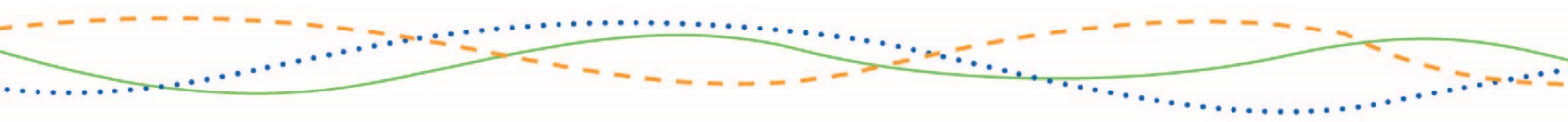




Public Interest Test Plan:

Local Law No. 7 (Waste Management) 2019



Public Interest Test Plan

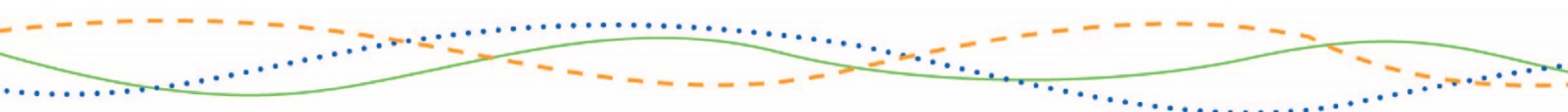
Local Law No. 7 (Waste Management) 2019

1 Introduction

- 1.1 In accordance with its obligations under section 38 of the *Local Government Act 2009* (Qld), Whitsunday Regional Council (**Council**) is conducting a public interest test on possible anti-competitive provisions identified in proposed *Local Law No. 7 (Waste Management) 2019* (**Proposed Local Law**).
- 1.2 This public interest test plan has been prepared in accordance with the National Competition Policy Guidelines for conducting reviews on anti-competitive provisions in local laws, version 1 (**Guidelines**), issued by the Queensland Department of Infrastructure, Local Government and Planning, (now the Department of Local Government, Racing and Multicultural Affairs) and called-up under the *Local Government Regulation 2012*. The Guidelines set out the criteria for identifying possible anti-competitive provisions and the process for conducting reviews of those provisions.
- 1.3 In preparing this public interest test plan, Council has also had regard to the *Public Benefit Test Guidelines* dated October 1999 issued by Queensland Treasury.
- 1.4 This public interest test plan details the activities to be conducted during the test and identifies the depth of analysis to be carried out on the possible anti-competitive provisions.

2 Objective of Proposed Local Law

- 2.1 The object of the Proposed 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 the local government's waste facilities; and
 - (c) ensuring that an act or omission does not result in:
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or loss of amenity; or
 - (iii) environmental harm or environmental nuisance.
- 2.2 The Proposed Local Law seeks to reinstate previous waste management arrangements contained in chapter 5A of the *Environmental Protection Regulation 2008* (**EP Regulation**) (now expired) and section 7 in part 2A of the *Waste Reduction and Recycling Regulation 2011* (**WRR Regulation**).
- 2.3 Chapter 5A of the EP Regulation enabled the local government to regulate:
 - (a) supply of waste containers;
 - (b) storage of general waste;
 - (c) storage/keeping of waste containers;
 - (d) removal of general waste; and
 - (e) storage and treatment of industrial waste.



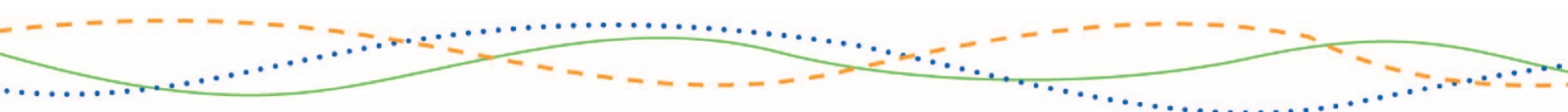
- 2.4 Chapter 5A of the EP Regulation also regulated the following at waste facilities:
- (a) unlawful disposal of waste;
 - (b) burning of waste;
 - (c) restrictions at the waste facility; and
 - (d) ability to give directions to a waste transporter.
- 2.5 Part 2A of the WRR Regulation provides the local government with the ability to designate areas within its local government area in which it may conduct general waste or green waste collection and decide the frequency of the collection in those areas.

3 Details of possible anti-competitive provisions

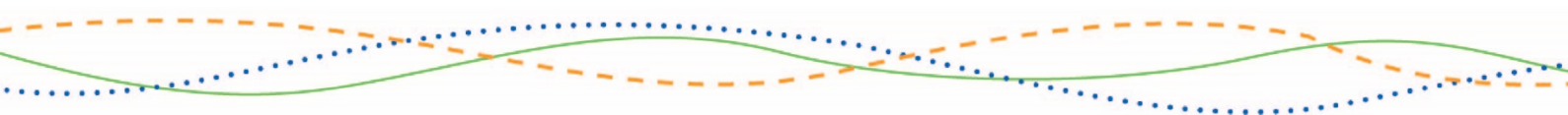
- 3.1 The local government has identified a number of provisions of the Proposed Local Law considered to be possibly anti-competitive because the provision is a barrier to entering the market and/or has the potential to restrict competition in the market.
- 3.2 A table identifying the provisions and the possible anti-competitive outcome of those provisions is included as **Annexure A**.

4 Assessment of need for Local Law No. 7 (Waste Management) 2019

- 4.1 The Proposed Local Law aims to give the local government the ability to protect public health, safety and amenity in the local government area by effectively continuing the regulation of the storage, servicing, removal, disposal and treatment of waste.
- 4.2 Section 7 of the WRR Regulation enables the local government to designate areas within its local government area in which the local government may conduct general waste or green waste collection and to decide the frequency of collection in those designated areas.
- 4.3 The local government provides waste collection services to areas within the 'collection area' as defined by its waste collection contract with the service provider. The collection areas are designated in a set of maps in the service contract which are amended from time to time to allow for additional waste collection areas in, for example, growth areas.
- 4.4 Not all premises are within the collection area and premises located outside of a designated area are given a number of options to dispose of waste at the premises.
- 4.5 The local government does not require commercial premises to use the local government's waste or recycling services and they may make arrangements with private suppliers.
- 4.6 The Proposed Local Law reinstates the arrangements for waste collection that were previously in place.
- 4.7 Without the Proposed Local Law to replace chapter 5A of the EP Regulation, waste management may not be adequately regulated or controlled to the extent necessary to protect the environment and public health, safety and amenity. A lack of adequate regulation would increase risks associated with the storage, collection and disposal of waste.
- 4.8 The local government is responsible for the good rule of its local government area and to reduce risks for residents when possible. To achieve a consistent approach to waste management in the local government area, the local government will ensure necessary controls are in place for the effective management of waste.



- 4.9 In accordance with section 7 of the WRR Regulation, the Proposed Local Law applies only to areas designated by the local government in which it may conduct general waste or green waste collection and decide the frequency of collection (see section 5 of the Proposed Local Law). The ability to designate waste collection areas is an essential and critical part of how the local government regulates waste management in the local government area.
- 4.10 The local government provides waste collection services to all households in urban areas within its local government area. It is likely that having the service provided by the local government will achieve a better outcome for residents in relation to protection of the environment and public health and amenity.
- 4.11 If there was no local law to replace the now expired provisions of the EP Regulation and to provide for waste collection within the local government area then:
- (a) owners and occupiers of premises at which general waste is generated would be left to make *ad hoc* arrangements about the storage, collection and disposal of waste; and
 - (b) those arrangements may not be in accordance with best practices, may result in an increase in noise, a loss of amenity for others or an increased risk to the environment or public health and safety.
- 4.12 The local government recognises that the Proposed Local Law possibly contains provisions that may be a barrier to entry to a market and a restriction on the conduct of business activities. However, those potential impacts must be viewed in the context that:
- (a) the Proposed Local Law simply aims to retain the previous arrangements in relation to waste management; and
 - (b) the potentially *anti-competitive* provisions have existed within those arrangements for more than 20 years.
- 4.13 Under the Proposed Local Law, the local government will prescribe a number of requirements for the storing, keeping, collection, treatment and disposal of waste at relevant premises and serviced premises. The local government will also prescribe requirements for dealing with waste at waste facilities.
- 4.14 The extent to which the Proposed Local Law may impact upon competition within the local government area will be dictated by the extent to which the local government, under section 5 of the Proposed Local Law:
- (a) designates areas in which the local government may conduct general waste or green waste collection; and
 - (b) decides the frequency of general waste or green waste collection in those designated areas.
- 4.15 The Proposed Local Law is possibly anti-competitive to the extent that the provision identified as possibly anti-competitive may have the effect of regulating some business activity.
- 4.16 The Proposed Local Law may also have an impact on the undertaking of the business activity of the collection of general waste from non-commercial premises by a contractor other than a local government appointed waste service provider. However, those potential impacts will not be new, having existed throughout the period of the currency of chapter 5A of the EP Regulation.
- 4.17 Under both the current regulatory scheme and the Proposed Local Law, there are opportunities to enter a competitive tender process to win local government waste collection contracts.
- 4.18 Further, given the Proposed Local Law seeks to replicate previous arrangements about waste collection services for commercial premises, waste contractors will continue to be capable of competing for the provision of those services to commercial premises.



- 4.19 The Proposed Local Law is in addition to, and does not derogate from, State laws about environmental management and protection. Accordingly, the application of the Proposed Local Law (and therefore the impact of the potentially anti-competitive provisions) is reduced to the extent of any conflict between the State Laws and the Proposed Local Law (for example, where environmentally relevant activities are carried out).
- 4.20 If the Proposed Local Law is not made, the local government would be required to rely upon other mechanisms such as other local laws, State legislation, common law action etc. to control and regulate the management of waste in the local government area. Those non-specific mechanisms are considered to be inadequate to achieve effective regulation.
- 4.21 Without an effective method of controlling the storage and collection of waste, environmental health and safety risks would be imposed on the local government area.

5 Confirm sections are anti-competitive

- 5.1 At this stage, the possible anti-competitive provisions that have been identified are still considered to be anti-competitive. The provisions will be reviewed again at the conclusion of the public consultation process.

6 Determination of exclusions

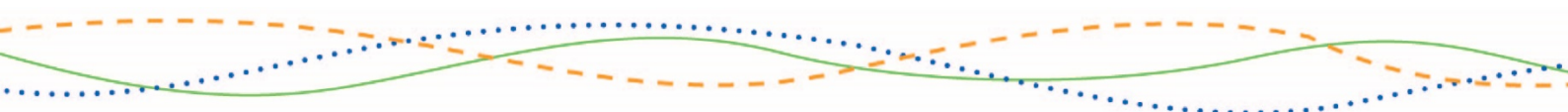
- 6.1 Under the Guidelines, the following types of local laws are excluded from the review of anti-competitive provisions:
- (a) local laws regulating the behaviour of individuals;
 - (b) local laws dealing solely with internal administrative procedures of a local government;
 - (c) local laws intended as legitimate measures to combat the spread of pests and disease;
 - (d) local laws to ensure accepted public health and safety standards are met; and
 - (a) repealing local laws.
- 6.2 It is arguable that the objects of the Proposed Local Law indicate that the Proposed Local Law aims to ensure accepted public health and safety standards are met, and that as a result the Proposed Local Law is excluded from the requirement to review any anti-competitive provisions. However, given there are a significant number of provisions within the Proposed Local Law that are not exclusively related to maintaining public health and safety standards, it is considered that there is a need to review the anti-competitive provisions of the Proposed Local Law.

7 Preliminary Assessment

- 7.1 A preliminary assessment has been conducted in accordance with the Guidelines and the local government is not presently satisfied that there will not be any significant impacts as a result of the possible anti-competitive provisions. Accordingly, the review process will be conducted in accordance with the Guidelines.

8 Realistic regulatory and non-regulatory alternatives to the proposed local law

- 8.1 The objects of the Proposed Local Law are detailed above.



- 8.2 In 1997, the then Department of Local Government and Planning published separate identification and review guidelines containing a list of prescribed *realistic* alternatives a local government was to assess a proposed local law against.
- 8.3 The Guidelines have since superseded the 1997 guidelines. The Guidelines requires all reasonable alternatives to be examined as part of a review of anti-competitive provisions. Nonetheless, the realistic alternatives identified in the 1997 guidelines remain relevant and of some assistance.
- 8.4 In considering whether there are suitable alternatives to regulating waste management under the Proposed Local Law, the Council has considered:
- (a) the *realistic* alternatives outlined in the 1997 guidelines;
 - (b) the Whitsunday Regional Council Planning Scheme 2017; and
 - (c) the existing available mechanisms for regulation.
- 8.5 The following alternatives to the Proposed Local Law were considered to be *reasonable* alternatives and given further consideration:
- (a) self-regulation;
 - (b) using existing available mechanisms for regulation; and
 - (c) public information and education programs.
- 8.6 After consideration of the identified reasonable alternatives to the Proposed Local Law, the local government determined that they were not practical to achieve the objects of the Proposed Local Law for the reasons explained below.

Self-regulation

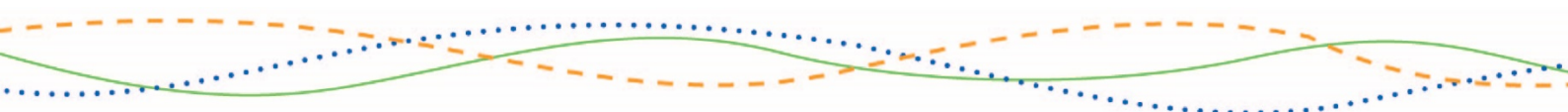
- 8.7 Self-regulation would require households, industry and the service sector to voluntarily make, and comply with, suitable waste management protocols. There would be no means of external enforcement.
- 8.8 Self-regulation is not considered to be a reasonable alternative as there is a high risk that all relevant stakeholders would not reach agreement in relation to suitable waste management protocols which would result in inadequate or no regulation of waste management. Further, there is a high risk that compliance would not be enforced, or would be enforced inconsistently and arbitrarily. It is considered that an overarching regulation is required to ensure effective waste management and that the local government, as an experienced regulator, is best suited to act as an impartial third party when required.

Using existing available mechanisms for regulation

- 8.9 If the Proposed Local Law is not made, the local government would be required to rely upon other existing regulatory provisions (e.g. nuisance under the *Environmental Protection Act 1994 (EPA)* or *Local Law No. 3 (Community & Environmental Management) 2014 (LL3)*).
- 8.10 Even in combination, these existing provisions do not provide a comprehensive regulatory scheme that would enable the local government to effectively manage all waste management issues. Further, the EPA and LL3 only contain general provisions in relation to waste management. It is considered that a local law that specifically deals with all issues that may arise in relation to waste management is more appropriate.

Public information and education programs

- 8.11 Rather than regulating to compel compliance, the local government could seek to achieve compliance by informing and educating people about acceptable waste management practices.



- 8.12 It is considered that this alternative is not appropriate for the same reasons as the alternative of self-regulation, detailed above. Preparing and carrying out the programs would be time and resource exhaustive and would require the creation of a set of standards for waste management. The Proposed Local Law maintains the previous, longstanding standards and provides the local government with the power to effectively enforce the standards when voluntary compliance is not maintained.

9 Identification of impacts

Key stakeholders affected by Local Law No. 7 (Waste Management) 2019

- 9.1 The following stakeholders and broad impacts have been identified as potentially being affected in relation to the creation and implementation of the Proposed Local Law:

Stakeholders	Impact rating and rationale
Whitsunday Regional Council	<p>High positive.</p> <p>The local government will achieve the objectives in the Proposed Local Law and will be capable of amending waste management requirements in response to changes.</p> <p>Low negative.</p> <p>The local government will continue to incur the costs associated with providing waste management services to premises and enforcement of the Proposed Local Law.</p>
State of Queensland	<p>High positive.</p> <p>The State will no longer be responsible for ensuring adequate waste management regulation is in place or making amendments to chapter 5A of the EP Regulation.</p>
Commercial premises where there is waste	<p>Low positive.</p> <p>Commercial premises will maintain their current rights and obligations under the Proposed Local Law without disruptions or changes to existing framework.</p> <p>Low Negative.</p> <p>Commercial premises do not obtain the benefit associated with a competitive tender process for waste collection services or consistency achieved with one waste collector. They must continue to deal with waste in accordance with imposed obligations.</p>

<p>Non-commercial premises where there is waste— existing and potential</p>	<p>Low positive. Non-commercial premises will maintain their current rights and obligations under the Proposed Local Law without disruptions or changes to existing framework.</p> <p>Low negative. Non-commercial premises cannot choose their own service provider to collect waste. They must continue to deal with waste in accordance with imposed obligations.</p>
<p>Peak Business Groups (e.g. Chambers of Commerce and/or Industries) <i>(All groups that support and lobby on behalf of the local government's businesses)</i></p>	<p>Low negative Potential short-term increase in complaints by business about overregulation, and barriers to entry into a market and competition.</p>
<p>Contractors who enter into agreements for the collection of waste at premises or otherwise deal with waste</p>	<p>Low negative. Contractors not selected as a service provider for waste collection services will not be able to service designated areas.</p> <p>Low positive. Contractors may still compete for providing waste collection services at commercial premises. Contractors may still tender for the provision of waste collection services at non-commercial premises with the local government.</p> <p>Other service providers (e.g. bin cleaners) maintain the ability to service all premises to ensure owner/occupiers comply with requirements imposed under the Proposed Local Law.</p>

10 Description of review process

Type of review to be carried out

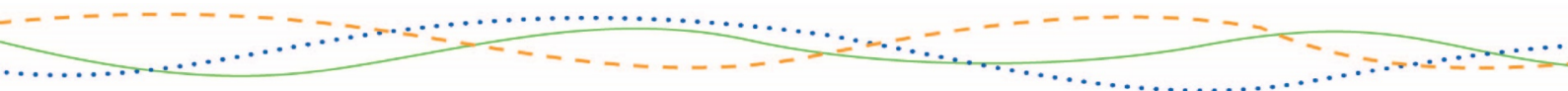
- 10.1 After considering the matters contained in the Guidelines and the Proposed Local Law, the review will be conducted as a minor assessment. The emphasis will be on a qualitative analysis of alternatives, with a monetary valuation of impacts where feasible. The assessment will focus on:
- (a) meaningful consultation with relevant businesses about the anti-competitive provisions;
 - (b) examination of the reasonable alternatives to the anti-competitive provisions;
 - (c) a cost benefit analysis that involves calculating the value of the impacts, both positive and negative, of the anti-competitive provisions; and
 - (d) determining whether, on balance, the anti-competitive provisions should be retained in the Proposed Local Law in the overall public interest.
- 10.2 A minor assessment is considered appropriate because:
- (a) the extent of restriction impacts on few stakeholders/groups;
 - (b) the broad impacts on all stakeholders is, on balance, positive and the negative impacts are low;
 - (c) the complexity of the issues are low with a low degree of uncertainty as to the impact changes have on the stakeholders;
 - (d) the community concern is low.
- 10.3 The review will be conducted in-house.

11 Consultation process to be undertaken

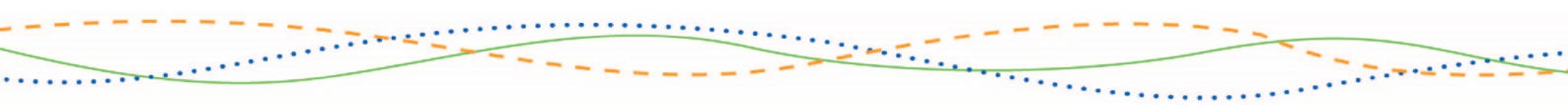
- 11.1 Consultation will be carried out by giving public notice on the local government's website with feedback collected electronically. Hardcopy forms will also be provided at Customer Service Centres.
- 11.2 Meaningful consultation with industry and service providers will be conducted with letters being sent to representative bodies and current service contract provider to obtain specific comments on any potential anti-competitive provisions.

12 Content of public interest test report

- 12.1 The public interest test report will include topics covered in this plan as well as:
- (a) a summary of the consultation process including a list of affected groups consulted and the outcomes of consultation; and
 - (b) a statement of alternatives which are assessed to not be viable; and



- (c) a summary of the positive and negative impacts associated with the alternatives compared to the existing environment; and
- (d) a summary of the net impacts associated with the alternatives; and
- (e) recommendations.



Annexure A

Table of possible anti-competitive provisions

Possible anti-competitive provision	Type of anti-competitive provision	Reason for inclusion as possible anti-competitive provision
Section 5 (Designation of areas) The local government may designate areas within its local government area to conduct general waste or green waste collection and decide the frequency of general waste or green waste collection in the designated areas.	Barriers to entering the market and restricting competition in the market	The provision has the potential to prohibit particular business activities within designated areas and the selected contract service providers for waste collection services are given some advantage over other business operators.
Section 6 (Owner or occupier of relevant premises to supply waste containers) The Owner or occupier is required to have at the premises containers for the storage of waste.		The provision places obligations on the operators of business activities that may impose some hindrance to business operations.
Section 7 (Requirements for storing general waste in waste containers) General waste is to be stored in accordance with prescribed requirements.		The provision places obligations on the operators of business activities that may impose some hindrance to business operations.

<p>Section 8 (General requirements for keeping waste containers at serviced premises)</p> <p>Occupiers of serviced premises must keep waste containers in designated places.</p>		<p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>
<p>Section 9 (Other requirements for storing general waste at particular serviced premises)</p> <p>Persons are required to ensure certain obligations about storing waste at certain premises are met.</p>		<p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>
<p>Section 11 (Depositing or disposal of general waste from premises other than serviced premises)</p> <p>Persons at non-serviced premises may be required to dispose of their waste in certain ways.</p>		<p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>
<p>Section 12 (Requirements for storing industrial waste)</p> <p>Occupiers of relevant premises where there is industrial waste may be required to comply with certain requirements for dealing with industrial waste</p>		<p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>

Section 13 (Requirements to treat industrial waste for disposal) Occupiers of relevant premises where there is industrial waste may be required to treat the waste in accordance with requirements.		The provision places obligations on the operators of business activities that may impose some hindrance to business operations.
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