

Ipswich

City Council

Public Interest Test Plan:

Local Law (Amending) Local Law No. 3 (Commercial Licensing) 2019

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1 Introduction

- 1.1 In accordance with its obligations under section 38 of the *Local Government Act 2009* (Qld), Ipswich City Council (**Council**) is conducting a public interest test on possible anti-competitive provisions identified in proposed *Local Law (Amending) Local Law No. 3 (Commercial Licensing) 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 amend *Local Law No. 3 (Commercial Licensing) 2013* (**LL3**) to:
- (a) prescribe minimum standards for carrying out licence regulated activities;
 - (b) prescribe the material required to accompany an application for a licence;
 - (c) prescribe the term of an approval for a licence regulated activity;
 - (d) regulate conditions of approvals for licence regulated activities;
 - (e) regulate the amendment, renewal or transfer of a licence;
 - (f) regulate the suspension or cancellation of a licence;
 - (g) prescribe licence regulated activities;
 - (h) make minor changes to amend references to legislation;
 - (i) insert, delete and amend definitions of terms that are necessary for the implementation of the provisions of the local law; and
 - (j) ensure consistency with State legislation, the local government's administrative procedures and the local government's other local laws and 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 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 Local Law (Amending) Local Law No. 3 (Commercial Licensing) 2019

- 4.1 LL3 was enacted in 2013 to prescribe licence regulated activities and regulate those activities to ensure they:
- (a) do not cause:
 - (i) harm to human health or safety, or personal injury;
 - (ii) property damage or a loss of amenity;
 - (iii) environmental harm or environmental nuisance; and
 - (b) comply with relevant Local Government Acts that regulate the licence regulated activity.
- 4.2 The object of LL3 is achieved by prohibiting the carrying out of licence regulated activities without an approval and by implementing an inspection, monitoring and enforcement program.
- 4.3 LL3 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 2013 and it was recommended that each should be retained.
- 4.4 Relevantly, the proposed amendments to LL3 (**Proposed Amendments**) include the:
- (a) prescription of minimum standards for carrying out licence regulated activities;
 - (b) prescription of particular material required to accompany an application for a licence;
 - (c) prescription of the term of an approval for a licence regulated activity; and
 - (d) inclusion of new, or amendment of existing, licence regulated activities.

Minimum standards

- 4.5 Section 5(4) and (5) of LL3 currently enable the local government to prescribe, by subordinate local law, minimum standards that must be complied with when carrying out a licence regulated activity. Section 5(6) makes it an offence to carry out a licence regulated activity other than in accordance with any relevant minimum standards.
- 4.6 Section 9 of the Proposed Local Law amends LL3 to relocate section 5(4)-(6) to a new section 5A (Minimum standards for licence regulated activity). The amendment is merely to simplify the provisions and improve intelligibility, and the new section 5A is otherwise the same as the existing provisions. The process for prescribing minimum standards is not identified.

Accordingly, the local government will have a broad discretion in relation to the minimum standards that are imposed.

- 4.7 Section 9 of the Proposed Local Law places an obligation on business operators by requiring them to comply with minimum standards. However, given section 9 of the Proposed Local Law simply relocates a provision that has been in existence since at least 2013, it is not considered that the provision will further impact upon competition.

Application for a licence

- 4.8 Section 6(1)(c)(iii) of LL3 currently requires an application for a licence for a licence regulated activity to be accompanied by evidence or confirmation that all required approvals under a Local Government Act have been obtained. Section 10 of the Proposed Local Law amends LL3 to require any application for a licence to be accompanied by:

- (a) proof that the applicant holds any required, separate approval;
- (b) proof that an application for any separate approval has been made and advice on the status of the application; or
- (c) advice on when an application for any separate approval will be made.

- 4.9 Section 10 of the Proposed Local Law is intended to make the application process more flexible and accessible by allowing those who have not yet obtain any required, separate approval, to still apply for a licence under LL3. The Proposed Amendments in relation to Section 10 may therefore increase competition, as it will relax the requirements for making an application for a licence. This flexibility, however, does not negate the fact that all required approvals must be obtained before the licence regulated activity can be carried out.

Term of a licence

- 4.10 Section 8(1) of LL3 currently provides that a licence granted by the local government is for a term extending from the date of issue until the thirtieth day of the following June, unless otherwise specified in the licence or a subordinate local law. Further, section 12 of LL3 provides the local government with the power to cancel or suspend a licence. Accordingly, section 13 of the Proposed Local Law amends LL3 to clarify that a licence remains in force from the date of issue until the thirtieth day of the following June, unless otherwise specified in the licence or a subordinate local law, *or unless earlier cancelled or suspended*.

- 4.11 The existing provision restricts competition in that it limits the time an approval holder can carry out a licence regulated activity, and requires an approval holder to make an application to renew the licence. Given section 13 of the Proposed Local Law simplifies and clarifies the existing provision, it is not considered to further impact competition.

Licence regulated activities

- 4.12 Schedule 2 of LL3 currently prescribes a list of licence regulated activities and includes a definition of each of those activities. Section 27 of the Proposed Local Law amends LL3 to:

- (a) include a new licence regulated activity for pet daycare;
- (b) amend the definition of 'commercial activity on a local government controlled area or road' to include the hire of bicycles, scooters or other personal mobility devices or rideables; and
- (c) amend the licence regulated activity 'entertainment venue' to restrict the need for a licence for such an activity to those venues identified in a subordinate local law.

- 4.13 In relation to the inclusion of pet daycare as a licence regulated activity and the amendment of commercial activity on a local government controlled area or road, these activities are not currently regulated in the local government area. The proposed local law is necessary to ensure these activities are being carried out properly and in accordance with appropriate standards. If the Proposed Local Law is not made and these activities remain unregulated, there is a high risk of harm to human health or safety, or personal injury, property damage or loss of amenity, and harm to those animals that attend pet daycare.
- 4.14 The Proposed Amendments in relation to pet daycare and commercial activity on a local government controlled area or road are likely to decrease competition by requiring approvals to be obtained before the activities can be carried out, and by restricting those activities 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.
- 4.15 In relation to the amendment to 'entertainment venue', this will actually increase competition as the new definition excludes venues that previously required approval. There is however, still a requirement for those venues identified in a subordinate local law to obtain an approval. Accordingly, this amendment has the potential to confer a benefit on the businesses which no longer require approval, and those businesses to which the local government provides its written authorisation in a way that provides them with an unfair advantage over those who require an approval and do not have one.

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 or to combat the spread of pests and disease, 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 or combating the spread of pests and disease, 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 the activities under the Proposed Local Law, Council has considered:
- (a) the *realistic* alternatives outlined in the 1997 guidelines;
 - (b) the Ipswich Planning Scheme; 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, Council determined that they were not practical to achieve the objects of the Proposed 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 licence regulated activity. Further, co-regulation would require the local government to consult and cooperate with a substantial number of affected parties given the large number of licence

regulated 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 each licence regulated activity. 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 Whilst a change to negative licensing may be capable of achieving the stated objectives of LL3, it would substantially increase the burden on the local government to enforce the requirements of the local law, which cost may ultimately be passed on to ratepayers.

9 Identification of impacts

Key stakeholders affected by Local Law (Amending) Local Law No. 3 (Commercial Licensing) 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 (<i>and approximate number in class</i>)	Impact rating and rationale
Ipswich City Council	<p>High positive. The local government will achieve the objectives in the Proposed Local Law and will be capable of amending minimum standards or conditions of approval in response to changes.</p> <p>Low negative. The local government will continue to incur the costs associated with enforcement of the Proposed Local Law.</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>
Consumers	<p>Low positive. Increased or introduction of regulation in relation to particular licence regulated activities to protect consumers.</p>
General public	<p>Low positive Introduction of regulation for particular activities previously unregulated, lowering the risk to the health and safety of the general public.</p>
<p>Peak Business Groups (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 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
<p>Section 9 (Insertion of new s 5A)</p> <p>The local government may, by subordinate local law, prescribe minimum standards that must be complied with in carrying out a licence regulated activity.</p>	<p>Barriers to entering the market and restricting competition in the market</p>	<p>The provision places obligations on the operators of business activities to comply with particular standards, that may impose some hindrance to business operators.</p>
<p>Section 10 (Application for a licence)</p> <p>In respect of any separate approval relating to the proposal that is required under another law – proof that the applicant holds the approval, has made an application for the approval and the status of the application or advice on when an application will be made.</p>		<p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>
<p>Section 13 (Amendment of s 8 (Term of a licence))</p> <p>Unless sooner cancelled or suspended, a licence remains in force from the date of issue until the thirtieth day of the following June unless otherwise specified in the licence or a subordinate local law.</p>		<p>The provision:</p> <ul style="list-style-type: none"> (a) places obligations on the operators of business activities that may impose some hindrance to business operations; and (b) has the potential to prohibit particular business activities and approval holders are given some advantage over other business operators.

Section 27 (Amendment of sch 2 (Licence regulated activities))		The provision has the potential to prohibit particular business activities and approval holders are given some advantage over other business operators.
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