capital employed. Chapter 2 contains a more detailed discussion of the legal and policy framework surrounding the concept of full-cost pricing.

## 4.2 Investigating the application of full-cost pricing principles

As the LCC has elected to apply the competitive neutrality principle by applying full-cost pricing to the green waste bin service, the next step in our investigation was to assess whether the principles of full-cost pricing have been correctly applied. The results of our investigation are set out in the following chapters.

To apply full-cost pricing, the total projected costs of the green waste bin service should include (Figure 2):

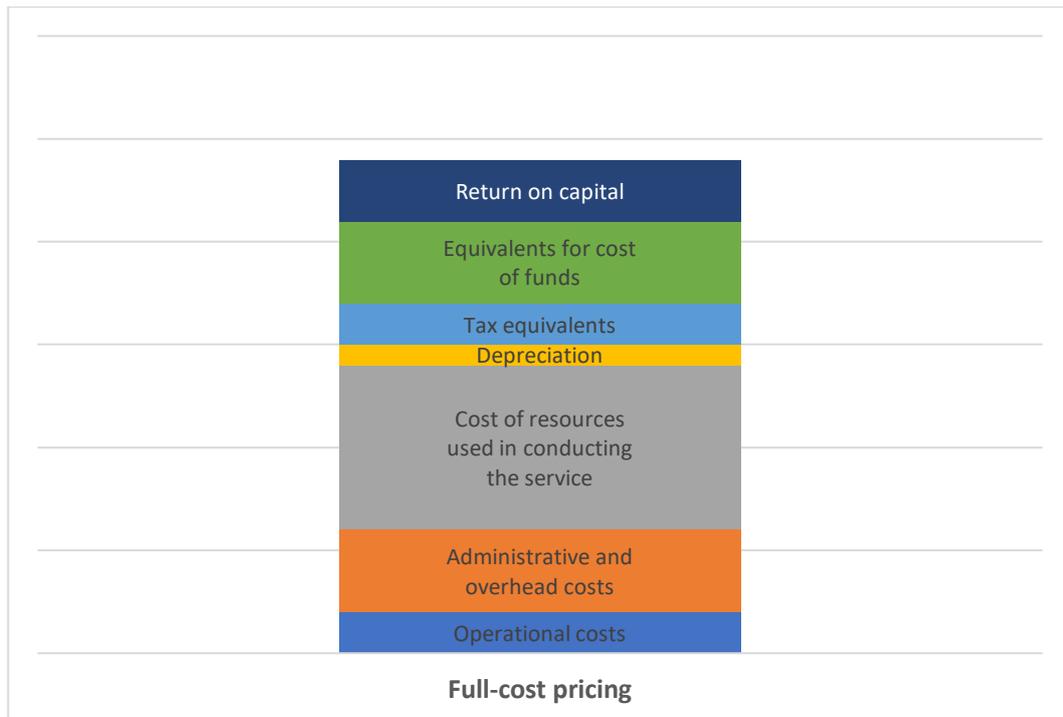
- (1) the operational costs incurred in conducting the service (Chapter 5)
- (2) administrative and overhead costs (section 6.2)
- (3) the cost of resources used in conducting the service (section 6.3)
- (4) depreciation (section 6.4)
- (5) equivalents for Commonwealth or state taxes that a local government is not liable to pay because it is a local government (section 6.5)
- (6) equivalents for the cost of funds advantage a local government obtains over commercial interest rates because of state guarantees on borrowings (section 6.6)
- (7) return on capital (section 6.7).<sup>53</sup>

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<sup>52</sup> We did not investigate whether full-cost pricing was also applied to other business activities undertaken by Logan Waste Services or to the significant business activity undertaken by Logan Waste Services as a whole, as those business activities were not the subject of the complaint.

<sup>53</sup> See LG Regulation, schedule 4.

**Figure 2 Total projected costs that make up full-cost pricing**



*Notes: This figure is for illustrative purposes only and is not to scale.*

Based on the information provided to us during our investigation, it appears that when the LCC set the price of the green waste bin service, it intended to ensure the projected total revenue from the conducting the service was enough to cover the projected total costs of conducting the service. However, we consider that the LCC green waste bin service price is currently set below the full cost of providing the service, despite the LCC's intended application of a full-cost pricing policy to the activities of Logan Waste Services, including its green waste bin service.

The following chapters provide our recommendations on how the LCC can conduct the green waste bin service in accordance with the competitive neutrality principle, in instances where we consider the LCC's green waste bin service has a competitive advantage over private sector competitors.

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## 5 OPERATIONAL COSTS

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### 5.1 Overview

This chapter discusses the operational costs of providing the green waste bin service that should be considered as part of full-cost pricing.<sup>54</sup> There are three key operational costs that the LCC incurs in providing the green waste bin service:

- collection costs—the costs of collecting the green waste from customers' green waste bins
- disposal costs—the costs of operating the LCC's waste and recycling facilities that are attributable to the green waste bin service, including the cost to the LCC of receiving, handling, stockpiling, processing and removing the green waste from its facilities
- marketing, promotion and temporary staffing costs—the costs associated with the initial marketing and promotion of the green waste bin service to residents.

### 5.2 Collection costs

The collection cost is the cost of collecting the green waste from the green waste bins of customers. The LCC contracted with Cleanaway, a private company, to provide the collection part of the service. The LCC pays Cleanaway for collection, and prices vary based on the number of bins collected and the bin size. The LCC therefore incurs these charges as a direct cost of Cleanaway providing the collection service on the LCC's behalf.

The LCC and Cleanaway appear to have interpreted and applied the collection price (price per service and per bin size) in differing ways. The LCC appears to have expected that a single agreed price would apply to the total number of bins (aggregated across all bin sizes); this may be because, in practice, a truck collecting along a route would collect all green waste from all bins along the route, regardless of the bin size. However, once the service began, Cleanaway charged different prices for each bin size, based on the number of bins collected for each bin size. As a result, when setting prices for the green waste bin service, the LCC applied a collection cost that is less than the collection cost it actually incurred under its contract with Cleanaway.

Our analysis shows that as the costs of collection appear not to be adequately accounted for in the final price for the green waste bin service, the total revenue received for the service will be less than its total cost. This suggests the principles of full-cost pricing have not been appropriately applied to the collection service, and the LCC may therefore not be complying with the competitive neutrality principle.

#### 5.2.1 Recommendations

We consider that if the LCC has applied the incorrect collection costs to set the initial prices for the green waste bin service, it should update the collection costs to correspond to the prices it actually incurred under the Cleanaway contract. This will improve compliance with the competitive neutrality principle through the correct application of full-cost pricing principles and will have the effect of reducing the price advantage the green waste bin service currently has over competitors (see section 5.5).

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<sup>54</sup> LG Regulation, schedule 4 (Pricing provisions), section 4(1)(a).

Our modelling indicates that if the LCC adjusted for the difference in contract prices in accordance with our recommendation, this will have a material impact on the service price (Table 1). For example, if full-cost pricing principles were correctly applied to the collection costs for the 240 L green bin, which is the most popular green bin, the total price for the green waste bin service should be \$12 more per year than what the LCC is currently charging, holding all else constant.

The number of customers who take up the green waste bin service is likely to vary from time to time. To comply with full-cost pricing principles, the LCC would therefore need to update service prices periodically to reflect any changes in collection costs due to changes in uptake volumes. However, we consider that this change over time is likely to be incremental and unlikely to trigger frequent or material changes in prices. The LCC could incorporate such a price review into its usual annual budget review activities.

**Table 1 Green waste bin service prices accounting for full collection costs (QCA modelling)**

	<i>Annual service price by bin size</i>		
	<i>140 L</i>	<i>240 L</i>	<i>360 L</i>
Current service price	\$46	\$51	\$76
QCA-estimated difference when accounting for full collection cost	\$14	\$12	\$20
New service price when accounting for full collection cost	\$60	\$63	\$96

*Note: This modelling was produced using the same initial uptake volumes as those assumed by the LCC in setting the current prices but applying Cleanaway's interpretation of the contract. Other costs are kept constant, at their status quo levels.*

### Recommendation 1: Collection costs

We recommend that the LCC reset the price of its green waste bin service to account for the full cost of collecting the bins.

## 5.3 Disposal costs

Disposal costs include all the LCC costs of providing services at the waste and recycling facilities that are required to handle green waste, including receipt at the site, handling, stockpiling, processing and removal.

### 5.3.1 Disposal fees for green waste from commercial operators

The LCC charges commercial operators a fee of \$75 per tonne for the disposal of green waste at its facilities. This fee applies whether the green waste originates in Logan or is brought in from elsewhere. According to the LCC, the \$75 per tonne fee is made up of:

- labour costs: \$6.00
- plant costs: \$5.50
- processing and removal costs: \$27.00 (this cost is explained in section 5.3.2)
- overheads: \$36.50.

The LCC did not provide an explanation of the breakdown of the fee, but only these figures.

We note that fees for disposing of commercial green waste based on load size (\$9 per small load, \$14 per medium load, \$23 per large load) apply at waste facilities without a weighbridge (see

Chapter 3). These fees are more expensive for an equivalent load of green waste than the weight-based disposal fee of \$75 per tonne.

As all commercial operators are able to access the \$75 per tonne disposal fee by attending a LCC waste facility with a weighbridge, our discussion focuses on the tonnage fee (rather than the load size-based fees).

### 5.3.2 Disposal costs for green waste from LCC green bins

In contrast to the \$75 per tonne disposal fee for commercial operators, the LCC's financial modelling for pricing its green waste bin service is based on a disposal cost of \$27 per tonne for the processing and ultimate removal of green waste (collected from LCC green bins) at its waste facilities.

Once green waste is dropped off at the LCC's waste facilities, it is removed by a contractor and taken to be composted (Chapter 3). The \$27 per tonne processing cost represents the simple average of the costs that the LCC has paid in the last eight years (since 2014) for a contractor to process, remove and compost the green waste. This figure is not necessarily reflective of the current cost the LCC incurs for the green waste removal and composting contractor.

#### Disposal costs vs disposal fee

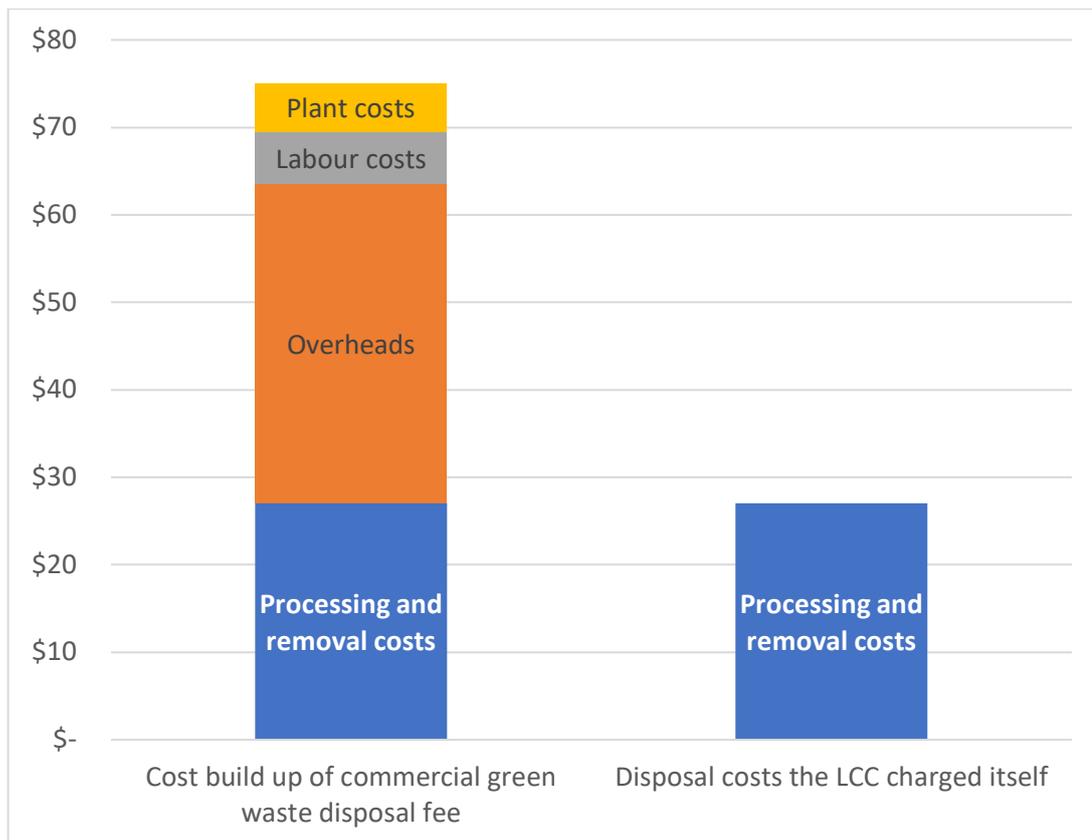
**Disposal cost:** the cost the LCC should charge itself when pricing its green waste bin service to residents. This cost covers activities at the LCC waste and recycling facilities involving the receipt of the green waste on the concrete pads, and the handling, stockpiling, processing and ultimate removal of the green waste from the site.

**Processing and removal costs:** the cost to the LCC to have the green waste processed and removed by a third-party contractor to an authorised composting or soil conditioning location. (The LCC applied a cost of \$27 per tonne.)

**Disposal fee:** a fee that the LCC charges commercial operators to dispose of green waste at the LCC waste and recycling facilities. (This fee is currently \$75 per tonne and includes the LCC's processing and removal costs, plant, labour, and overheads.)

### 5.3.3 Difference in disposal costs

We find that the LCC has been charging its own green waste bin service a cost that is substantially lower than the disposal fee it charges private commercial operators for what are essentially the same green waste services—that is, a difference of \$48 per tonne (Figure 3).

**Figure 3 Commercial disposal fee build-up compared to disposal costs for green waste**

Green waste from the LCC's green waste bin service and green waste from a private commercial operator are both received at the LCC's waste facilities. In both cases, the vehicle enters the site and deposits the green waste at the green waste pad (which is the same for both). Green waste from commercial users, domestic users and the LCC's green waste bin service are combined in the same stockpile, which is subsequently removed from the site for composting by the LCC's green waste removal and composting contractor.

We considered whether differences in operations, process and/or contamination rates at the facilities could possibly explain the variation in disposal costs between commercial operators and the green waste bin service:

- An automated process applies to Cleanaway trucks, while commercial operators are weighed on entry and billed on exit by a human operator.<sup>55</sup> Based on information provided to us by the LCC, differences in labour costs between the automated service used by LCC's Cleanaway contractors and the staffed service provided to commercial operators would account for no more than \$6 per tonne out of the total price differential of \$48 per tonne.
- The LCC's monitoring revealed that contamination levels from the green waste bin service were similar to contamination from the self-hauled commercial and domestic green waste. Once the green waste from the bin service and self-haul commercial and domestic users is deposited into the (same) green waste stockpile, it is processed by the same contractor and in the same manner for removal and composting. As such, we consider that any differences

<sup>55</sup> The waste disposal process is outlined in section 3.6.

in contamination levels would not be sufficient to account for the differences in the disposal costs charged to the green waste bin service and to commercial operators.

### 5.3.4 Compliance with the competitive neutrality principle

Under the competitive neutrality principle, the LCC's green waste bin service should not enjoy a net advantage over its competitors only because the service is operated by the LCC, which is in the public sector. We consider that with respect to the disposal cost of the green waste, the LCC has not applied the principles of full-cost pricing correctly, in that it has not removed a competitive advantage or taken it into account in setting the price of the green waste bin service.<sup>56</sup> The LCC charges its own green waste bin service \$48 per tonne less than it charges its private sector competitors for the same service. We consider the LCC is only able to have this cost advantage because it is in the public sector—in particular, because it owns the waste facilities and is able to charge its own green waste bin service a lower disposal fee than the fee charged to commercial operators. As a result, we consider the LCC has not complied with the competitive neutrality principle.

Our modelling suggests that if the LCC charged itself the same cost of disposal as the disposal fee charged to commercial operators, this would have a material impact on the price of the green waste bin service (Table 2). For example, if the LCC applied the same \$75 per tonne disposal fee that it charges commercial operators to its green waste bin service, the total price for a 240 L green bin should be \$15 more per year than what the LCC currently charges, holding all else constant. We are using the current \$75 per tonne disposal fee as an example only, and we consider the LCC should review this fee, so it is determined appropriately (see recommendation 2).

**Table 2 LCC green waste bin service prices accounting for a \$75 disposal fee (QCA modelling)**

	<i>Annual service price by bin size</i>		
	<i>140 L</i>	<i>240 L</i>	<i>360 L</i>
Current service price	\$46	\$51	\$76
QCA-estimated difference when accounting for a \$75 disposal fee	\$10	\$15	\$24
New service price when accounting for a \$75 disposal fee	\$56	\$66	\$100

*Notes: This modelling was produced using the same initial uptake volumes as those assumed by the LCC in setting the current prices. Other costs (such as collection costs) are kept constant, at their status quo levels. Our modelling assumed the LCC would charge itself \$75 per tonne instead of \$27 per tonne.*

### 5.3.5 Recommendations

We consider that the LCC's failure to comply with the competitive neutrality principle with respect to the disposal costs of its green waste bin service has adversely affected the service's private sector competitors, such as TRR. As a result, this has damaged, and will continue to damage, competition in the market for green waste removal services in Logan.

We consider that the LCC must ensure that it charges its private sector competitors the same price for the disposal of green waste at its waste facilities that it charges its own green waste bin service for that disposal. It is important that immediate action is taken to address the current \$48 per tonne discrepancy in these prices.

<sup>56</sup> LG Regulation, section 22(1)(b), (c).

We recommend the following:

- (1) The LCC immediately lower the disposal fee it charges to commercial operators for the disposal of green waste to \$27 per tonne.

The LCC should make the \$27 per tonne green waste disposal fee available to all private businesses that compete with the LCC's green waste bin service—that is, businesses based in, or operating in, the Logan City local government area. This is because it is these businesses that are likely to have been adversely affected by the LCC's failure to comply with the competitive neutrality principle.

- (2) The LCC review its disposal fee to ensure that, if applicable, the disposal fee also satisfies the principles of full-cost pricing.<sup>57</sup> If the LCC decides to adjust the disposal fee (from \$27 per tonne) after this review, it should ensure that it charges the same disposal fee to the green waste bin service and to commercial operators.

The disposal fee should be an appropriately determined disposal fee and set at a level that promotes allocative and dynamic efficiency. Allocative efficiency is about ensuring resources are allocated in a way that maximises community wellbeing, and occurs when supply of a product or service meets the level of demand for it.<sup>58</sup> Dynamic efficiency involves improving efficiency over time, such as developing new or better products or services and finding better ways of producing or providing those products and services.

### Recommendation 2: Disposal costs

We recommend that:

- 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
- 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.

## 5.4 Marketing, promotion and temporary staffing costs

### 5.4.1 Marketing and promotion costs

Marketing and promotion costs are costs associated with the initial marketing and promotion of the green waste bin service. The LCC conducted a marketing campaign to promote the introduction of its new green waste bin service. The LCC allocated \$85,000 from the Community Asset Reserve for the marketing campaign for the service across the 2020–2021 and 2021–2022 financial years, noting that the service commenced on 1 July 2021. Information from the LCC

<sup>57</sup> The LCC should determine whether the business activity that the disposal fee covers (namely the disposal of green waste at the LCC's waste facilities by commercial operators) is a business activity that is subject to the competitive neutrality principle. That is, whether it is a business activity operated in competition with the private sector, within the meaning of the LG Act. In any case, the disposal fee should be set at an appropriate level that promotes allocative and dynamic efficiency.

<sup>58</sup> This occurs when the product or service is produced up to the point where the extra benefit to the consumer of the last unit produced just equals the extra cost of producing it.

indicated that approximately \$40,000 of the green bin marketing budget had been spent by 1 July 2021, with the remainder of the funds to be spent in the 2021–2022 financial year.<sup>59</sup>

The LCC did not include the \$85,000 in marketing costs as part of the full cost recovery modelling and subsequent setting of the price for the green waste bin service. The LCC provided the following reasons for this exclusion:

- Part of the marketing costs were incurred in the financial year prior to the green waste bin service commencing.
- The intention was for the campaign to be a one-off marketing campaign and not an ongoing cost to the service. By including the marketing costs as part of the price of the service, the price would have been higher in the first year and would have dropped in the second year.<sup>60</sup>

#### 5.4.2 Temporary staffing costs

The LCC engaged an administration officer to support the introduction of the new green waste bin service. This role was allocated funding of approximately \$32,000 from the Community Asset Reserve. The administration officer commenced in the role in late February 2021.

The LCC did not include the \$32,000 for the temporary administration officer as part of the full-cost recovery modelling and subsequent setting of the price for the green waste bin service. The LCC said this was because:

- part of the expenses were incurred in the financial year prior to the green waste bin service commencing
- the expense would be a one-off cost to deal with the initial interest from ratepayers in the new service.<sup>61</sup>

#### 5.4.3 The LCC's findings in its internal investigation

The LCC conducted an internal investigation after the TRR raised its initial concerns with the LCC regarding the green waste bin service. It summarised its findings in a report.

The LCC found that the 'Council's Waste & Recycling Program did not allocate certain marketing and administration costs to the full-cost pricing analysis'.<sup>62</sup> Despite this finding, the LCC noted that if marketing and administration costs were included in the pricing for the green waste bin service, it would have had minimal effect on the pricing:

As the green waste service is offered to both residential and commercial ratepayers, with no difference in price, had the marketing and administration costs been included the pricing [sic] this would equate to approximately an additional \$0.70 per bin type.<sup>63</sup>

Information from the LCC showed the \$0.70 was calculated by apportioning the marketing and administration costs over the total residential and commercial base in Logan (that is, all those

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<sup>59</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, p. 9.

<sup>60</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, pp. 9–10.

<sup>61</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, pp. 9–10.

<sup>62</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, p. 10.

<sup>63</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, p. 10.

who could utilise the green waste bin service), and not just over the number of ratepayers who chose to take up the green waste bin service (estimated to be approximately 10% of all ratepayers).

#### 5.4.4 Compliance with the competitive neutrality principle

The LCC omitted \$85,000 in marketing costs and \$32,000 in temporary staffing costs from the full-cost recovery modelling, which ultimately reduced the final price for the green waste bin service. We consider the LCC is able to exclude these costs in calculating the final prices for the service because it is in the public sector. In particular, it receives public funding and other sources of funding that can be allocated to the green waste bin service. By comparison, a private sector business would not be able to fund marketing costs and temporary staffing costs in this way.

Full-cost pricing requires that the LCC ensures the total projected revenue from the green waste bin service is enough to cover the total projected costs of the service.<sup>64</sup> By not including marketing costs and temporary staffing costs as part of the total costs of providing the green waste bin service, the LCC is charging a lower price for the service than the price that would be consistent with full-cost pricing principles. As a result, we consider the LCC is enjoying a competitive advantage over its competitors only because the LCC is in the public sector.

We therefore consider the LCC is not complying with the competitive neutrality principle in this regard. However, we also observe that the net effect of including the marketing, promotion and staffing costs in the final prices for the green waste bin service would be small (Table 3). For example, if full-cost pricing principles were correctly applied with respect to the marketing, promotion and staffing costs, the total price of the 240 L green bin should be \$1 more per year than what the LCC is currently charging, holding all else constant.

**Table 3 LCC green waste bin service prices accounting for marketing, promotion and staffing costs (QCA modelling)**

	<i>Annual service price by bin size</i>		
	<b>140 L</b>	<b>240 L</b>	<b>360 L</b>
Current service price	\$46	\$51	\$76
QCA-estimated difference when accounting for marketing costs	\$2	\$1	\$1
New service price when accounting for marketing cost	\$48	\$52	\$77

*Notes: This modelling was produced using the same initial uptake volumes as those assumed by the LCC in setting the current prices. Other costs (such as collection and disposal costs) are kept constant, at their status quo levels. Our modelling assumed the LCC would smooth the total marketing and promotion costs of \$117,054 over the eight years of the Cleanaway contract.*

Alternatively, the LCC could charge an 'establishment fee' when customers sign up to the bin service, which we calculated to be either \$10 or \$11 per bin, depending on bin size (Table 4). Such a signup fee would sufficiently adjust for the initial marketing costs for the purposes of full-cost pricing.

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<sup>64</sup> More information on the legal framework relating to full-cost pricing is provided in Chapter 2.

**Table 4 LCC green waste bin service prices accounting for one-off initial establishment fee to cover marketing, promotion and staffing costs (QCA modelling)**

	<i>Annual service price by bin size</i>		
	<i>140 L</i>	<i>204 L</i>	<i>360 L</i>
Current service price	\$46	\$51	\$76
QCA-estimated initial one-off establishment fee	\$11	\$10	\$10
New on-going service price	\$46	\$51	\$76

*Notes: This modelling was produced using the same initial uptake volumes as those assumed by the LCC in setting the current prices. Our modelling assumed the LCC would charge a one-off establishment fee when a new customer signs up for the green waste bin service, to cover marketing, promotion and staffing costs. Other costs (such as collection and disposal costs) are kept constant, at their status quo levels.*

#### 5.4.5 Recommendations

We find the full costs of marketing, promotion and staffing should have been included in the build-up of the green waste bin service, because a private business incurring such costs could not 'absorb' them like the LCC did. We acknowledge, however, that the price impact of accounting for this cost is small.

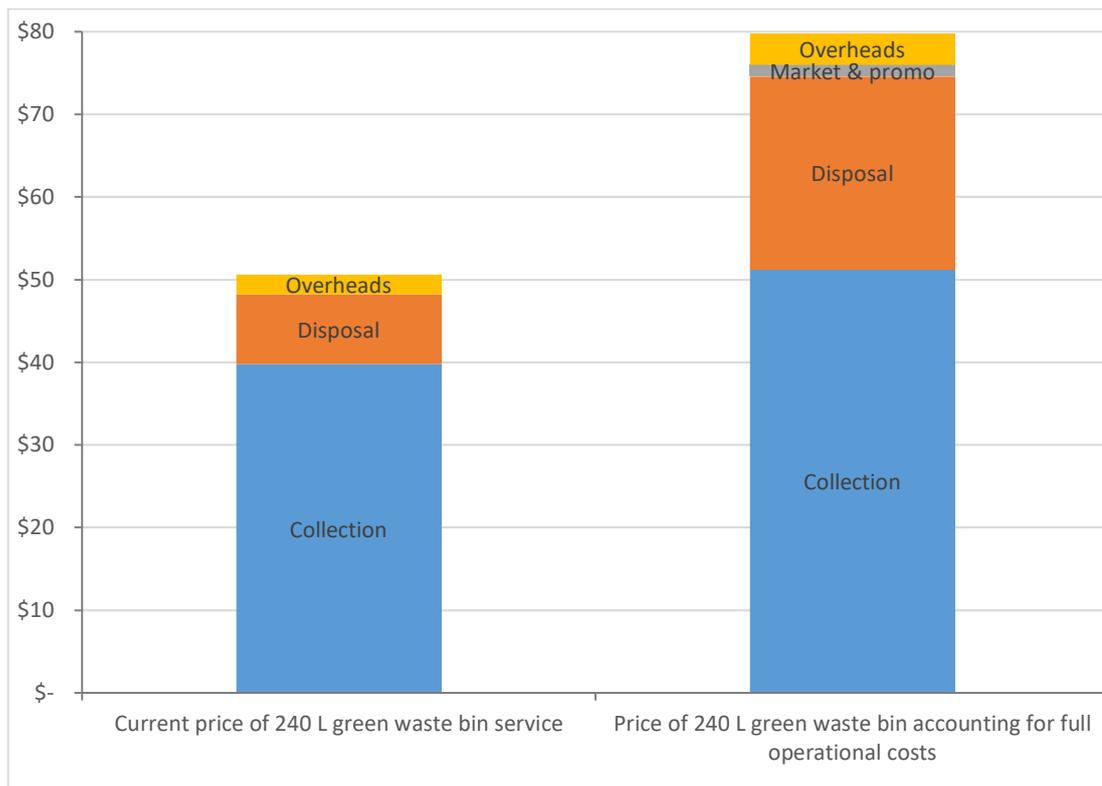
#### **Recommendation 3: Marketing, promotion and staffing costs**

We recommend that the LCC reset the price of its green waste bin service to account for the full marketing, promotion and staffing costs.

#### 5.5 Impact of applying estimated operational costs

Based on the above analysis, we find the LCC has a net advantage over private green waste removal businesses. This is because the LCC green waste bin service price is currently set below the full cost of providing the service, despite the LCC's intended application of a full-cost pricing policy to the activities of Logan Waste Services (Figure 4).

**Figure 4 Price composition of the 240 L green waste bin service—current green waste service bin price compared to a price accounting for estimated operational costs**



*Notes: this figure uses the current \$75 per tonne disposal fee in the right-hand bar, as an example. We consider the LCC should review this fee to ensure that it is determined appropriately.*

Consequently, we consider the LCC should adjust the price of the green waste bin service to fully account for the following operational costs:

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

The combined effects of adjusting the LCC green waste bin service price to fully account for these cost categories (using the current \$75 per tonne disposal fee as an example) would significantly raise the annual price of the service (Table 5). For example, for the 240 L green bin, our modelling suggests that if the estimated operational costs were applied as part of full-cost pricing, the annual price of the green waste bin service should be \$29 more than what the LCC is currently charging.

**Table 5 LCC green waste bin service prices accounting for estimated operational costs (QCA modelling)**

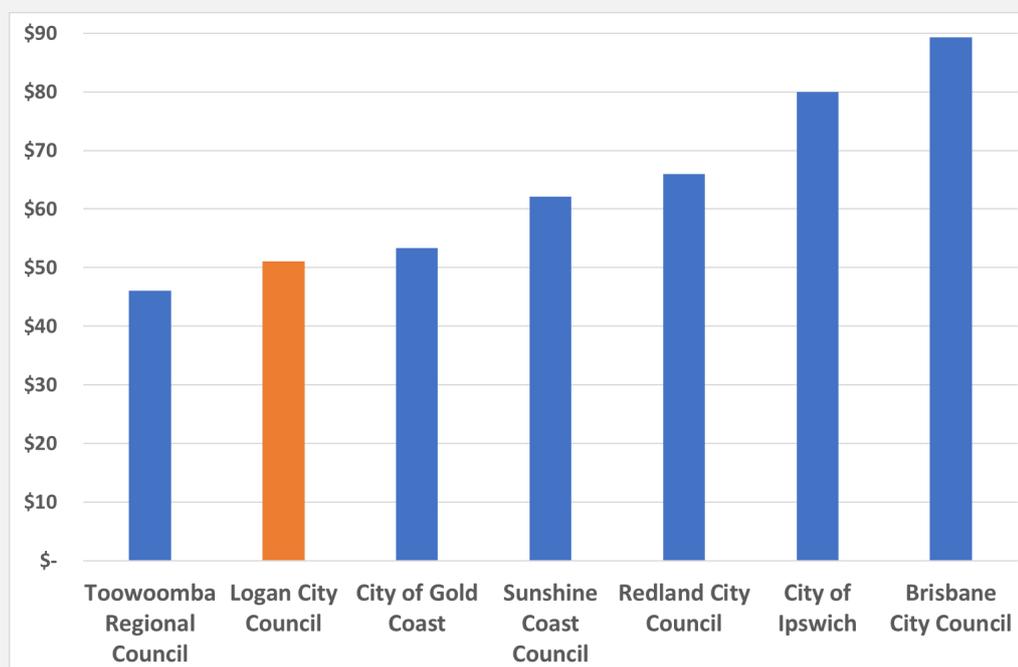
	Annual service price by bin size		
	140 L	240 L	360 L
Current service price	\$46	\$51	\$76
QCA-estimated difference when applying estimated operational costs	\$24	\$29	\$45
New service price when applying estimated operational costs	\$70	\$80	\$121

Notes: This modelling was produced using the same initial uptake volumes as those assumed by the LCC in setting the current prices. It accounts for collection, disposal, marketing, promotion and temporary staffing costs. The individual effects of each of the costs presented in Tables 1, 2 and 3 cannot simply be added to calculate the total impact of all three costs, due to rounding.

### Comparison with other south-east Queensland councils

Figure 5 provides an illustrative comparison of the current fees charged by other councils in the south-east Queensland area for a green waste bin service.

**Figure 5: Current prices of the 240 L green waste bin service in SEQ councils (annual)**



Notes: We do not know whether other SEQ councils apply full-cost pricing to their green waste bin service. Some councils charge an 'establishment fee' when a rate payer or tenant begins the service, which is not included in this figure. The Lockyer Valley Regional Council is conducting a trial in food organics garden organics (FOGO) collection. The price presented above is for the City of Ipswich FOGO service. Our research indicates neither the Moreton Bay nor the Somerset regional councils offer a green waste bin service, as of March 2022.

Applying the recommended revised pricing would bring the price of the 240 L bin service in Logan on par with the price in Ipswich, whilst remaining cheaper than in Brisbane.

#### 5.5.1 Competition with green waste bag collection services

Our modelling indicates that even if the LCC were to increase its prices to reflect estimated operational costs, TRR and other existing green waste removal businesses would likely remain

uncompetitive on price (Table 6).<sup>65</sup> Indeed, according to our calculations, existing TRR bags cost \$2.78 per 100 L per year, while even with price adjustment to reflect estimated operational costs, the LCC green waste bin service would cost less than \$1.30 per 100 L per year (assuming a subscription to a 240 L or 360 L bin).<sup>66</sup>

**Table 6 Pricing of competing green waste collection services in the Logan area**

<i>Company</i>	<i>Price per bag</i>	<i>Frequency</i>	<i>Bag/bin volume (litres)</i>	<i>Price per 100 litres</i>
The Rubbish Removers	\$20	Monthly	720	\$2.78
TRR competitor (private operator) 1	\$24	Every 4 or 8 weeks	1000	\$2.40
TRR competitor (private operator) 2	\$20	Every 4 weeks	800	\$2.50
TRR competitor (private operator) 3	\$24	Every 4 weeks (\$26 for every 8 weeks)	1000	\$2.40
TRR competitor (private operator) 4	\$20	Weekly or every 2, 4, 8 or 12 weeks	810	\$2.47
LCC (current)		Fortnightly, 140-litre bin	140	\$1.26
LCC (current)		Fortnightly, 240-litre bin	240	\$0.82
LCC (current)		Fortnightly, 360-litre bin	360	\$0.81
LCC (estimated operational costs)		Fortnightly, 140-litre bin	140	\$1.92
LCC (estimated operational costs)		Fortnightly, 240-litre bin	240	\$1.28
LCC (estimated operational costs)		Fortnightly, 360-litre bin	360	\$1.29

*Notes: Prices were in effect in April 2022. We researched prices and bag sizes from TRR competitors and were told the volumes were 'approximate', varying from 'two and a half wheelie bins' to 90 x 90 x 100 centimetres to 1 cubic meter. One operator also told us the frames and canvas bags they used were of a standard size and should be the same across all operators. Based on this information, we populated the above table as best as we could, but the focus should be on the difference between the LCC and commercial operators, rather than among commercial operators.*

This could be due to the economies of scale the LCC can achieve due to its size, the number of customers, and its bargaining power in negotiating collection costs and frequencies with Cleanaway. In addition, the LCC may have advantages through its 'brand name recognition'<sup>67</sup> or its established reputation in offering general and recycling waste collection services. However, these do not constitute a net advantage from a competitive neutrality perspective—that is, they do not arise only as a result of the LCC being in the public sector.

However, if the LCC were to apply the competitive neutrality principle to its green waste bin service through accurate full-cost pricing, more efficient future private competitors might be able to compete with the LCC. Existing green waste bag businesses can also offer a more personalised service or offer other points of differentiation.

<sup>65</sup> Our modelling used the current \$75 per tonne disposal fee as an example only. We consider the LCC should review this fee to ensure that it is determined appropriately.

<sup>66</sup> This only accounts for operational costs. The LCC would also need to account for non-operational costs to comply with its full-cost pricing policy. As found in Chapter 6, the non-operational costs that would apply to the green waste bin service price should be relatively small. Consequently, we estimate our finding that TRR bags are more expensive per 100 L than the LCC green bins service would still hold.

<sup>67</sup> That is, a large proportion of the population in Logan is likely to know who the LCC is and what services it provides.

## 5.6 Summary of findings on operational costs

The underlying policy objective of competitive neutrality is to promote economic efficiency in the provision of goods and services to the community. Our report to the LCC must include recommendations on how Logan Waste Services can conduct the green waste bin service in a way that complies with the competitive neutrality principle, and the reasons for the recommendations.<sup>68</sup>

We recommend that the LCC adopt measures to correctly apply full-cost pricing principles to the green waste bin service, and to comply with its stated full-cost pricing policy. As outlined in recommendations 1, 2 and 3, this includes adjusting the LCC's green waste bin service prices to fully account for the following operational costs:

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

In particular, the LCC should set a price that reflects the same cost for the disposal and removal of green waste that it charges to private sector competitors. Our recommendations on disposal costs are discussed in section 5.3, and our recommendations regarding how to account for capital and other (non-operating) costs are set out in Chapter 6.

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<sup>68</sup> LG Regulation, section 52(3).

## 6 CAPITAL AND OTHER COSTS

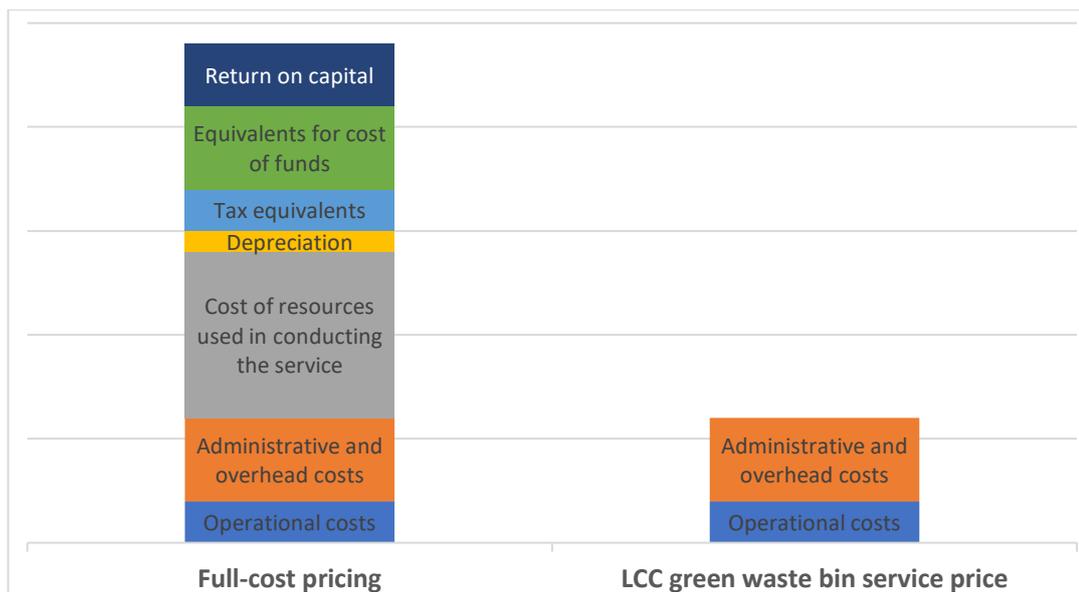
### 6.1 Overview

This chapter discusses the capital and other costs that make up the total projected costs of providing the green waste bin service, and that should be considered as part of full-cost pricing. These costs are:

- administrative and overhead costs
- the cost of resources used in conducting the service
- depreciation
- equivalents for Commonwealth or state taxes that a local government is not liable to pay because it is a local government
- equivalents for the 'cost of funds' advantage a local government obtains over commercial interest rates because of state guarantees on borrowings
- return on capital.<sup>69</sup>

We find that it is not apparent the LCC has included all the costs necessary to achieve full-cost pricing. Figure 6 shows the costs that we would expect in a full-cost pricing exercise in comparison to the costs we have identified in the LCC's cost build-up of the green waste bin service.

**Figure 6 Costs to be included in full-cost pricing, compared to the costs the LCC included when pricing the green waste bin service**



*Notes: This figure is only for illustrative purposes and is not to scale. That is, we do not know the actual magnitude of each of the costs the LCC should include in its full-cost pricing of the green waste bin service. The LCC's administrative and overhead cost includes several different elements of a full-cost pricing build-up that we illustrate explicitly in the figure (for example, depreciation). We are not able to disaggregate the administrative and overhead cost into these individual elements for direct comparison in the figure, as the LCC has not provided a breakdown of those elements.*

<sup>69</sup> LG Regulation, schedule 4 (Pricing Provisions), section 4(1).

## 6.2 Administrative and overhead costs

Administrative and overhead costs are those costs associated with finance administration, information technology, human resources, facilities, accounts and payroll, training, and records management. While councils organise these 'back office' functions differently across business units, there are a number of these functions that are common to all units.

In allocating administrative and overhead costs, a local government must make a reasonable allocation to each relevant activity<sup>70</sup>, having regard to all of a local government's relevant activities.<sup>71</sup> In the present context, administrative and overhead costs may not be fully attributable to the green waste bin service, as these costs may be shared across the LCC's various business units or across Logan Waste Services' different activities.

The LCC applied a cost for administration and overheads that was 5 per cent of the sum of the collection and processing costs associated with the green waste bin service. To explain this figure, the LCC said:

A 5% Administration overhead was deemed appropriate for the new service as it had a very small impact on the corporate charges for the following reasons:

- The service is optional and based on a 10% residents uptake;
- Minimal impact on the tax equivalents the waste business pays - as the cost of the service is offset by the annual rateable charge.
- Depreciation impacts [are] minimal – there may be a small impact on the green waste pads.
- Estimated annual tonnages are just under 3,800 tonnes from the new service, however these will not necessarily represent an increase to total tonnages. Currently residents have the option to dispose of green waste in their "red top" bins, or free disposal at the transfer station. Both of these options are included in the Waste & Recycling Utility Charges, which includes a component of corporate overheads. With this new service offered, it is anticipated that some of the tonnages in the red top bin & free disposal of the transfer stations will to [sic] "transfer" to the green waste service. Therefore only a portion of the 3,800 tonnes would represent "new/additional" tonnages.<sup>72</sup>

We consider it relevant for the LCC to factor in administrative and overheads costs, as the council's internal functions support council staff and enable them to deliver services to their constituents, including the green waste bin service.

For the green waste bin service, the LCC has provided an administration and overhead allowance of 5 per cent, which includes compensation for:

- corporate overheads
- depreciation
- tax equivalents.

While the LCC did not provide the individual allowances for each of these elements, it characterises the allowances for depreciation and tax equivalents as 'minimal'. Nonetheless, the

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<sup>70</sup> A relevant activity is defined in the LG Regulation (schedule 4, section 1) to be either a significant business activity of the local government to which full-cost pricing applies, or a business activity of the local government to which the code of competitive conduct applies.

<sup>71</sup> LG Regulation, schedule 4, section 5.

<sup>72</sup> LCC, response to QCA second information requirement notice, 25 January 2022.

allowance for corporate overheads is clearly no more than 5 per cent and is possibly (slightly) less.

In considering this allowance, we reviewed relevant material on corporate administration and overhead allowances. In particular, the Victorian Auditor-General reported in 2018 that Victorian councils spent approximately 15 per cent of their total expenditure on corporate services, noting that the level of expenditure did not appear to relate to council size.<sup>73</sup> This estimate is supported by benchmarking of Commonwealth and state government corporate services, which found that small- and medium-size public sector entities spent 14 per cent of total expenditure on corporate services.<sup>74</sup>

These benchmarking studies suggest that an allowance of 5 per cent is significantly below the benchmark for Victorian local councils (as well as Commonwealth and state governments), and we see no reason why Queensland councils would differ in the proportion of expenditure in this area.

Notwithstanding this finding, we did consider possible reasons for this relativity. We note that the green waste bin service is not provided fully in-house, but is partially provided by an external contractor, which likely reduces overhead costs.<sup>75</sup> Moreover, the LCC asserted that the costs of providing the green waste bin service may lead to a corresponding reduction in the costs of corporate overheads in relation to red bin services, as users transfer to the green waste bin service. Taken together, both factors are more likely to reduce the level of corporate overheads necessary to administer the new service than would otherwise be the case.

Notwithstanding these possible effects, the available benchmarking suggests that the current corporate overhead cost allowance applied to the green waste bin service is likely to be understated. While we do not have the information to propose a specific adjustment in this case, we recommend that the LCC revisit this matter.

#### Recommendation 4: Administrative and overhead costs

We recommend that the LCC review the price of its green waste bin service and if appropriate, revise its administrative and overhead costs allowance.

### 6.3 Cost of resources used in conducting the activity

The cost of the resources provided to or by a local government for conducting an activity may be taken to be:

- if the resources have an identifiable cost—the cost of the resources, or

<sup>73</sup> Victorian Auditor-General's Office, *Delivering local government services*, independent assurance report to Parliament, 2018, p. 52.

<sup>74</sup> Benchmarking reports define a small-size entity as one that has an operating expenditure of less than \$100 million and a medium-size entity as one that has expenditure between \$101 million and \$500 million. See Victorian Auditor-General's Office, *Delivering Local Government Services*, independent assurance report to Parliament, 2018, p. 56.

<sup>75</sup> The use of a contractor for the collection service would reduce corporate overheads that would otherwise be required if the LCC undertook that function itself. But using a contractor would still require some internal staff and services to manage the Cleanaway contract and to monitor contractual performance.

- otherwise—the price at which the resources are available on the open market (if available, on similar terms on which the resource is made available in conducting the activity).<sup>76</sup>

The costs of most of the resources used in conducting the activity are reflected in the prices that Cleanaway charges the LCC under terms of the contract and are therefore reflected in the LCC's costing of the green waste bin service to its users.

Most of the LCC resources used in providing the green waste bin service will be shared with other waste and council services and are considered under operational costs (Chapter 5), administration and overhead costs (section 6.2), depreciation (section 6.4) or return on capital (section 6.7). Additional resources that we could separately identify relate to:

- staffing—for the management of the Cleanaway contract and a share of the operations of the LCC's waste and recycling facilities (see the discussion of administrative and overhead costs in section 6.2)
- financial resources—the LCC did not report incurring any additional debt or dedicated financing to provide the green waste bin service (see the discussion of equivalents for cost of funds in section 6.6).

On this basis, there are no findings under this provision.

## 6.4 Depreciation

Depreciation is used to allocate the cost of an asset over its useful life. Depreciation of an asset used in conducting the green waste bin service must be based on the depreciable amount of the asset, allocated over its useful life. However, the LCC may decide to base the depreciation on an amount it decides to be appropriate in the circumstances.<sup>77</sup>

Cleanaway provides the assets used for the green waste collection, such as the fleet of vehicles and its provisioning facilities. The contract between the LCC and Cleanaway would be expected to already factor Cleanaway's depreciation costs into its collection charges. Therefore, the main assets left for the LCC to depreciate for the purpose of costing the green waste bin service are those assets—located at its waste and recycling facilities—that provide some utility to the green waste bin service.

For example, we would expect the LCC to apply depreciation to the green waste pads located at the waste and recycling facility. In addition, we would expect the LCC to allocate a portion of the value of shared assets used at the waste and recycling facilities to the green waste bin service. Based on our understanding of the green waste collection and disposal process, we would therefore expect a portion of the depreciation charge for each of the following assets to be included in the pricing for the green waste bin service:

- calibrated weighbridges
- any plant that is used to process the green waste at the facility
- truck tag scanners
- computers
- the software system that records vehicle mass (Mandalay weighbridge software)

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<sup>76</sup> LG Regulation, schedule 4, section 6.

<sup>77</sup> LG Regulation, schedule 4, section 7.

- printers to print tickets for the drivers and tax invoices for commercial vehicles
- EFTPOS machines
- shelters for the weighbridge operator
- fencing and boom gates.

While the LCC seemed to indicate it took depreciation of green waste pads into account when setting its 5 per cent administration and overheads charge, we cannot see explicitly how the LCC accounted for depreciation in its green waste bin service price modelling. It is therefore not apparent that the LCC has taken the depreciation of all the assets identified above into account. However, these depreciation values are likely to be small, because Cleanaway provides most of the assets used for bin collection, such as the fleet of trucks; additionally, the green waste bin service shares facility assets with other services (for example, general waste and recycling).

#### Recommendation 5: Depreciation

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.

## 6.5 Tax equivalents

Tax equivalents account for the equivalent amount of a Commonwealth or state tax that a local government is not liable to pay, because it is a local government.

A commercialised business unit that is applying full-cost pricing to a significant business activity (such as Logan Waste Services) must comply with the tax equivalents manual issued by the state government.<sup>78,79</sup> Commercial business units of local governments pay tax equivalents each year to the Queensland Revenue Office for:

- transfer duty
- insurance duty
- vehicle registration duty
- land tax
- payroll tax.

We have not found evidence to suggest the LCC is not complying with its obligations under the tax equivalents manual with respect to its commercialised business unit, Logan Waste Services. However, the LCC has not demonstrated if or how these tax equivalents were specifically applied in relation to the green waste bin service. The LCC's comment (quoted in section 6.2) with regard to its 5 per cent overhead charge suggests that the charge was meant to include tax equivalents, which LCC expected to be 'minimal'.

### Goods and service tax

Our investigation established that the LCC is registered for GST and holds an Australian Business Number. The LCC states that it invoices for GST on its standard rated fees and charges, except

<sup>78</sup> LG Regulation, section 25.

<sup>79</sup> Queensland Treasury, *Local government tax equivalents regime*, Queensland Treasury website, 2022, viewed 5 April 2022.

where 'excluded from the GST by a determination of the Treasurer', as per *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).<sup>80</sup>

Regarding the green waste bin service, the LCC stated that '[t]hese rates charges are exempt from GST' for ratepayers<sup>81</sup> and '[p]rices are exempt from GST' for tenants.<sup>82</sup> This is consistent with the relevant 2019 regulation regarding GST<sup>83</sup>, which excludes fees or charges for the kerbside collection of waste from GST.

Based on this information, we consider the LCC has likely applied the appropriate treatment of GST to its green waste bin service.

### Other taxes

The LCC provided information that shows it accounted for the following taxes as part of providing waste services:

- income tax
- payroll tax
- land tax.

#### Recommendation 6: Tax equivalents

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.

## 6.6 Equivalent for cost of funds

This item accounts for the fact that local governments may be able to access debt at interest rates lower than commercial interest rates, due to an implicit or explicit government guarantee, including a guarantee by the state government.<sup>84</sup>

A review of the LCC's financial accounts suggests there are no debts directly attributable to the green waste bin service. In terms of general debt, the LCC's financial statement states:

In accordance with the Local Government Regulation 2012, Council adopts an annual debt policy that sets out Council's planned borrowings for the next nine years. Council's current policy is to only borrow for capital projects and for a term no longer than the expected life of the asset. Council also aims to comply with the QTC's borrowing guidelines and ensure that sustainability indicators remain within acceptable levels at all times. All loans payable at the reporting date are with the QTC and are measured and disclosed in the statement of financial position at book value of the principal outstanding.<sup>85</sup>

The introduction of the green waste bin service is not a capital project and, as such, should not incur any new borrowings for the LCC. Logan Waste Services had \$13.7 million in liabilities

<sup>80</sup> LCC, *Goods and services tax (GST)*, LCC website 2022, viewed 5 April 2022.

<sup>81</sup> LCC, *2021/22 Application for Green Waste Bins—Ratepayers*, n.d., p. 1.

<sup>82</sup> LCC, *2021/22 Application for Green Waste Bins—Tenants*, n.d., p. 2.

<sup>83</sup> A New Tax System (Goods and Services Tax) Regulation 2019 (Cth), division 81-15.01.

<sup>84</sup> If the LCC chooses to calculate a weighted average cost of capital (WACC) as the methodology for the return on capital (see section 6.7), this will include a cost of debt, rendering the equivalent cost of funds redundant. However, if the LCC chooses another rate of return method instead of the WACC, then it might still need to account for the equivalent cost of funds separately.

<sup>85</sup> LCC, *Consolidated annual financial statements*, 30 June 2021, p. 35.

compared to \$50.7 million in assets at 30 June 2021.<sup>86</sup> Accordingly, the LCC should allocate a portion of its liabilities to the green waste bin service price and calculate the equivalent cost of funds at the relevant commercial interest rate.

### Recommendation 7: Cost of funds equivalents

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.

## 6.7 Return on capital

In order to comply with the competitive neutrality principle, government business activities, like its private counterparts, should earn sufficient revenue to cover their efficient costs, including a return on capital. A (normal) return on capital compensates investors for the time value of money and the risk of their investment. In a competitive market, if investors do not receive an appropriate return on their capital, then they will reallocate their capital to other uses.

Additionally, if a government business does not account for an appropriate return on capital, it may be operating at a lower profit margin than its private sector counterparts, allowing for the government business activities to undercut its competitors through lower prices. The effect of such pricing could be to 'penalise' competitors that provide the same service, even though those businesses might produce the service more efficiently. In general, the impact would be a higher overall cost of service provision to the community.

The return on capital used by the LCC in providing the green waste bin service must be decided using the rate at which, in the LCC's opinion, a comparable private sector business conducting the activity would be able to obtain the capital in the market.<sup>87</sup> The capital used by the LCC in providing the green waste bin service is the total value of the assets used for the service (this value is decided using an accepted accountancy method) less the liabilities attributable to the service.

The return on capital applies to the assets, or an allocated portion of the assets, that are used by the LCC to provide the green waste bin service. This is similar to depreciation, and we would expect the return on capital to be applied to the green waste bin service's share of the same assets (section 6.4). In addition, the LCC should apply the return on capital to the land on which the waste and recycling facilities sit. Like depreciation, the return on capital on the collection assets provided by Cleanaway would be expected to be captured in the Cleanaway contract prices.

The LCC did not specifically identify the return on capital it applied to the green waste bin service pricing. Rather, it said it applied 5 per cent administration overheads to its collection and disposal costs.

When the LCC was asked to detail the calculation of its competitive neutrality adjustment for waste services, it provided a budget breakdown that included 'Return Eq Charg'. This item could represent a return on equity for the entire Logan Waste Services. Typically, return on capital includes both return on equity and return on debt. However, we see no indication the LCC factored in a return on debt.

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<sup>86</sup> LCC, *Consolidated annual financial statements*, 30 June 2021, p. 12.

<sup>87</sup> LG Regulation, schedule 4, section 10(1).

The Productivity Commission noted that jurisdictions have typically applied one of three methods (in increasing order of complexity) for setting an appropriate rate of return for government-owned businesses:

- targeting a set rate of return, such as the long-term bond rate plus a margin of, for example, 3.5 per cent for smaller (often non-corporatised) business activities
- benchmarking its activities against similar listed company returns or industry averages
- calculating a weighted average cost of capital.<sup>88</sup>

Based on the information we received from the LCC, we were not able to determine either:

- the capital base involved in providing the green waste bin service; or
- the appropriate return being applied consistent with the risk of providing the service.

We recommend that the LCC review the value of the assets being used to provide the service and the market risk of the service, and determine a return on capital consistent with that risk.<sup>89</sup>

#### Recommendation 8: Return on capital

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.

## 6.8 Summary of recommended implementation process

Based on our analysis in Chapters 5 and 6, the following is a suggested implementation process for our recommendations that the LCC may wish to follow:

- (1) Immediately lower the disposal fee the LCC charges to commercial operators for the disposal of green waste to \$27 per tonne, that being the price it charges itself for the service.
- (2) Immediately reset the price of the green waste bin service to fully account for the LCC's operational costs, including collection and marketing, promotion and temporary staffing costs.
- (3) Review the disposal fee and capital and other costs for green waste bin service.
- (4) Adjust the disposal fee and the green waste bin service price based on the above review.

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<sup>88</sup> Commonwealth Competitive Neutrality Complaints Office (CCNCO), *Rate of Return Issues*, CCNCO research paper, Productivity Commission, 1998, pp. viii, 5–11.

<sup>89</sup> For example, the Commonwealth Competitive Neutrality Complaints Office (CCNCO) provided guidance on rate of return issues. See CCNCO, *Rate of Return Issues*, CCNCO research paper, Productivity Commission, 1998, p. viii, table 1.

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## 7 GOVERNMENT POLICIES AND COMPETITIVE DISADVANTAGES

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### 7.1 Introduction

In this chapter, we consider possible competitive disadvantages that LCC may experience in the operation of the green waste bin service. As a separate matter, we also consider various policies of the LCC (insofar as they relate to competitive neutrality), as required under the competitive neutrality criteria.<sup>90</sup>

### 7.2 Competitive disadvantages

Under the competitive neutrality principle, the LCC's green waste bin service should not enjoy a *net advantage* over competitors only because it is operated by the council.<sup>91</sup> The concept of net advantage involves a consideration of both competitive advantages as well as competitive disadvantages that apply to the green waste bin service.

Examples of competitive advantages are discussed in previous chapters. An example of a competitive disadvantage is a community service obligation (see section 7.3.1). This is a public interest obligation imposed on local government businesses, which would not ordinarily be in the commercial interests of a business to carry out.<sup>92</sup>

#### 7.2.1 Competitive disadvantages identified by LCC

In the LCC's internal report into TRR's initial concerns over the green waste bin service, the LCC considered that its green waste bin service operated at a competitive disadvantage:

**Finding 2**

Council's Waste & Recycling Program operates at a regulatory disadvantage due to obligations imposed from a Commonwealth level through to ongoing management responsibilities in relation to local law.<sup>93</sup>

The report identifies three sources of potential disadvantage:

- the LCC's Local Law No. 8 (Waste Management) 2018 (LL8)—a source of regulatory disadvantage
- the Commonwealth Government's *National Waste Policy 2018* (NWP)<sup>94</sup> and the Queensland Government's *Waste Management and Resource Recovery Strategy* (WMRRS)<sup>95</sup>—a source of regulatory disadvantage
- the LCC's internal procurement requirements that apply to waste management contracts—a source of procedural disadvantage.

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<sup>90</sup> LG Regulation, section 51(2).

<sup>91</sup> LG Act, section 43(3).

<sup>92</sup> For example, a community service obligation could involve giving a price concession to a particular group of customers, such as pensioners, seniors or students.

<sup>93</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished), 19 November 2021, p. 12.

<sup>94</sup> Australian Government, *National Waste Policy*, 2018.

<sup>95</sup> Queensland Government, *Waste Management and Resource Recovery Strategy*, n.d.

## Regulatory disadvantages

### Local Law No. 8

The LCC's LL8 is a local law, made in accordance with the LG Act<sup>96</sup>, that applies 'to the whole of the Logan City Council local government area'.<sup>97</sup> The object of LL8 is as follows:

The object of this local law is to protect the public health, safety and amenity related to waste management by—

- (a) regulating the storage, servicing and removal of waste;
- (b) regulating the disposal of waste at a waste facility; and
- (c) ensuring that an act or omission does not result in—
  - (i) harm to human health or safety or personal injury;
  - (ii) property damage or loss of amenity; or
  - (iii) environmental harm or environmental nuisance.<sup>98</sup>

The provisions of LL8 are largely procedural in nature, including provisions on:

- how general, green and industrial waste is to be stored (for example, in council-approved bins)
- how and when waste will be collected by the council
- the types of waste that can be disposed of at a council waste facility
- enforcement and administrative provisions relating to the waste storage, collection and disposal process.

We consider that LL8 is not a source of regulatory disadvantage for the LCC's green waste bin service, as LL8 applies to the whole of the LCC local government area, including to both public and private sector waste businesses operating in the area. Private operators, like TRR, are required to comply with LL8 to the same extent as the LCC's green waste bin service. It is not apparent that the LCC's green waste bin service is disadvantaged in the application of LL8 solely because it is operated by the LCC.

### Waste policies

The NWP and WMRRS both promote a move away from waste to landfill and towards more sustainable waste practices (including recycling and green waste services), as a way to create job opportunities, protect the environment and better manage resources. The policies are aimed at businesses, industry and all levels of governments and acknowledge in particular that local governments play an important role in providing household waste collection services and in managing and operating landfill sites.

In its internal report, the LCC stated that its green waste bin service was introduced to promote the objectives of the state and federal waste policies in reducing the amount of green waste being placed in landfill:

Council has an interest in reducing waste to landfill due to landfill being unsustainable and to seeking better environmental and social outcomes [sic]. The introduction of a dedicated green

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<sup>96</sup> LG Act, section 28.

<sup>97</sup> LL8, section 2(1).

<sup>98</sup> LL8, section 2(2).

waste service was designed to shift the quantum of organic waste being placed in general waste and being directed to landfill. This is consistent with the WMRRS and the NWP.<sup>99</sup>

We consider that the LCC has not provided sufficient information to support its claim that its green waste bin service suffers competitive disadvantages because the LCC has adopted certain recommendations and responsibilities set out in the WMRRS and NWP. The implementation of the green waste bin service is in line with the objectives of the waste policies; however, once the LCC has decided to implement the service, it is not clear how the service suffers a competitive disadvantage to private sector green waste businesses simply due to the existence of the waste policies.

Private sector green waste removal businesses, like TRR, provide services that also promote the objectives of the waste policies. The policies encourage businesses, industry and government to work together in promoting better waste management.

In seeking to comply with the waste policies, the LCC should ensure that any new business activity it establishes (such as the green waste bin service) clearly identifies what competitive advantages and disadvantages it has, in order to compete with private sector businesses on a competitively neutral basis.

### Procedural disadvantages

In its internal report, the LCC stated that it is subject to procurement requirements that may not be experienced by small private sector businesses:

On the other hand, Council's Waste & Recycling Program may suffer procedural disadvantage in relation to certain internal requirements imposed by legislative and/or internal policy requirements. For example, Council's procurement requirements (stemming from the Local Government Act 2009) will apply in the procuring of goods or services as required by Council's Waste & Recycling Program. For waste management contracts, often at significant values, this generally equates to a Tender process that may be large, complex and resource intensive to finalise. Even moderate procurements may result in expansive 'request for quote' processes needing to be assessed against defined criteria prior to sign-off by the appropriate delegate (both financially and from a decision-making perspective). These types of procurement requirements, or the extent of them, may not be experienced by small private sector businesses.<sup>100</sup>

We recognise that procedural requirements imposed upon local government entities, such as record keeping requirements, obligations to follow specific timelines, or requirements to afford natural justice<sup>101</sup>, can be a source of procedural disadvantage. However, a competitive disadvantage for the purposes of competitive neutrality is one that a council business experiences over a private sector business only because it is in the public sector. We consider that the disadvantage the LCC identifies in the quote above is due to its size, and not necessarily due to its public ownership.

We consider that the examples provided by the LCC in its internal report may be issues that a large private sector business could also face—including awarding contracts of significant value that require multiple levels of approval or detailed assessment against internal criteria, and in some industries, regulatory oversight. Additionally, in the case of large private and public sector

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<sup>99</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished internal report), 19 November 2021, pp. 11–12.

<sup>100</sup> LCC, Allegation about competitive neutrality—The introduction of Council's green waste bin service by Council's Waste & Recycling Program (unpublished internal report), 19 November 2021, p. 12.

<sup>101</sup> Examples of natural justice requirements include requirements on the council to provide feedback to unsuccessful tenderers, or requirements to give tenderers an opportunity to respond to an adverse finding made against their tender proposal.

businesses, these procedural disadvantages may be offset by advantages, such as greater bargaining power in the tendering process to obtain terms favourable to the business. As a result, we consider that the LCC has not provided sufficient information to substantiate the assertion that its green waste bin service operates at a procedural disadvantage for the purposes of competitive neutrality.

## 7.3 LCC policies

As part of our investigation of the complaint, we are required to consider a number of the LCC's policies, including policies concerning:

- the competitive neutrality principle
- ecologically sustainable development
- industrial relations
- occupational health and safety.<sup>102</sup>

### 7.3.1 Policies about competitive neutrality

We requested that the LCC provide us with any policies that it had concerning the competitive neutrality principle. The LCC provided the following policies:

- Accounting policy statement 2020–2021<sup>103</sup>
- Community service obligations policy<sup>104</sup>
- Waste and Recycling Program Business Unit dividend policy<sup>105</sup>
- Waste services and waste management utility charges policy.<sup>106</sup>

#### Accounting policy statement 2020–2021

The accounting policy statement 2020–2021 sets out the policies the LCC has adopted in order to apply the accounting principles implicit in the National Competition Policy (including competitive neutrality policy). For the 2020–2021 financial year, the LCC has adopted the following policies<sup>107</sup>:

- tax equivalents policy—the LCC will calculate and require payment of actual tax equivalents from commercialised business units (such as Logan Waste Services) in accordance with the Queensland Government's local government tax equivalent regime
- depreciation policy—the LCC will provide for depreciation in accordance with the LCC's 'Depreciation of Non-Current Assets' policy
- internal services (full-cost pricing) policy—the LCC will apply full-cost pricing for commercialised business units (such as Logan Waste Services) in accordance with the LG Regulation

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<sup>102</sup> LG Regulation, section 51(b),(c).

<sup>103</sup> LCC, *Accounting Policy Statement 2020/21*, 2021.

<sup>104</sup> LCC, *Community Service Obligations Policy*, 2018.

<sup>105</sup> LCC, *Waste and Recycling Program Business Unit Dividend Policy*, 2021.

<sup>106</sup> LCC, Waste services and waste management utility charge rates policy, 19 September 2019. The policy was provided to us as part of our investigation.

<sup>107</sup> LCC, *Accounting Policy Statement 2020/21*, 2021.

- community service obligation policies—the LCC will deliver community service obligations in accordance with policies on community service obligations and on remissions to sporting, recreational and community organisations.

We consider the application of the tax equivalents policy, depreciation policy and internal services (full-cost pricing) policy in Chapter 6.

The accounting policy statement 2020–2021 also states that Logan Waste Services is a significant business activity<sup>108</sup>, and that the LCC has resolved to apply commercialisation as a reform to Logan Waste Services in accordance with the National Competition Policy and the LG Act. We discuss the concepts of significant business activity and commercialisation reform in Chapters 2 and 4.

Finally, the accounting policy statement indicates that for the 2020–2021 financial year, the LCC has resolved that the Code of Competitive Conduct<sup>109</sup> will not be applied to any business activities of the LCC. This resolution appears to be made in accordance with section 47(7) of the LG Act. As such, we have not considered the application of the code to the LCC's green waste bin service.

#### Community service obligations policy

The community service obligations policy indicates that the LCC's business units may be reimbursed for the imposition by the LCC of community service obligations. The policy outlines the criteria (categories of services) that will be applied in determining eligibility for reimbursement. In relation to the activities of Logan Waste Services, the policy states that community service obligations are provided for the following:

- free tipping at LCC's landfills for community organisations
- discounts on waste management charges for pensioners
- exemptions from waste management charges for natural disasters or certain approved community events within Logan City.

The policy is clear as to the procedure to be followed by the relevant business unit in seeking reimbursement for community service obligations. The cost of community service obligations is subsequently reported in the LCC's annual financial statements. For the financial year ended 30 June 2021, the LCC reported \$486,000 in community service obligations attributable to Logan Waste Services.

From our investigations, it appears that community service obligations are not individually reported for the green waste bin service. Despite this, we consider that the LCC has clear and transparent policies and processes for the recording, reimbursing, and reporting of community service obligations with respect to Logan Waste Services.

The LCC did not indicate that either the business activities of Logan Waste Services generally, or of the green waste bin service specifically, operated at a competitive disadvantage due to the imposition of community service obligations. We consider that no such competitive disadvantage exists, and the implementation of community service obligations has been done in compliance with the competitive neutrality principle.

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<sup>108</sup> Within the meaning of section 43 of the LG Act.

<sup>109</sup> As set out in the LG Regulation, part 2, division 5.

### Waste and Recycling Program Business Unit dividend policy

The Waste and Recycling Program Business Unit dividend policy states that 'Council will ensure that it manages its Waste and Recycling Program Business Unit in such a manner to return a dividend payment to Council'.<sup>110</sup> It also sets out the methodology for calculating this dividend. We discuss this policy in Chapter 4.

### Waste services and waste management utility charges policy

The waste services and waste management utility charges policy contains procedural details about the collection and management of waste, including details on:

- the areas within Logan City where general waste collection is conducted by the LCC
- the types of premises within Logan City that are serviced premises
- the types of waste services (for example, general, recycling or bulk waste) that are available to various types of premises within Logan City (for example, residential, commercial or industrial premises).

The policy is procedural in nature and does not specifically discuss competitive neutrality issues. The waste collection process has been considered as part of our investigation and is discussed in Chapter 3.

## 7.3.2 Policies about ecologically sustainable development, industrial relations, and occupational health and safety

The LCC provided us with the following policies:

- Climate change resilience policy<sup>111</sup>
- Health and safety policy<sup>112</sup>
- Quality environmental management of waste services activities policy<sup>113</sup>
- Sustainability policy.<sup>114</sup>

These policies do not contain content that is specifically relevant to the green waste bin service or to competitive neutrality. The sustainability policy and the climate change resilience policy refer to the LCC's 'Principles of Sustainability'<sup>115</sup>, which state that with respect to the environment, the LCC will deliver services and activities in a manner that avoids and reduces waste and protects and enhances the natural environment, while considering the social, economic and governance implications of decisions.

We consider that the introduction of the LCC's green waste bin service is likely to promote the objectives of its environmental and sustainability policies, as well as the objectives of state and federal waste policies (discussed in section 7.2). However, the LCC needs to ensure that its green waste bin service is compliant with the competitive neutrality principle, as set out in this report.

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<sup>110</sup> LCC, *Waste and Recycling Program Business Unit Dividend Policy*, 2021.

<sup>111</sup> LCC, *Climate Change Resilience Policy*, 2020.

<sup>112</sup> LCC, *Health and Safety Policy*, 2017.

<sup>113</sup> LCC, *Quality Environmental Management of Waste Services Activities Policy*, 2017.

<sup>114</sup> LCC, *Sustainability Policy*, 2019.

<sup>115</sup> LCC, *Sustainability Policy*, 2019, p. 1 and *Climate Change Resilience Policy*, 2020, p. 2.



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## ABBREVIATIONS AND DEFINITIONS

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### Abbreviations

BPWRF	Browns Plains Waste and Recycling Facility
CBWRF	Carbrook Waste and Recycling Facility
CSO	community service obligation
CPA	Competition Principles Agreement
GST	goods and services tax
L	litre
LCC	Logan City Council
LG Act	<i>Local Government Act 2009</i> (Qld)
LG Regulation	Local Government Regulation 2012 (Qld)
LL8	Local Law No. 8 (Waste Management) 2018 (Logan City Council)
NWP	National Waste Policy
TRR	The Rubbish Removers
WACC	weighted average cost of capital
WMRRS	Waste Management and Resource Recovery Strategy (Queensland Government)

### Definitions

business activity	trading in goods and services
collection cost	the cost of collecting the green waste from the green waste bins of customers
commercialisation	the creation of a new business unit, which is part of the local government, to conduct a significant business activity on a commercial basis
competitive neutrality complaint	a complaint that relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle
competitive neutrality principle	the principle 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
complainant	the person who makes a competitive neutrality complaint

business activity	trading in goods and services
disposal cost	the cost the LCC should charge itself when pricing its green waste bin service to residents; this cost covers activities at the LCC waste and recycling facilities involving the receipt of the green waste on the concrete pads, and the handling, stockpiling, processing and ultimate removal of the green waste from the site
disposal fee	a fee that the LCC charges commercial operators to dispose of green waste at the LCC waste and recycling facilities, currently \$75 per tonne
full-cost pricing	the pricing of a significant business activity on a commercial basis
processing and removal costs	the cost to the LCC to have the green waste processed and removed by a third-party contractor to an authorised composting or soil conditioning location
significant business activity	a business activity that: <ul style="list-style-type: none"> <li>(a) is conducted in competition, or potential competition, with the private sector, and</li> <li>(b) has expenditure of at least \$9.7 million for the financial year ending immediately before the current financial year</li> </ul>

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## APPENDIX A: COMPETITIVE NEUTRALITY COMPLAINT PROCESS

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### What is a competitive neutrality complaint?

A competitive neutrality complaint is a complaint that relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle. A complaint must be made by an affected person—that is, a person who:

- competes (or wants to compete) with the local government in relation to the business activity, and
- claims to be adversely affected (or hindered from competing) by a competitive advantage that the person alleges is enjoyed by the local government.<sup>116</sup>

The QCA is the agency responsible for receiving, investigating and reporting on competitive neutrality complaints.<sup>117</sup>

### Making a competitive neutrality complaint

A person who wants to make a competitive neutrality complaint must make the complaint in writing to the QCA or to the local government that is the subject of the complaint.<sup>118</sup> The complaint must contain:

- details of the local government business entity's alleged failure to comply with the competitive neutrality principle in conducting the business activity that is the subject of the complaint
- information that shows:
  - the complainant<sup>119</sup> is, or could be, in competition with the local government business entity
  - how the complainant is, or may be, adversely affected by the business entity's alleged failure, and
  - the complainant has made a genuine attempt to first resolve the issue with the local government prior to submitting the complaint to the QCA.<sup>120</sup>

### Investigating a competitive neutrality complaint

If the QCA receives a complaint, it is required to investigate and report on that complaint, unless there is a reason to refuse to investigate it.<sup>121</sup> The LG Regulation provides that the QCA may only refuse to investigate a competitive neutrality complaint for one of four reasons. That is, the QCA can refuse to investigate if the QCA reasonably believes that:

- (1) the complainant has not shown that they have made a genuine attempt to first resolve the issue with the local government prior to submitting the competitive neutrality complaint
- (2) the complainant is not, or will not be, in competition with the local government that is the subject of the complaint, after the QCA considers:

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<sup>116</sup> LG Act, section 48.

<sup>117</sup> LG Regulation, section 45(1).

<sup>118</sup> If a competitive neutrality complaint is made to the local government, the local government is required to give the complaint to the QCA for investigation.

<sup>119</sup> The complainant is the person who is submitting the complaint.

<sup>120</sup> LG Regulation, section 45.

<sup>121</sup> LG Regulation, sections 46 and 48.

- (a) whether the complainant is, or will be, supplying goods or services that are similar to the goods or services that the local government business activity supplies, and
  - (b) the laws relating to competition that apply to the business activity
- (3) the complainant is not, or is unlikely to be, adversely affected if the business activity is not conducted in a way that complies with the competitive neutrality principle
- (4) the complaint is frivolous or vexatious.<sup>122</sup>

In the case of TRR's competitive neutrality complaint against the LCC, the QCA found that there was no reason to refuse to investigate the complaint and therefore commenced an investigation of the complaint as required by the legislation.

After an investigation has commenced, the LG Regulation gives the QCA information gathering powers. The QCA can require the relevant local government to provide any information or documents that are relevant to the investigation, and the local government must comply—unless certain exceptions apply.<sup>123</sup>

## Reporting on a competitive neutrality investigation

### Content of the report

Following the investigation of the competitive neutrality complaint, the QCA is required to produce a report on the results of the investigation. Section 52 of the LG Regulation sets out the requirements for such a report.

The report must state whether the QCA considers the complaint has been substantiated. The complaint is substantiated if the QCA considers that the relevant local government has failed to conduct the relevant business activity in accordance with the competitive neutrality principle.

If the QCA decides the local government business entity that is the subject of the complaint has a competitive advantage, the report must include:

- recommendations on how the business entity can conduct the business activity in a way that complies with the competitive neutrality principle, and
- the reasons for the recommendations.

If the QCA decides the business entity suffers a competitive disadvantage, the report must include:

- recommendations on how the business entity can overcome the competitive disadvantage
- the reasons for the recommendations, and
- comments about the competitive disadvantage, including comments about the effect of the disadvantage, including comments about the effect of the disadvantage on the business entity.

### Distribution and disclosure of the report

The QCA's report must be given to the local government business that is the subject of the complaint.<sup>124</sup> The QCA must give a copy of the recommendations in the report to any person to whom the QCA gave a notice of investigation at the start of the investigation—usually, this would include the complainant.

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<sup>122</sup> LG Regulation, section 48.

<sup>123</sup> LG Regulation, section 50.

<sup>124</sup> If a corporate body is conducting the business activity, a copy of the report must also be given to that corporate body.

The local government must ensure that the report is available for public inspection (at the local government's public office), as soon as practicable after receiving it.<sup>125</sup>

The QCA is not required to publish (on its website or otherwise) a copy of the report or a copy of the local government's response to the report. Members of the public can inspect the report, and the local government's resolutions in response to the report, at the public offices of the local government.

### Local government response to the report

The local government is required to decide, by resolution, whether to implement the recommendations in the QCA's report.<sup>126</sup> The resolution must state the reasons for the local government's decision. Importantly, the local government is not required to accept or implement any of the QCA's recommendations.

The local government must make the resolution within one month after being given the report by the QCA.<sup>127</sup> Within seven days after making the resolution, the local government must give notice of that resolution to the complainant, the QCA and the corporate body that is conducting the business activity (if relevant).<sup>128</sup>

### Process followed in investigating the TRR complaint

Table 7 provides a summary of the complaints process, including the steps required by the legislation, and the steps taken during the QCA's investigation of the complaint.

**Table 7 Process followed in investigation the complaint**

<i>Stage of the complaint</i>	<i>Relevant section of the LG Regulation</i>	<i>Steps taken during the investigation</i>
Before a formal complaint is lodged	Section 44 sets out the minimum requirements for a local government's process for resolving a competitive neutrality complaint.  The local government must ensure it has a process that deals with resolving an issue before a formal competitive neutrality complaint is made—for example, a process for a person to raise concerns about alleged failures of a local government business entity to comply with the competitive neutrality principle.	Based on materials provided to the QCA, from approximately January 2021 to October 2021, TRR worked with the LCC to attempt to resolve the TRR's competitive neutrality concerns regarding the LCC's introduction of a green waste bin service.  The LCC conducted an internal investigation into TRR's complaint. An internal report into this investigation was finalised on 19 November 2021.  A letter summarising the results of the internal investigation was sent to TRR on 1 October 2021. At the time of writing, the QCA understands that TRR has not been provided with a copy of the internal report finalised on 19 November 2021.
Making a formal competitive neutrality complaint	Section 45 outlines the requirements that a person must meet (such as the information that must be provided) in order to make a formal competitive neutrality complaint.	On 15 October 2021, TRR lodged a formal competitive neutrality complaint with the QCA.

<sup>125</sup> LG Regulation, section 53.

<sup>126</sup> LG Regulation, section 55.

<sup>127</sup> LG Regulation, section 55(3). If the local government does not ordinarily meet in a month, then the resolution must be made at the first meeting of the local government after that month.

<sup>128</sup> LG Regulation, section 55(4).

<b>Stage of the complaint</b>	<b>Relevant section of the LG Regulation</b>	<b>Steps taken during the investigation</b>
Acceptance of complaint	Section 46 requires that the QCA must investigate and report on a competitive neutrality complaint received under section 45, unless there is a reason to refuse to investigate.	On 21 October 2021, the QCA found there was no reason to refuse to investigate the complaint and commenced an investigation.
Notice of intention to investigate	Section 49 states that before the QCA starts to investigate a competitive neutrality complaint, it must give an investigation notice to the complainant, the relevant local government and a corporatised business entity (if such an entity is conducting the business activity that is the subject of the complaint).	On 22 October 2021, the QCA issued the notice of investigation to TRR and the LCC. There is no relevant corporatised business entity in relation to the complaint.
Information requirement notice given to the local government	Section 50 states that the QCA may give an information requirement notice to the relevant local government, to require it to give to the QCA stated information or documents relevant to the complaint.	On 18 November 2021, the QCA issued an information requirement notice to the LCC. On 8 December 2021, the LCC provided the information and documents requested to the QCA. On 6 January 2022, the QCA issued a second information requirement notice to the LCC. On 25 January 2022, the LCC provided the QCA with the information and documents requested in the second information requirement notice. On 1 February 2022, the QCA sent a further email to the LCC seeking clarification on some answers provided by the LCC in response to the second information requirement notice. On 18 February 2022, the LCC provided its response.
Requests for confidentiality over information provided to the QCA	Section 55A allows a person who has provided information to the QCA as part of the competitive neutrality investigation to request confidentiality over the information provided.	On 4 March 2022, the LCC made confidentiality requests over certain information provided to the QCA. The QCA has assessed the LCC's confidentiality request in accordance with the LG Regulation.
The QCA's report on the investigation	Section 52 requires the QCA to prepare a report on the results of its investigation into the competitive neutrality complaint and give it to the relevant local government (and the relevant corporatised business entity, if the business activity is being conducted by a corporatised business entity).	Logan Waste Services is the relevant entity that is conducting the business activity (the green waste bin service) that is the subject of the complaint. Logan Waste Services is not a corporatised business entity. There is no relevant corporatised business entity in relation to the complaint. As such, the QCA's report will be given to the LCC. A penultimate copy of the report was given to the LCC to comment on any errors of fact or confidentiality issues; the LCC had a period of 3 weeks for this purpose. TRR was also given a 3-week period for the same purpose. A final version of the report was then given to the LCC, after the QCA considered the submissions received as part of this consultation process. A copy of the recommendations in the report was also given to TRR, pursuant to section 54 of the LG Regulation.

<b>Stage of the complaint</b>	<b>Relevant section of the LG Regulation</b>	<b>Steps taken during the investigation</b>
Public access to report	Section 53 requires that a local government must ensure the public can inspect a copy of the QCA's report on the competitive neutrality complaint at the local government's public office as soon as practicable after being given the report.	
Information to persons given an investigation notice	Section 54 requires the QCA to give the following documents to any other person to whom it gave an investigation notice: <ul style="list-style-type: none"> <li>• a copy of the recommendations in the report</li> <li>• notice that the person may inspect the report, including recommendations, at the local government's public office.</li> </ul>	An investigation notice was given to TRR pursuant to section 49 LGR. As such, TRR will be given: <ul style="list-style-type: none"> <li>• a copy of the recommendations in the report</li> <li>• notice that TRR may inspect the report, including recommendations, at the LCC's public office.</li> </ul>
Local government response to report	Section 55 states that the relevant local government must decide, by resolution, whether to implement the recommendations in the QCA's report. Within 7 days after making the resolution, the local government must give notice of the resolution to: <ul style="list-style-type: none"> <li>• the complainant</li> <li>• the QCA</li> <li>• if applicable, the relevant corporatised entity conducting the business activity.</li> </ul>	

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