

PUBLIC INTEREST TEST PLAN

SUBORDINATE LOCAL LAW NO. 1.4 (INSTALLATION OF ADVERTISING DEVICES) 2017

INTRODUCTION

As part of the National Competition Policy reforms, Council is conducting a public interest test on possible anti-competitive provisions identified in the subordinate local law identified in Schedule 1. The public interest test will be conducted against the principles and objectives set by the Competition Principles Agreement (CPA).

Under clause 5(1) of the CPA, all governments agreed to the principle that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

In reviewing legislation that restricts competition, clause 5(9) of the CPA requires that the review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

Without limiting the matters to be taken into account in a review Clause 1(3) of the CPA sets out matters which should be taken into account, as follows:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

This public interest test plan has been prepared in accordance with guidelines issued by the Queensland Department of Local Government and called up by regulation under the *Local Government Act 2009* to provide a basis for community consultation. The plan details activities to be conducted during the test and identifies the depth of analysis to be carried out on the possible anti-competitive provisions.

PURPOSE OF THE SUBORDINATE LOCAL LAW

The purpose of the proposed subordinate local law identified in Schedule 1 is specified in the subordinate local law copy of which is available for inspection with this public interest test plan.

POSSIBLE ANTI-COMPETITIVE PROVISIONS

The possible anti-competitive provisions in the subordinate local laws identified in schedule 1 are also identified in Schedule 1.

CURRENT ENVIRONMENT

Installation of Advertising Devices — See Schedule 2

TYPE OF ASSESSMENT AND LEVEL OF RESOURCES REQUIRED

The assessment of the anti-competitive provisions in the subordinate local law will be conducted as a minor review. The emphasis will be on qualitative analysis of alternatives with key impacts expressed in monetary terms where data is available.

The review will be conducted in-house by a team of officers.

EXTENT OF CONSULTATION TO BE CONDUCTED

Consultation will be conducted by giving public notice of the review in the local newspaper and inviting submissions. Public notices will also be posted on all public notice boards in the Council Chambers. The public notice will also advise that the consultation on anti-competitive provisions is being conducted with the public consultation for the proposed subordinate local law.

The public interest test plan will be open to inspection at the Council's public office and available for purchase.

TIME-FRAME FOR CONDUCTING THE PUBLIC INTEREST TEST

Commence public interest test	2 nd May 2017
Estimate of time for completing public interest test	6 weeks including consultation period
Consultation period	3 weeks (21 days)
Target date for presenting report to local government	The Council meeting to be convened by Council approximately 2 months after the commencement of the public interest test.

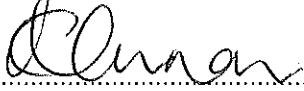
CONTENT OF THE PUBLIC INTEREST TEST REPORT

The public interest test report will provide:

- A summary of the consultation process including a list of affected groups consulted and the outcomes of consultation
- A statement of alternatives which are assessed to be not viable
- A summary of the positive and negative impacts associated with the alternatives compared to the existing environment
- A summary of the net impacts (positive or negative) associated with the alternatives
- Recommendations

PUBLIC INTEREST TEST PLAN APPROVAL

Approval of this public interest test plan will be by resolution of Council. Council will not delegate any decision in respect of recommendations contained in the actual public interest test report.

Prepared by: 
Corporate Governance and Policy Officer.

Date: 13 / 4 /2017.

Schedule 1 Identification of Subordinate Local Law

Subordinate Local Law No. 1.4 (Installation of Advertising Devices) 2017

Section 5(2), (5), (6) and (7) and 6

Schedule 2 - Current Environment – Installation of Advertising Devices

CURRENT ENVIRONMENT

Local Law No. 1 (Administration) 2015 identifies, as a prescribed activity, the installation of advertising devices. A person must not undertake a prescribed activity without a current approval granted by Council.

However, Council may, by subordinate local law, declare that the requirement for an approval for a prescribed activity does not apply in specified circumstances.

The legal and procedural framework for the undertaking of prescribed activities in *Local Law No. 1 (Administration) 2015* is supplemented by *Subordinate Local Law No. 1.4 (Installation of Advertising Devices) 2015* which, for example, prescribes the circumstances in which the requirement for an approval for the prescribed activity of the installation of advertising devices is not required.

Council regulates the installation, erection and display of various categories of advertising device under its planning scheme. However, the provisions about the installation, erection and display of advertising devices are to be removed from the planning scheme of Council. As a consequence, Council is revising the content of its subordinate local law about the installation of advertising devices and has decided to:

- repeal *Subordinate Local Law No. 1.4 (Installation of Advertising Devices) 2015*; and
- make *Subordinate Local Law No. 1.4 (Installation of Advertising Devices) 2017*.

The business environment has failed to operate competitively by not including in the product/service cost, the impact that signs have on public safety and on the local amenity/environment. To ensure business includes these costs, as part of the produce/service cost, the making of the subordinate local law is proposed. The objective is to ensure the minimum standard the community has regarding safety and visual pollution is maintained. Without the restriction, costs would be imposed on the community when essentially they should be included as part of the original transaction between business and consumers. The costs potentially imposed are a decrease in public safety and an increase in visual pollution.

Public safety is maintained by:

- regulating the structural integrity of advertising signs by specifying materials, dimensions, maintenance, positioning and construction; and
- ensuring structures do not obstruct or detract vehicular and pedestrian traffic.

Amenity standards are maintained by:

- prescribing the dimensions of the signs to ensure they bear a reasonable relationship with surrounding buildings thereby ensuring they are not dominating and oppressive and do not unreasonably obstruct existing views; and
- the advertisement is consistent, in colour, character and appearance with the environment.

The anti-competitive provisions restricting the exhibition of signs are generally restrictive and impact on all businesses. As a result no particular product will be identified and Council will refer to the market in general.

CONFIRM IDENTIFIED PROVISIONS ARE ANTI-COMPETITIVE

The sections are confirmed as anti-competitive and no errors in analysis were made in the identification stage.

REALISTIC REGULATORY AND NON-REGULATORY ALTERNATIVES TO THE PROPOSED SUBORDINATE LOCAL LAW

The objective of regulating the prescribed activity is to ensure an adequate standard of safety and environmental protection is maintained by regulating the construction and quality of materials and the positioning of signs. The subordinate local law (together with the authorising local law) achieve this using a combination of conventional and negative licensing. Some form of government intervention is required to ensure that signs displayed meet the standards expected by the community and in meeting these standards that the onus of cost is on business and not the community.

The market is unable to self regulate or impose restrictions due to lack of solidarity within the market (there is no specific industry) and no common business theme or interest to create dependence between businesses.

By meeting the objective detailed above, the proposed subordinate local law does not induce strongly anti-competitive conduct in the market place or confer monopoly power to a business. Considering the need to monitor the exhibition of signs for quality and environmental reasons, other types of intervention which are considered realistic are:

- **Negative licensing** was considered to be a viable alternative at this stage. Negative licensing is a system whereby participants can enter the market if they meet the standards or "rules" set for the particular business activity. There is no requirement to first obtain a permit or similar approval. There is, therefore, no barrier to entry to the market. Under a negative licensing regime, the local law would need to be changed to remove the requirement to hold a licence and prescribe a range of generic standards or "rules". Of necessity, the standards will need to be output standards as opposed to specifying how to meet the output. The local law could retain offences and penalties for non-compliance.

Under the pure model of negative licensing, no fees are paid and no permits are issued. However, the penalties for non-compliance are high and should be applied immediately. Some uncertainty exists as to whether large penalties can be obtained due to the inability to set minimum penalties in local laws (only maximum penalties can be set in local laws) and the tendency of judges to apply small fines, particularly for first offences.

- **Community empowerment** - Local government would act as facilitator rather than regulator of signs. No regulation would exist for exhibition of signs with the exception of signs on public land or in areas covered by State legislation. Information guidelines would be produced for businesses when producing signs, but these would not be enforced.

In assessing the viability of the realistic alternatives, Council considers community empowerment to be non-viable. The community empowerment alternative fails to provide voluntary compliance by business to a minimum level of environmental and public safety standards. Over time, the level of information and interest in maintaining these standards is expected to erode. Council considers the benefits enjoyed by ensuring some level of environmental and quality standard far outweigh the benefits given to business under a system of voluntary compliance.

KEY STAKEHOLDERS AFFECTED BY THE CURRENT SITUATION AND BY A MOVE TO ALTERNATIVE ARRANGEMENTS

The following stakeholders have been identified:

Stakeholders/broad impacts	Impact rating and rationale
Local Government Council is impacted because of the change in its activities which would result under the new	Moderate - Only requires implementation of new changes to local law. But will have an impact on

Stakeholders/broad impacts	Impact rating and rationale
regulatory arrangement.	staff duties.
Business - Existing and Potential Existing and potential business are impacted because of changes in regulation on exhibiting signs to advertise business product and services.	Medium - The number of businesses dependent on this type of advertising is high. The effect on each business is low.
Consumers Consumers are impacted because of changes in the product/service choice available resulting from increased competition and level of advertising of business product.	Low - Consumers are impacted from changes to price.
Home owners Home owners are impacted because of the potential to decrease the monetary and aesthetic value of their homes.	Low - Only impacts on a small number of total home owners.
Conservationists Conservationists have an interest in any changes to environmental protection laws.	Low - Only impacts on how environmental standards are enforced not the level of enforcement.