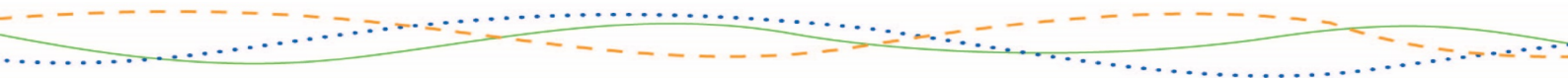




Public Interest Test Plan:
Subordinate Local Law (Amending)
Subordinate Local Law No. 1 (Administration)
2019



Public Interest Test Plan

Subordinate Local Law (Amending) Subordinate Local Law No. 1 (Administration) 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 *Subordinate Local Law (Amending) Subordinate Local Law No. 1 (Administration) 2019* (**Proposed Subordinate 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 Subordinate Local Law is to amend *Subordinate Local Law No. 1 (Administration) 2014* (**SLL1**) to:
 - (a) regulate the commercial use of local government controlled areas and roads;
 - (b) regulate the establishment or occupation of a temporary home;
 - (c) regulate the keeping of animals, specifically the keeping of chickens;
 - (d) regulate the operation of water parks;
 - (e) regulate the operation of temporary entertainment events;
 - (f) make minor amendments to the term of an approval for undertaking regulated activities regarding human remains;
 - (g) make minor changes to amend references to legislation;
 - (h) insert, delete and amend definitions of terms that are necessary for the implementation of the provisions of the local law; and
 - (i) to correct grammatical or typographical errors and other inconsistencies.

3 Details of possible anti-competitive provisions

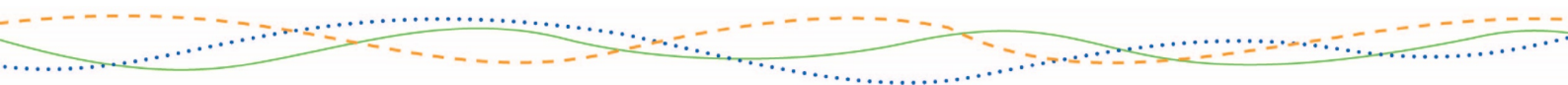
- 3.1 The local government has identified a number of provisions of the Proposed Subordinate Local Law considered to be possibly anti-competitive because the provision is a barrier to entering the market and/or has the potential to restrict competition in the market.
- 3.2 A table identifying the provisions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

4 Assessment of need for Subordinate Local Law (Amending) Subordinate Local Law No. 1 (Administration) 2019

- 4.1 SLL1 was enacted in 2014 to supplement Local Law No. 1 (Administration) 2014 (LL1), which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters. The purpose of SLL1 is to be achieved by providing for:
 - (a) various matters regarding the granting of approvals for prescribed activities; and
 - (b) further specification of the definitions relevant to various prescribed activities.
- 4.2 SLL1 contains a number of provisions which have been determined to be anti-competitive. The impacts of those anti-competitive provisions were subject to public interest tests prior to their enactment in 2014 and it was recommended that each should be retained.
- 4.3 Relevantly, the proposed amendments to SLL1 (**Proposed Amendments**) include:
 - (a) regulate the commercial use of local government controlled areas and roads; and
 - (b) regulate the operation of water parks.

Commercial use of local government controlled areas and roads

- 4.4 SLL1 currently prescribes the commercial use of local government controlled areas and roads as a prescribed activity requiring approval. Schedule 8 prescribes additional criteria to be considered by the local government when considering an application for a permit for the commercial use of a local government controlled area or road, and conditions that will ordinarily be imposed on any approval. Section 3 of the Proposed Subordinate Local Law amends SLL1 by:
 - (a) including a new additional criteria limiting the number of operators of a commercial activity from a vehicle in a particular area of the local government area, to no more than 10 vehicles, with each vehicle selling a different type or category of goods;
 - (b) amending the standard condition for roadside vending prohibiting an approval holder from selling or offering for sale, any goods within 200 metres of a shopping centre or any retail business selling similar goods, to exclude another roadside vendor. In other words, roadside vendors are not prohibited from operating adjacent to another roadside vendor;
 - (c) including a new standard condition for roadside vendors prohibiting them from operating in an area if three roadside vendors, each selling a different type or category of goods, are currently approved by the local government.
- 4.5 The Proposed Amendments in relation to Schedule 1 are likely to have the following effects on competition:



- (a) they may actually increase competition in that they will relax the existing prohibition and allow for the sale, offering or hire of goods where approved by the local government, where SLL4 currently prohibits any sale, offering or hire. However, the Proposed Amendments also have the potential to confer a benefit on the businesses or persons to which the local government issues an approval in a way that provides them with an unfair advantage over those who have not received such an approval; and
- (b) they may decrease competition by introducing a new camping area into the local government area, and provide the local government with an unfair advantage over other caravan park operators required to obtain an approval to operate.

4.6 However, the Proposed Amendments are intended to promote variety and to prevent the saturation of the local government area with the same roadside vendors and goods. While the Proposed Amendments restrict competition, they do so only to an appropriate extent, and will not substantially lessen competition in the local government area. The Proposed Amendments are also intended to protect roadside vendors from unsustainable competition from other operators.

Water parks

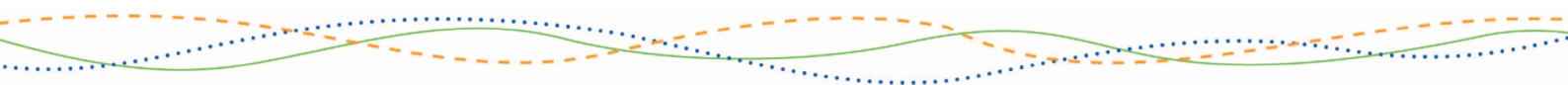
- 4.7 Schedule 16 of SLL1 current regulates the operation of public swimming pools within the local government area. Section 6 of the Proposed Subordinate Local Law amends Schedule 16 of SLL1 to include water parks within the local government area. Both 'public swimming pool' and 'water park' are not defined.
- 4.8 The Proposed Amendments in relation to Schedule 16 of SLL1 are likely to decrease competition by requiring approvals to be obtained before a water park can be operated, and by restricting the operation of water parks to any conditions of approval or applicable minimum standards. Further, these amendments also have the potential to confer a benefit on those business to which the local government issues an approval in a way that provides them with an unfair advantage over those who do not hold such an approval.
- 4.9 However, the Proposed Amendments are necessary to ensure all water parks within the local government area are being operated correctly and in accordance with appropriate standards, and to provide the local government with the power to enforce those conditions or standards. If the Proposed Subordinate Local Law is not made and water parks remain unregulated, there is a high risk of harm to human health or safety, or personal injury, property damage or loss of amenity.

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
- (e) repealing local laws.

6.2 It may be considered that the Proposed Amendments in relation to the regulation of water parks are intended to ensure accepted public health and safety standards are met. However, given some of the Proposed Amendments are only inferentially related to ensuring accepted public health and safety standards are met, the better view is that there is a need to review the anti-competitive provisions of the Proposed Subordinate 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

8.1 The objects of the Proposed Subordinate 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.

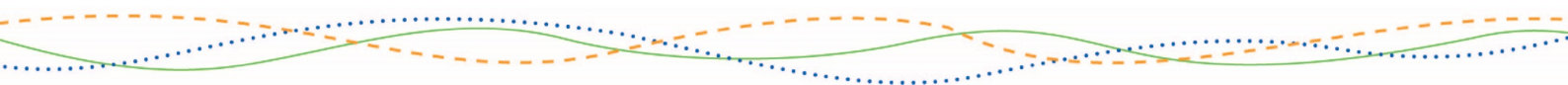
8.4 In considering whether there are suitable alternatives to regulating waste management under the Proposed Local Law, the Council has considered:

- (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) co-regulation;
- (b) self-regulation;
- (c) negative licensing; and
- (d) public information and education programs.

8.6 After consideration of the identified reasonable alternatives to the Proposed Subordinate Local Law, the local government determined that they were not practical to achieve the objects of the Proposed Subordinate Local Law for the reasons explained below.



Co-regulation

- 8.7 Co-regulation involves the local government consulting and cooperating with affected parties such as businesses and relevant chambers of commerce to draft suitable rules and protocols in relation to the carrying out of licence regulated activities. The local government would act as a 'Senior Partner' in relation to product/service providers and consumers. Given those directly affected by the rules assisted in drafting them, it is likely that the chances of compliance are increased.
- 8.8 Co-regulation however is not considered to be a reasonable alternative as there is a high risk that agreement will not be reached in relation to suitable rules and protocols for each of the prescribed activities. It is considered that an overarching regulation would be more streamlined and efficient.

Self regulation

- 8.9 Self-regulation would require industry or service sectors to voluntarily make, and comply with, suitable rules and protocols in relation to both prescribed activities. There would be no means of external enforcement.
- 8.10 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 rules and protocols which would result in inadequate or no regulation. 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 and appropriate rules and protocols are implemented and that the local government, as an experienced regulator, is best suited to act as an impartial third party when required.

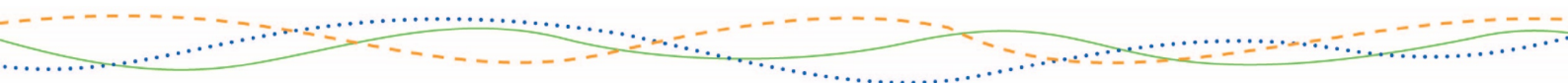
Negative licensing

- 8.11 Under a negative licensing system, operators are presumed to have the right to be in business and prepared to 'play by the rules', provided they know what the rules are. No permits are issued and no fees are paid. Participants are fined heavily and immediately for breaches of the rules, and complaints are responded to quickly.
- 8.12 A change to negative licensing is not considered to be a reasonable alternative as it does not coincide with the purpose of LL1 or SLL1 and would substantially increase the burden on the local government to enforce the requirements of the subordinate local law, which cost may ultimately be passed on to ratepayers.

9 Identification of impacts

Key stakeholders affected by Subordinate Local Law (Amending) Subordinate Local Law No. 1 (Administration) 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 Subordinate Local Law:



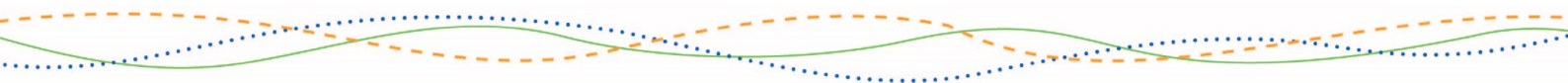
Stakeholders	Impact rating and rationale
Whitsunday Regional Council	<p>High positive. The local government will achieve the objectives in the Proposed Subordinate Local Law.</p> <p>Low negative. The local government will continue to incur the costs associated with enforcement of the Proposed Subordinate Local Law.</p> <p>Increased responsibilities (i.e. enforcement) as a result of regulation of new activities and inclusion of new standard conditions for certain activities.</p>
Existing and potential businesses	<p>Low positive. Consistent standards for operation of particular licence regulated activities</p> <p>Low negative. Increase in responsibility for businesses to comply with standards in relation to licence regulated activities with minimum standards.</p> <p>Moderate negative Regulation of activities previously unregulated results in increased responsibility and costs to businesses to apply for approval and ensure compliance with conditions.</p>

General public	<p>Low positive</p> <p>Introduction of regulation for particular activities previously unregulated, lowering the risk to the health and safety of the general public.</p> <p>Increased regulation in the types and variety of goods available to consumers.</p>
<p>Peak Business Groups</p> <p>(e.g. Chambers of Commerce and/or Industries)</p> <p><i>(All groups that support and lobby on behalf of the local government's businesses)</i></p>	<p>Low negative</p> <p>Potential short-term increase in complaints by business about overregulation, and barriers to entry into a market and competition.</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.

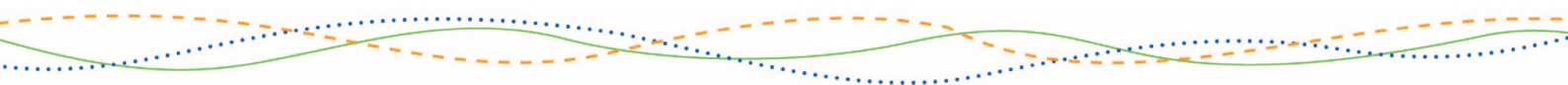
10.3 The review will be conducted in-house.

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

Possibly anti-competitive provision	Type of anti-competitive provision	Reason for inclusion as possible anti-competitive provision
Section 3 (Amendment of sch 8 (Commercial use of local government controlled areas and roads))	Barriers to entering the market and restricting competition in the market	The provision places obligations on the operators of business activities that may impose some hindrance to business operations.
Section 6 (Amendment of sch 16 (Operation of public swimming pools))		The provision has the potential to prohibit particular business activities and approval holders are given some advantage over other business operators.