

# **Ipswich**

City Council

Public Interest Test Plan:  
Subordinate Local Law (Amending)  
Subordinate Local Law No. 3.1 (Commercial  
Licensing) 2019

# Public Interest Test Plan

## Subordinate Local Law (Amending) Subordinate Local Law No. 3.1 (Commercial Licensing) 2019

### 1 Introduction

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- 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 *Subordinate Local Law (Amending) Subordinate Local Law No. 3.1 (Commercial Licensing) 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 Subordinate Local Law

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- 2.1 The object of the Proposed Subordinate Local Law is to amend *Subordinate Local Law No. 3.1 (Commercial Licensing) 2013* (**SLL3.1**) to:
- (a) regulate temporary entertainment events and entertainment venues;
  - (b) regulate street pole banners;
  - (c) prescribe the material and information required to accompany an application for a licence;
  - (d) prescribe minimum standards for particular licence regulated activities;
  - (e) prescribe activities exempt from requiring a licence;
  - (f) prescribe standard conditions of approvals for licence regulated activities;
  - (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) 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**

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- 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. 3.1 (Commercial Licensing) 2019**

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- 4.1 SLL3.1 was enacted in 2013 to assist in the implementation of *Local Law No. 3 (Commercial Licensing) 2013 (LL3)*. The object of SLL3.1 is achieved by prescribing matters necessary to implement a commercial licensing system in the local government area, including prescribing when a licence is required, the material and information required to accompany an application for a licence, and the standard conditions or minimal standards for licences for particular licence regulated activities.
- 4.2 SLL3.1 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.
- 4.3 Relevantly, the proposed amendments to SLL3.1 (**Proposed Amendments**) include the:
- (a) prescription of standard conditions and minimum standards for carrying out licence regulated activities;
  - (b) prescription of particular material and information required to accompany an application for a licence;
  - (c) prescription of activities exempted from requiring a licence;
  - (d) regulation of street pole banners; and
  - (e) amendments to the regulation of temporary entertainment events and entertainment venues.

#### **Amendment of Schedule 2**

- 4.4 Schedule 2 of SLL3.1 currently prescribes particular minimum standards for temporary advertising devices and election signs. Section 32 of the Proposed Subordinate Local Law amends SLL3.1 by:
- (a) including a new minimum standard in relation to the removal of Real Estate Signs;
  - (b) including minimum standards for street pole banners;
  - (c) streamlining the minimum standards for temporary advertising devices other than those temporary advertising devices for which a specific category is prescribed; and
  - (d) including minimum standards for election signs.
- 4.5 SLL3.1 currently prescribes minimum standards for real estate signs, however there is no prescription in relation to the removal of a sign following sale of the relevant property. Accordingly, section 32 of the Proposed Local Law includes a new minimum standard for real

estate signs, requiring removal within 14 days of the property settling or being leased. The requirement is considered anti-competitive in that it places an obligation on operators that may cause some hindrance. However, without the Proposed Amendments, there is nothing regulating the removal of real estate signs and signs may be left on properties for extended periods of time and may deteriorate, become damaged, or fall over. This is likely to create a risk to human health and safety, and negatively impact on the amenity of the surrounding area.

- 4.6 The Proposed Subordinate Local Law also includes 'street pole banners' as a new temporary advertising device. Section 31 of the Proposed Subordinate Local Law amends SLL3.1 to include a definition of 'street pole banner' while section 32 prescribes minimum standards for the erection of a street pole banner. The Proposed Amendments impose obligations on operators that may cause some hindrance however, without the Proposed Amendments, street pole banners would remain unregulated and without appropriate standards, may cause harm to human health or safety, or negatively impact the amenity of the surrounding area.
- 4.7 The Proposed Subordinate Local Law also amends SLL3.1 to streamline the minimum standards for temporary advertising devices other than those temporary advertising devices for which a specific category is prescribed. The minimum standards currently prescribed in SLL3.1 are repetitive and the Proposed Amendments remove this repetition. Given this, it is considered that the Proposed Amendments will not further impact competition in this respect.
- 4.8 SLL3.1 currently requires a permit for elections signs. The Proposed Subordinate Local Law amends SLL3.1 by removing the requirement to obtain a permit for an election sign. Instead, operators will simply need to comply with the minimum standards for election signs in section 32 of the Proposed Subordinate Local Law. The minimum standards for election signs have been relocated from Schedule 3 of SLL3.1 where they were previously prescribed as standard conditions for a permit for an election sign. Accordingly, the minimum standards for an election sign are not new, and the Proposed Amendments actually increase competition by removing the requirement to obtain a permit from the local government. Nevertheless, operators are still required to comply with the minimum standards and this may place a hindrance on some operators.

### **Amendment of Schedule 3**

- 4.9 Schedule 3 of SLL3.1 currently prescribes documents and material that must accompany, and standard conditions for, specified licence regulated activities. Section 33 of the Proposed Subordinate Local Law amends Schedule 3 of SLL3.1 by including new documents that are to accompany any application for particular licence regulated activities, and including new standard conditions that must apply to any licence granted by the local government. Section 33 also prescribes required documents and information and standard conditions for the new licence regulated activity – pet daycare.
- 4.10 The Proposed Amendments are likely to impact competition by imposing obligations on applicants or approval holders that may cause some hindrance or by restricting the operation of the licence regulated activity. However, the Proposed Amendments will ensure the local government is provided with all material and information necessary to decide an application for a licence, and to ensure the licence regulated activity is carried out safely, in accordance with current standards and as approved by the local government. Without the Proposed Amendments, there is a risk that the local government will not be provided with all necessary material or information to decide whether it is appropriate to grant a licence, and the unregulated operation of a licence regulated activity is a risk to human health and safety.

### **Prescription of exempted activities**

- 4.11 SLL3.1 currently prescribes activities exempt from requiring a licence. Section 34 of the Proposed Subordinate Local Law amends SLL3.1 to include the following as being exempt from requiring a licence:
- (a) entertainment venue – where the entertainment venue is determined by an authorised person to be 'low risk'. 'Low risk' is also defined to mean '*a venue where amplified music is not the primary activity inside the building or other circumstances where an authorised person believes there is no risk to the surrounding environment as a result of the venue*'; and
  - (b) temporary entertainment event – where the proposed number of attendees is less than 500 people.
- 4.12 The local government has determined that these activities are unlikely to have a significant impact on the local government area or residents of the local government area, and as such, do not require a licence. Accordingly, the Proposed Amendments actually increase competition by excluding an activity that previously required an approval. However, the Proposed Amendments also have the potential to confer a benefit on the businesses which do not require approval in a way that provides them with an unfair advantage over those who do require an approval.

### **Regulation of temporary entertainment events**

- 4.13 Schedule 3 of SLL3.1 currently prescribes the documents and information required to accompany an application for, and the standard conditions that must be imposed on any licence for, a temporary entertainment event. The Proposed Subordinate Local Law amends SLL3.1 by creating a new Schedule 6 which:
- (a) breaks down the activity of 'temporary entertainment event' into three categories (low, medium and high) depending on the impact of the event. The impact of the event is determined by:
    - (i) the number of attendees;
    - (ii) the time and duration of the event;
    - (iii) the number of food stalls and/or amusement devices;
    - (iv) the level of sound amplification;
    - (v) the infrastructure footprint; and
    - (vi) the local government infrastructure to be impacted,
  - (b) prescribes the required documents and information, and standard conditions for a licence for a temporary entertainment event; and
  - (c) prescribes the minimum time for making an application and additional documents to be provided with an application for particular categories of temporary entertainment events.
- 4.14 The required documents and information, and the standard conditions for a temporary entertainment event have simply been relocated from Schedule 2 of SLL3.1. There are minimal amendments to these requirements.

- 4.15 The Proposed Amendments are necessary to ensure that appropriate and specific conditions are imposed in relation to temporary entertainment events based on the likely impact of the event on the local government area or its residents. This enables the local government to better regulate those events that are considered to be medium or high impact events to better protect the local government area and its residents. The Proposed Amendments may actually increase competition in that those events determined to have a lower impact will be subject to less regulation. However, the Proposed Amendments also have the potential to confer a benefit on those lower impact events in a way that provides them with an unfair advantage over those events which have a higher impact and therefore are subject to greater regulation.

### **Regulation of entertainment venues**

- 4.16 Schedule 3 of SLL3.1 currently prescribes the documents and information required to accompany an application for, and the standard conditions that must be imposed on any licence for, an entertainment venue. The Proposed Subordinate Local Law amends SLL3.1 by creating a new Schedule 7 which:
- (a) prescribes the entertainment venues that require a licence;
  - (b) prescribes the required documents and information, and standard conditions for a licence for an entertainment venue.
- 4.17 Currently, the definition of 'entertainment venue' in LL3 is very broad and includes '*any place open to the public for entertainment whether or not a charge for admission is made and whether or not the person who controls admission reserves a right to refuse admission but does not include a shop*'. The Proposed Amendments reduce the number of venues requiring a licence by specifying particular venues which require one.
- 4.18 Accordingly, the Proposed Amendments will actually increase competition as the venues which require approval have been significantly reduced. There is however, still a requirement for those venues identified in the Proposed Subordinate Local Law to obtain an approval. Accordingly, this amendment has the potential to confer a benefit on the venues which no longer require approval, and those venues 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. Further, the Proposed Amendments also impose greater obligations than previously imposed on those venues which require an approval, which may cause some hindrance to those venues.

## **5 Confirm sections are anti-competitive**

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- 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**

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- 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 Subordinate Local Law indicate that the Proposed Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Local Law.

## **7 Preliminary Assessment**

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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 Subordinate Local Law**

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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 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) co-regulation;
- (b) self-regulation; and
- (c) negative licensing.

- 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**

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### **Key stakeholders affected by Subordinate Local Law (Amending) Subordinate Local Law No. 3.1 (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 Subordinate Local Law:



<b>Stakeholders</b>	<b>Impact rating and rationale</b>
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>Decreased regulation in relation to particular licence regulated activities no longer requiring a licence or only required to comply with minimum standards.</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**

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### **Type of review to be carried out**

- 10.1 After considering the matters contained in the Guidelines and the Proposed Subordinate 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 Subordinate 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**

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- 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**

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- 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

<b>Possibly anti-competitive provision</b>	<b>Type of anti-competitive provision</b>	<b>Reason for inclusion as possible anti-competitive provision</b>
<p><b>Section 25 (Insertion of new s 29A)</b></p> <p>For the purposes of Schedule 1, definition temporary entertainment event, of the authorising local law, the events listed in part 1 of schedule 6 require a licence.</p>	<p>Barriers to entering the market and restricting competition in the market</p>	<p>The provision has the potential to prohibit particular business activities and approval holders are given some benefit over other business operators.</p>
<p><b>Section 26 (Replacement of s 30 (Application for a licence))</b></p> <p>A licence is not required for a temporary entertainment event of the category specified in column 1 of schedule 4 in the circumstances specified in column 2 of schedule 4.</p>		<p>The provision has the potential to prohibit particular business activities and those business activities exempted from requiring an approval are given some benefit over other bussiness activities that require approval.</p>
<p><b>Section 28 (Insertion of new s 31A)</b></p> <p>A licence is not required for an entertainment venue of the category specified in column 1 of schedule 4 in the circumstances specified in column 2 of schedule 4.</p>		<p>The provision has the potential to prohibit particular business activities and those business activities exempted from requiring approval are given some advantage over other business activities that require approval.</p>

<p><b>Section 32 (Amendment of sch 2 (Minimum standards for temporary advertising devices and election signs))</b></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><b>Section 33 (Amendment of sch 3 (Matters affecting certain licences))</b></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><b>Section 34 (Amendment of sch 4 (Exceptions))</b></p>		<p>The provision has the potential to prohibit particular business activities and those business activities exempted from requiring approval are given some advantage over other business activities that require approval.</p>

<b>Section 35 (Insertion of new sch 6)</b>		<p>The provision:</p> <p>(a) has the potential to prohibit particular business activities and those business activities exempted from requiring approval are given some advantage over other business activities that require approval; and</p> <p>(b) places obligations on the operators of business activities to comply with particular standards, that may impose some hindrance to business operators.</p>
<b>Section 36 (Insertion of new sch 7)</b>		<p>The provision:</p> <p>(a) has the potential to prohibit particular business activities and those business activities exempted from requiring approval are given some advantage over other business activities that require approval; and</p> <p>(b) places obligations on the operators of business activities to comply with particular standards, that may impose some hindrance to business operators.</p>