

## **Public Interest Test Plan - Local Law No. 7 (Waste Management) 2018**

### **Introduction**

The Townsville City Council (**Council**) is conducting a public interest test on possible anti-competitive provisions identified in the proposed *Local Law No. 7 (Waste Management) 2018 (the Local Law)*.

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 (**the Guidelines**), issued by the Queensland Department of Infrastructure, Local Government and Planning. The Guidelines set out the criteria for identifying possible anti-competitive provisions and the process for conducting reviews of those provisions.

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.

This 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.

## **ANALYSIS OF PROPOSED LOCAL LAW NO. 7 (WASTE MANAGEMENT) 2018**

### **Objective**

The object of the 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 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.

The proposed local law seeks to preserve the current approach to waste management by replacing the expiring clauses in chapter 5A of the *Environmental Protection Regulation 2008 (the EP Regulation)* and section 7 in part 2A of the *Waste Reduction and Recycling Regulation 2011 (the WRR Regulation)*.

Chapter 5A of the *EP Regulation* provides Council with the ability to take action for matters relating to:

- (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.

Chapter 5A provisions also address the following matters 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.

Part 2A of the *WRR Regulation* provides Council 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.

## Details of possible anti-competitive provisions

Each of the following listed provisions is considered to be possibly *anti-competitive* because the provision is a barrier to entering the market and has the potential to restrict competition in the market.

The provisions and the possibly anti-competitive outcome of those provisions are:

| <b>Provision and consequence of regulation</b>   | <b>Possible anti-competitive outcome</b>  |
|--|---|
| <p><b>Section 5 (Designation of areas)</b></p> <p>The Council 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.</p> | <p>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.</p> |
| <p><b>Section 6 (Owner or occupier of relevant premises to supply waste containers)</b></p> <p>The Owner or occupier is required to have at the premises containers for the storage of waste.</p>  | <p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>  |
| <p><b>Section 7 (Requirements for storing general waste in waste containers)</b></p> <p>General waste is to be stored in accordance with prescribed requirements.</p>  | <p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p>  |
| <p><b>Section 8 (General requirements for keeping waste containers at serviced premises)</b></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><b>Section 9 (Other requirements for storing general waste at particular serviced premises)</b></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>  |

| Provision and consequence of regulation  | Possible anti-competitive outcome  |
|--|--|
| <p><b>Section 11 (Depositing or disposal of general waste from premises other than serviced premises)</b></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><b>Section 12 (Requirements for storing industrial waste)</b></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> |
| <p><b>Section 13 (Requirements to treat industrial waste for disposal)</b></p> <p>Occupiers of relevant premises where there is industrial waste may be required to treat the waste in accordance with requirements.</p>         | <p>The provision places obligations on the operators of business activities that may impose some hindrance to business operations.</p> |

### **ASSESSMENT OF NEED FOR LOCAL LAW NO. 7 (WASTE MANAGEMENT) 2018**

The Local Law aims to give Council the ability to protect public health, safety and amenity in Townsville by effectively continuing the regulation of the storage, servicing, removal, disposal and treatment of waste.

Section 7 of the *WRR Regulation* enables Council to designate areas within its local government area in which Council may conduct general waste or green waste collection and to decide the frequency of collection in those designated areas.

Council 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.

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.

Council does not require commercial premises to use Council's waste or recycling services and they may make arrangements with private suppliers.

The Local Law maintains the arrangements for waste collection that are currently in place.

Without the Local Law to replace the expiring provisions in chapter 5A of the *EP Regulation* and part 2A of the *WRR 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.

The Council has responsibilities to ensure the good rule of the Townsville local government area and to reduce risks for residents when possible. To achieve a consistent approach to waste management in Townsville, Council will ensure necessary controls are in place for the effective management of waste.

The Local Law applies only to areas designated by Council in which it may conduct general waste or green waste collection and decide the frequency of collection (see section 5 of the Local Law). This replaces section 7 of the WRR Regulation. The ability to designate waste collection areas is an essential and critical part of how Council regulates waste management in the local government area.

The Council provides waste collection services to more than 76,000 households in the Townsville local government area. As this represents more than 98.95 percent of total residents, it is likely that the economies of scale of having the service provided by the Council achieves better outcomes for residents in terms protection for the environment and public health and amenity.

If the provisions of the *EP Regulation* and the *WRR Regulation* were to expire and there were no local law to replace them then:

- the 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
- 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.

Council recognises that the Local Law contains provisions that may be a barrier to entry to a market and a restriction on the conduct of business activities. The Council believes that those potential impacts must be viewed in the context that:

- the Local Law simply aims to retain the current arrangements; and
- the potentially *anti-competitive* provisions have existed within those current arrangements for more than 20 years.

Under the Local Law, Council will prescribe a number of requirements for the storing, keeping, collection, treatment and disposal of waste at relevant premises and serviced premises. Council will also prescribe requirements for dealing with waste at waste facilities.

The extent to which the Local Law may impact upon competition with the Townsville local government area will be dictated by the extent to which Council, under section 5:

- Designates areas in which Council may conduct general waste or green waste collection; and
- Decides the frequency of general waste or green waste collection in those designated areas.

Within the designated collection areas the identified potentially anti-competitive provisions regulate some business activity, which regulation may have anti-competitive outcomes.

The 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 Council appointed waste service provider. Those potential impacts will not be new, having existed throughout the period of the currency of chapter 5A of the *EP Regulation* and part 2A of the *WRR Regulation*.

Under both the current regulatory scheme and the Local Law there are opportunities to enter a competitive tender process to win Council waste collection contracts.

Further, because the Local Law does not propose to disturb current 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.

As State laws about environmental management and protection will take precedence over the Local Law, the application of the Local Law - and accordingly the impact of the potentially anti-competitive provisions – is reduced to the extent of any conflict between the State Laws and the Local Law (for example, where environmentally relevant activities are carried out).

Without the Local Law in place, Council would be required to rely upon other mechanisms - 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.

Without an effective method of controlling the storage and collection of waste, environmental health and safety risks would be imposed on the Townsville community.

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

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.

### **Determination of exclusions**

Under the Guidelines, the following types of local laws are excluded from the review of anti-competitive provisions:

- local laws regulating the behaviour of individuals;
- local laws dealing solely with internal administrative procedures of a local government;
- local laws intended as legitimate measures to combat the spread of pests and disease;
- local laws to ensure accepted public health and safety standards are met; and
- repealing local laws.

It may be considered that the objects of the Local Law show that the Local Law is directed at ensuring accepted public health and safety standards are met, and that as a result the Local Law is excluded from the necessity to review anti-competitive provisions. Because there are significant aspects of the Local Law that are only inferentially related to maintaining public health and safety standards, the better view is that there is a need to review the anti-competitive provisions of the Local Law.

## **Preliminary Assessment**

A preliminary assessment has been conducted in accordance with the Guidelines. Council is not presently satisfied that there will not be any significant impacts from the possible anti-competitive provisions. Accordingly, the review process will be conducted in accordance with the Guidelines.

## **Realistic regulatory and non-regulatory alternatives to the proposed local law**

The objects of the Local Law are specified above.

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.

The publication of the Guidelines superseded the 1997 guidelines so that now all *reasonable* alternatives must be examined as part of the review of the anti-competitive provisions.

In considering whether there are suitable alternatives to regulating using the proposed Local Law, the Council has considered:

- the *realistic* alternatives outlined in the 1997 guidelines;
- the Townsville City Plan; and
- the existing available mechanisms for regulation.

The following alternatives to the Local Law were considered to be *reasonable* alternatives and given further consideration:

- self-regulation;
- using existing available mechanisms for regulation; and
- public information and education programs.

After consideration of the identified reasonable alternatives to the Local Law, it was determined that they were not practical to achieve the objects of the Local Law for the following reasons:

- **Self-regulation.**

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.

The numerous and highly likely failure-points of this approach – the almost certainty of a less-than-complete acceptance and adherence being foremost – led Council to conclude that this approach was neither a realistic nor a reasonable alternative.

- **Using existing available mechanisms for regulation**

If the Local Law is not made, after the (imminent) expiry of chapter 5A of the *EP Regulation* and part 2A of the *WRR Regulation* Council would be obliged to rely upon other already existing regulatory provisions (e.g. nuisance under the *Environmental Protection Act 1994* or *Local Law No. 3 (Community and Environmental Management) 2011*).

Even taken together, these existing provisions do not provide a comprehensive regulatory scheme that would enable the Council to deal effectively with all waste management issues.

- **Public information and education programs**

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

This alternative was viewed as having essentially identical failure points to the self-regulation proposal.

No considered alternative was viewed as being likely to provide the outcomes achievable under the Local Law, noting that those outcomes have for very many years been achieved through the (expiring) State laws.

The Local Law maintains the current set of longstanding controls with the added benefit of Council being able to effectively enforce the standards when voluntary compliance is not maintained.

### Identification of impacts

#### Key stakeholders affected by *Local Law No. 7 (Waste Management) 2018*

The following stakeholders and broad impacts have been identified as potentially being affected in relation to the creation and implementation of *Local Law No. 7 (Waste Management) 2018*—

| <b>Stakeholders</b><br><i>(and approximate number in class)</i>  | <b>Impact rating and rationale</b>  |
|--|---|
| Townsville City Council<br><br><i>(One)</i>  | High positive.<br>The local government will achieve the objectives in the Local Law. Will be capable of amending waste management requirements in response to changes.<br><br>Low negative.<br>The local government continues to incur the costs associated with providing waste management services to premises and enforcement of the Local Law provisions.   |
| State of Queensland<br><br><i>(One)</i>  | High positive.<br>The State will no longer have responsibilities of ensuring adequate waste management regulation is in place or making amendments to chapter 5A.   |
| Commercial premises where there is waste<br><br><i>(The total number of businesses in the Townsville local government area is approximately 3,476)</i> | Low positive.<br>Commercial premises will maintain their current rights and obligations under the Local Law without disruptions or changes to existing framework.<br><br>Low Negative.<br>Commercial premises do not obtain the benefit associated with a competitive tender process for waste collection services or consistency achieved with one waste collector.<br>Must continue to deal with waste in accordance with imposed |

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|  | obligations.   |
| <p>Non-commercial premises where there is waste—existing and potential</p> <p><i>(This figure was not able to be separately quantified and is included in the numbers above)</i></p>                                 | <p>Low positive.<br/>Non-commercial premises will maintain their current rights and obligations under the Local Law without disruptions or changes to existing framework.</p> <p>Low negative.<br/>Non-commercial premises cannot choose their own service provider to collect waste. Must continue to deal with waste in accordance with imposed obligations.</p>   |
| <p>Townsville's 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 Townsville businesses)</i></p>                                   | <p>Low negative<br/>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><i>(Approximately four large Service providers in the Townsville local government area)</i></p> | <p>Low negative.<br/>Contractors not selected as a service provider for waste collection services will not be able to service designated areas.</p> <p>Low positive.<br/>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 Local Law.</p> |

## Description of review process

### Type of review to be carried out

After considering the matters contained in the Guidelines and the particular case of the 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:

- meaningful consultation with relevant businesses about the anti-competitive provisions;
- examination of the reasonable alternatives to the anti-competitive provisions;
- a cost benefit analysis that involves calculating the value of the impacts, both positive

- and native, of the anti-competitive provisions; and
- determining whether on balance, the anti-competitive provisions should be retained in the proposed local law in the overall public interest.

A minor assessment is considered appropriate because:

- the extent of restriction impacts on few stakeholders/groups;
- the broad impacts on all stakeholders is, on balance, positive and the negative impacts are low;
- the complexity of the issues are low with a low degree of uncertainty as to the impact changes have on the stakeholders;
- the community concern is low.

The review will be conducted in-house.

### **Consultation process to be undertaken**

Consultation will be conducted by giving public notice on the local government's website with feedback collected electronically. Hardcopy forms will also be provided at Customer Service Centres.

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.

### **Content of public interest test report**

The public interest test report will include topics covered in this plan as well as—

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