26 May 2017

Essential for community Essential for environment

Committee Secretary
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Email: ipnrc@parliament.qld.gov.au

Dear Mr Jim Pearce MP (Chair)

**Re: Parliamentary Inquiry into Long-term Financial Sustainability of Local Government**

The Waste Recycling Industry Association (QLD) WRIQ is Queensland's peak waste and recycling industry association representing the legitimate operators of the sector.

Industry members provide an essential community service for all Queenslanders by responsibly handling the safe removal, treatment, recovering resources and recycling and ultimately disposing of all wastes. The association promotes thought leadership to all its stakeholders, advocating industry issues with purpose and focus for achieving sound economic outcomes, underpinned by innovative environmental practices.

***Background***

WRIQ understands that following the tabling of the Queensland Audit Office report's 2 and 13 for 2016-17, the Infrastructure, Planning and Natural Resources Committee has resolved under section 94 of the *Parliament of Queensland Act 2001* to conduct an inquiry into the long-term financial sustainability of local government.

Under the Terms of reference for this inquiry, the committee will consider the long-term financial sustainability of local government and the issues arising from the Queensland Audit Office's Report 2: 2016-17 *Forecasting long-term sustainability of local government* and Report 13: 2016-17 *Local government entities: 2015–16 results of financial audits*, including consideration of the following matters:

a. financial planning and long-term forecasting
b. asset condition data and asset management plans
c. decision-making frameworks for major infrastructure asset investments
d. community engagement on future service levels
e. financial sustainability targets
f. organisational governance
g. strategic planning and organisational capacity
h. budget transparency
i. financial sustainability ratios
j. procurement policy and value for money
k. other matters the committee determines are relevant to the inquiry.

WRIQ welcomes the opportunity to provide comment to the 'Parliamentary Inquiry into Long-term Financial Sustainability of Local Government'. The Association provides this submission without prejudice to any additional submission provided by its members.

***Issue 1 - Local Government's Future Environmental and Social Liability for Landfill***

WRIQ notes the 'Liabilities' section of the Queensland Audit Office report[2] (referpage 36):

*"In 2015–16, councils reported total liabilities of $7.7 billion. Borrowings make up 70 per cent of total liabilities. SEQ ($3.7 billion) and Coastal ($1.3 billion) councils hold the highest amounts of debt. Councils borrow to fund the development of infrastructure assets and for their other business enterprises. A total of 57 councils currently hold debt, with 31 councils holding debt greater than $10 million.... Provisions make up 14 per cent of total liabilities and include monies set aside for funds to rehabilitate landfill and quarry sites and resume land".*

WRIQ has previously expressed concern[1] about the future and ongoing environmental and social liability associated with local government owned and operated landfills, particularly in small, regional communities. These facilities pose a number of risks including financial in terms of their required rehabilitation and under current practice, are not subject to financial assurance provisions.

Financial Assurances (FAs) are intended to provide a guarantee that the costs of remediation, site closure and post-closure liabilities are not borne by the State and/or community in the event of the occupiers of a premises or operators of a facility abandoning the site, becoming insolvent, or incurring clean-up costs beyond their financial capacity.

Financial assurances may be applied to a number of activities which disturb land or may result in chemical releases and significant contamination of land. The Administering Authority (the Department of Environment and Heritage) has identified the following waste management activities as those which may require a financial assurance in its Guideline[2]:

- ERA 55(2) Regulated Waste Recycling or Reprocessing;
- ERA 56 Regulated Waste Storage;
- ERA 58 Regulated Waste Treatment;
- ERA 60 Waste Disposal
- ERA 61 (3a) and (3b) Clinical and Regulated Waste Incineration and Thermal Treatment.

Historically, it has been the view of both local government and the Department of Environment and Heritage Protection that local governments exists in perpetuity and thus, cannot 'abandon' a waste disposal (landfill) site. The former 'Operational Policy: Circumstances for Requiring Financial Assurance on a Development Approval', dated August 2012 stated that *"there is very low risk (if any) that a council will not be able to meet the costs of rehabilitation or restoration of the environment affected by an activity on completion of that activities".*

As such, historically local governments have not been required to hold financial assurances for their landfills, given the expectation that a local government would be able to raise revenue for any costs of pollution or remediation through its ability to charge rates. However, this approach

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[1] Since 2012 including to previous Parliamentary Committees, the Queensland Ombudsman and the Director General of the Department of Environment and Heritage Protection – copies of correspondence are available upon request.

[2] Guideline: Financial Assurance under the Environmental Protection Act 1994. Version 3, March 2016.

is difficult for small regional areas many of which have a significantly large number of poorly engineered and maintained historical facilities and a small rate-payer base.

According to the December 2016 Queensland Government published report – Progress on Government election commitments on Page 62 Minister Miles has completed a formal review in association with local governments into the application of financial assurances for landfill. The review considered whether it is necessary for local governments to apply different accounting practices to reflect the cost of landfill site remediation over the life of the site.

*The report's findings have never been released or been publicly reported. WRIQ seeks the committee consider this report as part of its inquiry.*

Any omission of local government owned waste management facilities from requiring a financial assurance in turn, provides those facilities with lower operating costs than their private sector equivalents – even where those activities are conducted on a commercial basis. Typically, private organisations are paying between 2-5% of the specified amount in costs for their financial assurance (be it cash, bank bond, bank guarantee or insurance premium).

The underlying competitive neutrality concept is that government businesses, where they are engaged in significant business activities, should not enjoy any net competitive advantage simply because of their public-sector ownership. This is not the case of local government owned landfill facilities in Queensland which are not subject to financial assurance.

***Issue 2 - Cross-Subsidisation of Domestic Waste Management Services from Local Government Operated Commercial Waste Operations***

Under National Competition Policy (NCP) local government businesses that compete against the private sector or offer a monopoly service should aim to recover the full costs of a business activity - Full Cost Pricing (FCP, see sections 21/22 of the Local Government Regulation 2012). For a Council waste business, this means that the landfill gate fees, domestic and commercial kerbside waste collection services must be priced so that the revenue generated meets the full cost of providing the service, not just the day-to-day operating costs.

The Local Government Association of Queensland commissioned a consultancy to conduct a review into matters related to commercial waste services ratings and charges by Councils. WRIQ under two Right to Information applications sought release of this report and / or its findings from both Departments of Local Government and Environment and Heritage Protection. Both RTI applications made by WRIQ were denied.

*The report is not publicly available. The Committee should consider the findings of this report in its deliberations.*

For a typical regional or rural council, wastes businesses are operationally complex, typically comprising multiple waste transfer stations, landfills and a range of resource recovery activities from green waste processing through to tyre recycling. Landfill infrastructure development and management is the most complex issue for a waste business and the operating and accounting robustness can impact and distort future pricing decisions. Factors such as higher environmental standards and the associated higher capital costs for engineered landfills, future construction costs for landfill closure and provisioning for the long-term maintenance costs at closed landfill sites all have a present-day price implication. For many, the real cost of these issues has not been accounted for and presents a risk to sound financial management and future financial sustainability. This is particularly the current situation, where historic landfills (and

their environmental approvals/licences) do not comply with current minimum engineering and environmental standards.

A review commissioned by the Association in 2011 of all Queensland Councils and their landfill disposal charges highlighted the challenge of full cost pricing. Gate fees can vary substantially due to the engineering standard, licence conditions and volume of waste received. But do these factors sufficiently explain the gate fee variation, or could it be that future liabilities have not been correctly accounted. A follow-up study by the Association following the brief introduction of the landfill levy into Queensland, showed even further discrepancies.

The Association acknowledges that pricing decisions for landfill and other waste services (including refuse and recycling collections) are complex. Councils may offer a range of collection service types and have an extensive range of landfill gate fees or differential pricing across multiple landfills. This allows cost to be allocated against a range of user pays service types. While the aim should be on allocating the cost of delivering the service to the matching fee type, a political desire to keep the landfill gate fees lower in some Councils has resulted in the waste disposal costs being subsidised by the waste cleansing charge. Alternatively, the charge set to provide cleansing services to the commercial sector may be subsidising the domestic cleansing rate, potentially disadvantaging local business. This is certainly the case currently in Queensland with some councils establishing monopoly environments at the detriment to private sector and regionally based businesses.

As the Association's studies have revealed, many regional and rural local governments have historically under-recovered waste costs. In some regions, this is compounded by static or declining populations which make it more difficult to spread increasing costs over a declining population base. As environmental standards and associated costs increase, this trend will continue to pose a challenge to the long-term financial sustainability of some councils.

There are significant benefits for the application of FCP to waste management services including, but not limited to

- Transparent decision making for senior management and Councillors.
- Price adjustments can be "smoothed" over time to reduce community impact.
- Compliance with National Competition Policy.
- Scenario testing to support strategic decision making for future capital investment.
- Financial sustainability

Chapter 5A of the Environmental Protection Regulation 2008 and section 7 in Part 2A of the Waste Reduction and Recycling Regulation 2011 Local Government to prescribe to its ratepayers how waste management is to be conducted, types of bins to be used and other related handling matters principally focussed at a Domestic ratepayer level. This provision evolved from the Queensland Health Act 1937.

On June 30, the State Legislation and current head of power this Law proposes to replace expires. The State Government (EHP) has advised WRIQ and Local Government these outdated government regulations are deemed no longer relevant in a 2017 operating environment and matters contained within it can be best handled at a local level by each Council.

Importantly the legislation currently contains outdated provisions that give Councils a right to prescribe designated collection areas. Gold Coast Council has already used this legislation to impose designated areas and as result all its commercial property ratepayers in and around Dreamworld are excluded by that Coomera Town Centre Local Law from accessing private industry waste and recycling services. And the Sunshine Coast and Noosa Councils currently

use this legislation to apply a self-imposed waste and recycling services monopoly onto all businesses. They mandate all commercial ratepayers pay Council set charges for all these services and they are excluded from seeking access to any private company for an alternate service option.

On 29 March 2018 Gold Coast Council initiated a process regarding the public consultation for a proposed new Local Law No. 20 (Waste Management) 2017 and the Public Interest Test Plan. This law if introduced will expand the precinct provisions and capture the entire Council jurisdiction, and will limit the ability of all private waste and recycling contractors from providing any commercial services in that Council area. (Refer attachments)

The law when passed gives Council absolute control over all its ratepayers respect to the provision of domestic and commercial and industrial waste services. Its 'Objects' however, also define a singular term of 'waste' and this unilaterally potentially gives it a head of power to or way of right for Council should it choose to control all waste and related activity in a Council area.

These local laws imposed by some Queensland councils pose a genuine threat to private businesses and is also a breach of Australian Competitive Neutrality Laws. They also impose additional costs to all commercial waste generators, (Woolworths to small family businesses) who can no longer seek access to private contractors. Essentially all businesses will be required to pay for a commercial waste and recycling collection at a set rate dictated by council regardless of them using it or not. If they want a private contractor they will be paying twice for that same service.

Whilst the local law once passed by Council must undergo a state interest check. Legislative provisions prescribe in Section 29A of the Local Government Act 2009 and section 31A of the City of Brisbane Act 2010 require local governments to consult with relevant state agencies about the overall state interest in the proposed local law before making a local law.

Further each local government must consult with those state departments that have portfolio responsibility for the area the local law relates to and obtain their feedback and comments for consideration before a local law is made by resolution.

*Research conducted by WRIQ provides that despite this published protocol is required the State Government has no published protocol, process or how transparently such consultation occurs or any published considerations on the matrix of issues that must be proven or otherwise in making the determination that the local law is in the state interest or not.*

*This legislative loophole allows Local Government an ability to pass Local Laws regardless of the state implications or those of industry considerations be addressed.*

The Association has also raised its concerns about the impact of the current local council monopolies with the Department of Environment and Heritage Protection with regards to the state introduction of the Container Return Scheme (CRS) in 2018. The final CRS scheme design and corresponding regulation has to consider the existing local government-operated monopolies in Queensland. The Sunshine Coast Council and Noosa Shire Council areas may be exempt from any CRS due to the existing local law. Where a local council dictates mandatory collection services which includes recycling (inclusive of eligible containers); access by independent/external container return point operators and other network operators will not be possible.

The omission of these council monopolies from the CRS and resulting power of these councils to access 'eligible' containers under the CRS, at the exclusion of all industry schemes, chartable collections and social enterprises; may trigger the cartel provisions of the *Competition and Consumer Act 2010 (Cth)* (CCA).

Under section 44ZZRF of the CCA, a corporation commits an offence if it makes a contract or arrangement or arrives at an understanding (arrangement), and that arrangement contains a cartel provision. The Association asks the Queensland Government to refer this matter to the ACCC for a decision notice.

The Association believes that the collection of eligible containers by the council as part of their monopoly collection of recyclables is a breach of section 44ZZRF because:

- Section 2C of the CCA states that cartel provisions under Part IV of the CCA apply to local government bodies which 'carry on a business'. Clearly 'container return point operators' and 'network operators' are running a business. The scheme outlined in the Discussion Paper provided by the Department states that the CRS will create "business opportunities" and in Figure 1, outlines the collection of eligible containers from hotels and clubs a "Business Operator Transfer".

- In addition, under section 44ZZRF of the CCA, the cartel provision must have the purpose of, or is likely to have the effect of, fixing, controlling or maintaining the price, discount, allowance, rebates or credit in respect of goods and services. The existing mandated recycling collections by the councils on commercial entities (social clubs, hotels and clubs etc.) will give the council full control of the "rebate or credit" (the refund payment) in respect of the eligible containers. It is fundamental to price fixing arrangements that the relevant conduct, in purpose or effect, substantially lessens competition or would likely do so. Social clubs for example, will not be able to 'donate' their containers to local charities or social enterprises which may align with their core business or vision.

Under section 88 of the CCA, the Commissioner has the power to grant an authorisation to give effect to a cartel provision within an arrangement. Authorisation however, is dependent upon the public benefit outweighing the public detriment constituted by any lessening of competition that would result from authorisation. The Association believes that the CRS scheme should operate in a transparent and offer community benefit where possible – particularly as the refund/deposit component on the eligible container is paid directly by the consumer.

***Issue 3 – Rates***

WRIQ notes the main findings in Chapter 3[3], including the increase in own-source revenue.

*Own-source revenue (revenue from rates, fees and services) has increased by two per cent since last year and now makes up 74 per cent of total revenue. SEQ, Coastal, and Rural/Regional councils have the highest proportions of own-source revenue.....Most councils are working to restrain expenditure and increase own-source revenue (revenue from rates, fees and services).*

*Rates and levies revenue increased by four per cent across the sector this year. This primarily came from an increase in rateable properties (due to development activity and population growth) as well as councils' approved fee increases. Rates and levies charges have a base charge and a usage element, linked to consumption. On average, councils increased general rate charges by three per cent across the sector.*

Local governments in Queensland must make and levy general rates on all rateable land[4] within their local government areas. Local governments must calculate[5] general rates on the rateable value of the land determined under the *Land Valuation Act 2010*.

Whilst WRIQ acknowledges that local government needs to have flexibility for raising sufficient own source revenue, they must also implement fair and equitable rating systems.

WRIQ is aware of a growing trend with regards to rural local government setting rates according to a perceived 'ability to pay' as opposed to regulatory requirements; while other councils have announced increased rates without any prewarning to industry.

Scenic Rim for example, undertook a review of its rating system last year for intensive industrial activities. "This review considered a range of factors including the movement of heavy vehicle traffic generated as a result of these industries and the need to manage anticipated issues such as noise and dust. In this, Council had regards to direct and indirect costs to the region at community, social and Council levels of these industries". As a result of the review, intensive industrial rating categories (identified as land used or capable of being used, for a noxious or offensive industry) were adopted as part of Council's 2016-2017 budget on 23 June 2016. This ruling may be applied to land purchased by our members, even where waste management or recycling activities are not being undertaken.

There must be a reasonable level of predictability in the amount of rates levied on parcels of land. Any significant increases in rates should be reasonable and attributed to transparent changes to either the services or facilities provided to land or to changed circumstances of the land.

Where changes to the circumstances of parcels of land have led to significant increases in the rates levied, WRIQ understands that local governments may use the averaging of valuations and a rates cap to transition potentially significant increases in the rates levied on parcels of land, taking to ensure that the causal effect of not increasing the general rate, does not result in similarly valued properties used for the same purpose paying significantly different amounts of rates, contrary to the *Principle of Equity* for like properties.

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[3] Local government entities: 2015–16 results of financial audits. Report 13: 2016–17. Queensland Audit Office.

[4] See section 94(1)(a) of the *Local Government Act 2009*

[5] See section 74(1), *Local Government Regulation 2012*

WRIQ understands that in 2016, the Department of Infrastructure, Local Government and Planning developed a best practice guideline for local governments to consider and adhere to when developing their rating systems[6]. However, this guideline has not been ratified and it not available on-line. WRIQ calls for the immediate adoption and communication of this guideline by the Queensland Government to all local councils and its ongoing monitoring to ensure adherence to its principles.

***Issue 4 – Lack of Transparency of Local Government Budgets***

Additionally, contained within the *Right to Information Act 2009* (see Schedule 3, 4B) information relating to local government budgets is exempt from being released under right to information laws. This creates a total lack of transparency about local government budget processes.

4B Budgetary information for local governments
(1) Information brought into existence in the course of a local government's budgetary processes is exempt information for 10 years after the date it was brought into existence.
(2) Subsection (1) does not apply to information officially published by decision of the local government

The Association suggests that rate payers should have timely access to local government budgets and that the above clause (4B) is removed.

If you have any queries please do not hesitate to contact me on [redacted] or at [redacted]

Yours Sincerely
Waste Recycling Industry Association (QLD) Inc

Rick Ralph

Chief Executive Officer

**Attch**

Queensland Competition Authority: Sunshine Coast Regional Council: Competitive Neutrality Complaint; June 2012

ACCC response Complaint Sunshine Coast Regional Council Competitive Neutrality complaint

Gold Coast Local Law 20 Public Interest Plan

WRIQ Response to Local Law 20

WRIQ letter to EHP re CRS scheme matters

WRIQ Letter to Premier, Treasurer, Ministers Local Government and Environment & Heritage Protection – Local Law 20

[6] Draft Guideline on Equity and Fairness in Ratings for Queensland Local Government. 2016.