



## Report on Public Interest Review:

**Proposed Amendment Local Law No. 2 (Miscellaneous)  
2019; and**

**Proposed Amendment Subordinate Local Law No. 3  
(Miscellaneous) 2019**

October 2019



## 1. Purpose of this document

Before making a local law, local governments are required to review any provisions that restrict competition to ensure that they are in the public interest. At its meeting on 22 August 2019, the Sunshine Coast Council proposed to make Amendment Local Law No. 2 (Miscellaneous) 2019 and Amendment Subordinate Local Law No. 3 (Miscellaneous) 2019. These proposed laws contain provisions with the potential to restrict competition (i.e. they may be 'anti-competitive provisions'), so the Council conducted a public interest review during August 2019 and September 2019 in accordance with State Government requirements. The purpose of this document is to report on the outcomes of the public interest review and to outline the Council's decision about whether to proceed with the law.

## 2. Background to public interest reviews

### Why are public interest reviews required?

In April 1995, all Australian governments committed to the National Competition Policy (NCP) to establish a national approach to achieve greater economic efficiency and to improve the overall competitiveness of the Australian economy. One of the key principles of the NCP was a commitment that all governments, including local governments, would not make laws that restricted competition unless it could be demonstrated that:

- the benefits of the restriction to the community as a whole outweighed the costs, and
- the objectives of the law could only be achieved by restricting competition.

To give effect to this principle, governments agreed to review all laws that restrict competition. For local governments, this requirement is enshrined in section 38 of the *Local Government Act 2009*, which states that a Council must not make a local law that contains an anti-competitive provision unless it has complied with the procedures prescribed by the State for the review of anti-competitive provisions. These procedures are contained in the *National Competition Policy – Guidelines for conducting reviews on anti-competitive provisions in local laws*, Version 1, made by the State Government (the 'Public Interest Review guidelines').

### What is an anti-competitive provision?

An anti-competitive provision is a provision that the local government identifies as creating a barrier to:

- (a) entry to a market; or
- (b) competition within a market.

### Creating barriers to entering a market

The public interest review guidelines describe this type of anti-competitive provision in a local law as either prohibiting particular business activities or placing obligations on the operators of business activities.

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### Restricting competition in the market

The public interest review guidelines describe this type of anti-competitive provision as giving some benefit or imposing some hindrance on particular business operators.

### What issues are considered in a public interest review?

The key objective of the NCP is to develop a more open and integrated Australian market that limits anti-competitive conduct and removes the special advantages previously enjoyed by government business activities, where it is in the public interest to do so. While NCP is designed to result in better use of resources and substantial and ongoing benefits to the community, the introduction of increased levels of competition will not always deliver the best overall result for the community. Increased competition can bring benefits to the community, but these need to be balanced against the various social, environmental, public amenity and public health imperatives that underpin a local government's regulatory role. A public interest review is not a review of economic considerations alone.

The types of issues considered in a public interest review are:

- what are the objectives of the laws containing the anti-competitive provisions?
- how will the laws impact on business or restrict competition?
- what are the costs and benefits of the restrictions to Council, to businesses and to the community as a whole?
- are there any alternative means of achieving the objectives without the anti-competitive provisions?

In reviewing the anti-competitive provisions, Council is required to consider the following matters:

- 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.

In conducting the review, Council has had regard to the Queensland Treasury's guidelines for conducting public benefit tests for legislation. The current review follows the approach taken for a 'minor review' under those guidelines, whereby the focus is on qualitative data rather than attempting to value impacts in dollar terms. The emphasis in such reviews is on fully identifying and weighing up the positive or negative impacts of the anti-competitive provisions on affected stakeholders.

### 3. Possible anti-competitive provisions in the local law

Analysis of the draft amendment local law and subordinate local law identified the following provisions that are possibly anti-competitive.

**Table 1 - Anti-competitive provisions in proposed local law and subordinate local law amendments (grouped according to subject-matter)**

New provision	Effect of provision	Possible anti-competitive impact
<b>Topic: Building site delivery noise and building work noise</b>		
s8 Amendment Local Law No. 2 (Miscellaneous) 2019	Creates prescribed activities for 'causing building site delivery noise' and 'causing building work noise'.  The section amends Schedules 1 and 2 of <i>Local Law No. 1 (Administration) 2011</i> . Part 2 of that local law provides that undertaking a prescribed activity without approval is an offence and contains general provisions for the granting of approvals by the Council (as well as authorising the making of subordinate local laws about prescribed activities).  The <i>Environmental Protection Act 1994</i> (Qld) prohibits the emission of audible noise from building work on a business day or Saturday before 6.30 am or after 6.30 pm or on any other day at any time, but allows local governments to prescribe an alternative noise standard in a local law. These amendments will allow the making of noise on building sites outside of these hours under the conditions of an approval issued by Council.	These amendments will allow businesses to obtain a permit to make noise that would otherwise not be permissible. The general impact on business is therefore positive. However, the amendments will establish a regulatory framework (an approval system) for these circumstances that businesses will need to comply with. It could also potentially represent a barrier to other businesses seeking to enter a relevant market (e.g. for construction or the supply or transportation of building materials).
s7 Amendment Subordinate Local Law No. 3 (Miscellaneous) 2019	Inserts Schedule 5A 'Causing building site delivery noise' and Schedule 5B 'Causing building site noise' into <i>Subordinate Local Law No. 1 (Administration) 2016</i> . These schedules detail the processes for applying for relevant approvals by the Council, the criteria for granting approvals, conditions that will ordinarily be imposed on approvals and the term of approvals.	
<b>Topic: Amplified music venue within a special entertainment precinct</b>		
s8 Amendment Local Law No. 2 (Miscellaneous) 2019	Creates a prescribed activity for 'operation of an amplified music venue within a special entertainment precinct'.  The section amends Schedules 1 and 2 of <i>Local Law No. 1 (Administration) 2011</i> . Part 2 of that local law provides that undertaking a prescribed activity without approval is an offence and contains general provisions for the granting of approvals by the Council (as well as authorising the making of subordinate local laws about prescribed activities).  Note: Where a local government designates a 'special entertainment precinct' under its planning scheme, the <i>Local Government Act 2009</i> (Qld) provides that amplified music played at premises in the area is regulated by a local law rather than the <i>Liquor Act 1992</i> (Qld), which is the usual legislation regulating noise from amplified music played at licensed premises.	The amendments will enable approval to be obtained by a business to emit amplified music noise in certain areas. The general effect on businesses is therefore potentially liberalising.  However, in respect of this new permit opportunity for businesses emitting amplified music, the amendments will impose obligations that businesses will need to comply with. It could also potentially represent a barrier to other businesses seeking to enter the market (i.e. to
s9 Amendment Subordinate	Inserts Schedule 10A 'Operation of an amplified music venue within a special entertainment precinct' into <i>Subordinate Local Law No. 1 (Administration) 2016</i> . The	

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Local Law No. 3 (Miscellaneous) 2019	schedule specifies one relevant activity that does not require an approval by the Council and details the process for applying for an approval as otherwise required, the criteria for granting an approval, conditions that must or will ordinarily be imposed on an approval and the term of an approval.	establish an amplified music venue in a relevant precinct).
Topic: <b>Temporary placement of a shipping container</b>		
s8 Amendment Local Law No. 2 (Miscellaneous) 2019	<p>Creates a prescribed activity for 'temporary placement of a shipping container'. The activity is defined as: "the placement of a shipping container on a residential property for a purpose other than temporary use as a place of residence, in circumstances that do not constitute building work under the <i>Building Act 1975</i>."</p> <p>The section amends Schedules 1 and 2 of <i>Local Law No. 1 (Administration) 2011</i>. Part 2 of that local law provides that undertaking a prescribed activity without approval is an offence and contains general provisions for the granting of approvals by the Council (as well as authorising the making of subordinate local laws about prescribed activities).</p> <p>Note: The permanent placement of a shipping container is regulated under the <i>Building Act 1975</i> (Qld) and the Sunshine Coast Planning Scheme 2014 and use of a shipping container as a temporary home would constitute the prescribed activity of 'establishment or occupation of a temporary home' in <i>Subordinate Local Law No. 1 (Administration) 2016</i>, Schedule 7. However, there is currently no express regulation of the activity addressed by the proposed amendment.</p>	Although the principal intent is to regulate temporary placement of shipping containers on residential and not commercial properties, these amendments have the potential to impact on businesses conducted from residential premises. The imposition of restrictions on the temporary placement of a shipping container for certain purposes and the need for an approval to undertake the prescribed activity may impact the conduct of a business activity as additional costs may be incurred. The requirement for an approval could also represent a barrier to businesses entering a relevant market.
s10 Amendment Subordinate Local Law No. 3 (Miscellaneous) 2019	Inserts Schedule 11A 'Temporary placement of a shipping container' into <i>Subordinate Local Law No. 1 (Administration) 2016</i> . The schedule specifies relevant activities that do not require approval by the Council and details the process for applying for an approval as otherwise required, the criteria for granting an approval, conditions that will ordinarily be imposed on an approval and the term of an approval.	
Topic: <b>Parking permits</b>		
s11 Amendment Subordinate Local Law No. 3 (Miscellaneous) 2019	<p>Makes changes in relation to the prescribed activity of 'parking contrary to an indication on an official traffic sign regulating parking by time or payment of a fee' by way of the categories of parking permit that may be issued by the Council (parking permits constituting an approval for the prescribed activity). The category of 'business parking permit' is removed and the category of 'health and community services permit' is created.</p> <p>Amends <i>Subordinate Local Law No. 1 (Administration) 2016</i>, Schedule 16.</p>	Changes to the availability of certain parking permits may impact the conduct of a business activity as additional costs may be incurred in order to access parking.
s25 Amendment Subordinate Local Law No. 3	Changes the categories of persons who may be issued with a parking permit, reflecting the changes made by s11, above, and in addition:	

(Miscellaneous) 2019	<ul style="list-style-type: none"> <li>narrows the categories of persons who may be issued with a work zone permit or a prepaid parking permit; and</li> <li>provides that a health and community services permit may be issued to a registered health practitioner or a registered charity.</li> </ul> <p>Amends <i>Subordinate Local Law No.5 (Parking) 2011</i>, Schedule 3.</p>	
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#### 4. Anti-competitive provisions excluded from the review

Under the Public Interest Review guidelines, the Council is not required to undertake a public interest review of any anti-competitive provisions that the Council considers, following a preliminary assessment, to have no significant impacts.

In accordance with the guidelines, Council excluded from the review a number of provisions with potentially anti-competitive effects on multiple grounds for exclusion provided for in the Public Interest Review guidelines. Further information on the excluded provisions, which relate predominantly to animal management and, in one instance, permitted recreational activities, and the grounds for exclusion, can be found in the *Public Interest Review Consultation Paper: Proposed Amendment Local Law No. 2 (Miscellaneous) 2019 and the Proposed Amendment Subordinate Local Law No. 3 (2019), August 2019*, which can be viewed online at: <https://haveyoursay.sunshinecoast.qld.gov.au/48772/documents/113759>

#### 5. Results of consultation process

Following Council's resolution to make the amendment local law on 22 August 2019, a public consultation process for the public interest review was undertaken from 23 August to 23 September 2019, a period of 32 days. The consultation about the anti-competitive provisions was run concurrently with the general community consultation about the proposed local law.

Council published a notice on its website announcing the public interest review and made a Public Interest Review Consultation Paper available for inspection and download. Council also published a newspaper advertisement on 23 August 2019 with information about the public interest review.

No submissions were received in relation to the public interest review.

#### 6. Cost-benefit analysis of the anti-competitive provisions

##### Object of and rationale for the provisions

The overall object of the proposed amendments to the local laws and subordinate local laws, including the identified anti-competitive provisions, is to ensure the local regulatory regime in the Sunshine Coast Council area remains appropriate, responsive and current. Although the amendments are broad-ranging, their specific objects are typically related to protecting community health, safety and amenity and preventing environmental harm.

The rationale for each of the four groups of potentially anti-competitive provisions identified above in **Table 1** is outlined below.

The provisions relating to *building site delivery noise* and *building work noise* will allow the Council to grant approvals for the temporary causing of noise outside of the hours permitted under State

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legislation, in exceptional circumstances or where environmental or public safety reasons apply. The proposed amendments in respect of *building work noise* will take advantage of a power in State legislation for local governments to prescribe a noise standard under a local law<sup>1</sup>. Although State legislation does not specifically regulate *building site delivery noise* through a specific noise standard, it is open to Council to do so. Given the near identical noise issues arising from build work and building site deliveries out of hours, Council has chosen to regulate them in the same way through a permit system.

The provisions relating to the *operation of an amplified music venue within a special entertainment precinct* will allow the Council to regulate noise emitted from a music venue within a special entertainment precinct (as designated under the Sunshine Coast Planning Scheme 2014). The proposed local laws will set a maximum noise level that venues may emit without Council approval, as well as providing for Council to approve higher noise levels up to default maximum levels or in accordance with an approved noise management plan. The local laws, which will override noise restrictions imposed under State liquor licensing laws, comply with a requirement under State legislation for a local government which creates a special entertainment precinct (which Council is in the process of establishing at Nambour) to also make a local law to regulate noise from amplified music premises within the precinct by way of a permit.<sup>2</sup>

The provisions relating to the *temporary placement of a shipping container* establish this activity as a prescribed activity that is regulated by an approval process. This will apply to temporary placement of shipping containers on residential properties for a purpose other than temporary use as a place of residence, addressing a gap in current State and Council regulatory regimes. The proposed law will specify both the circumstances in which this activity will be permitted without an approval by Council and allow for applications to be made for an approval in other instances. This will enable the Council to manage any impacts on amenity arising from the increasing prevalence of shipping containers on residential properties.

The provisions that make changes to local laws governing *parking permits* seek to achieve a more targeted approach to the parking needs of various categories of road users and are designed to better manage the demand for on-street parking by ensuring regular turnover of parking spaces. A key objective is to improve opportunities for customer access to businesses in high density areas. Specifically, the changes that may impact on business activities are as follows:

- the category of 'works zone permit' is changed from 'commercial, construction or fundraising purposes' to 'construction or maintenance purposes'; and
- the category of 'business parking permit' (which currently applies for 'commercial or fundraising purposes') is replaced with a 'health and community services permit' (for registered health practitioners and registered charities).

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<sup>1</sup> The *Environmental Protection Act 1994* (Part 3B Offences relating to noise standards) establishes a default noise standard which prohibits audible noise from building works during specified times. However, it allows local government to prescribe an alternative noise standard in a local law.

<sup>2</sup> Under the *Local Government Act 2009*, section 264.

## Restrictions on competition

The anti-competitive provisions under review have the potential to restrict competition as described in **Table 1**. In summary, the effects fall into two broad categories outlined below:

### Prescribed activities

Four new prescribed activities are proposed, with the effect that they will generally only be permitted with a permit issued by Council, although some activities are permitted as of right in certain circumstances. The potential anti-competitive effects arise because:

- costs may be incurred by businesses in applying for a permit and complying with the conditions of a permit, and this has potential to restrict entry to a market by businesses;
- competition within a market may be reduced because non-permit holders will be restricted in the activities they can undertake as compared with permit holders; and
- in relation to the activity of *temporary placement of a shipping container*, although the activity only relates to residential land, it is possible that restrictions will impact home-based businesses wishing to utilise shipping containers for business related purposes.

### Parking permits

Small changes to certain categories of parking permits, particularly the removal of the general category of permit for 'business' purposes in favour of 'health and community services' have potential to negatively impact some businesses by restricting access to permits.

## Reasonable alternatives to the anti-competitive provisions

The Public Interest Review Consultation Paper (referred to in section 5 above) examined reasonable alternatives to achieving the objectives of the anti-competitive provisions and concluded that there was limited scope for their application. The alternatives identified and their applicability to each of the four groups of anti-competitive provisions are assessed in more detail below.

### Planning scheme

This option involves not adopting the relevant provisions in the proposed local law but, rather, utilising the Sunshine Coast Planning Scheme 2014 to achieve the objectives of the provisions.

This approach is not applicable to the proposed prescribed activities of *building work noise* and *operation of an amplified music venue within a special entertainment area* because, as explained above, these are matters currently regulated under State legislation which expressly provides that local governments may make local laws if they wish to govern these matters (effectively assuming jurisdiction from the State). The Council could not choose to regulate these matters under its planning scheme instead of making a local law as the relevant State Acts specify that a local government must make a local law in order to regulate these matters<sup>3</sup>.

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<sup>3</sup> Refer to notes 1 and 2

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The situation is slightly different for the proposed prescribed activity of *building site delivery noise*. A local government can use its general powers to make a local law governing this activity<sup>4</sup> and, in such a case, the relevant State legislation (*Environmental Protection Act 1994*) specifically provides that the local law will take precedence.<sup>5</sup> Alternatively, Council could, in theory, choose to regulate this activity under the Planning Scheme instead. However, this would not a reasonable option for the Council for a number of reasons:

- the Planning Scheme is not a practical vehicle for regulating an activity such as this by way of creating an offence and a permit system;
- if a local law offence was not created, the Environmental Protection Act would continue to apply (whether or not the Planning Scheme regulated the matter); and
- it is logical to regulate building site delivery noise in the same way as building work noise, as illustrated by the Schedules for these activities in the proposed local law, which largely mirror each other.

It would, however, be possible to regulate the proposed prescribed activity of *temporary placement of a shipping container* through the Planning Scheme. A detailed cost-benefit analysis of that option has therefore been undertaken in **Table 2**, in the section, 'Conclusion about viable options and cost-benefits' below.

In relation to the final category of potentially anti-competitive laws – the proposed minor changes to *parking permits* – the Planning Scheme is not a suitable regulatory option. While the creation of parking zones could conceivably be a planning matter, a parking permit system is not. In any case, such a system is already established in local laws and the proposed changes merely amend the existing provisions.

#### Minimal, complaint-responsive regulation

This alternative approach would involve a modified local law that, rather than imposing detailed obligations and requiring approvals, which could have anti-competitive effects, would incorporate minimum standards for the desired behaviours. Council would not proactively enforce the provisions, but respond only where a need had been established, such as through a pattern of complaints about a particular behaviour.

This option is not applicable to the proposed prescribed activities of *building work noise* or *operation of an amplified music venue within a special entertainment area*, for the reasons outlined previously – that is, the State legislation currently covering these issues specifically requires that if a local government wishes to assume jurisdiction over the issue, it must do so through a local law, and the nature of the local law is also stipulated. The situation is very similar for the regulation of *building site delivery noise*. If specific behaviour (which would constitute an 'environmental

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<sup>4</sup> Using its general local law-making powers under the the *Local Government Act 1993*, Chapter 3.

<sup>5</sup> *Environmental Protection Act 1994*, Schedule 1, Part 1, section 3.

nuisance' under the Environmental Protection Act) is not expressly prohibited or permitted under a local law, the State legislation will continue to apply.<sup>6</sup>

This option could possibly be invoked for the activity of *temporary placement of a shipping container* and, again, a further analysis of this option is conducted alongside the others for this activity in **Table 2** below.

In relation to *parking permits*, complaint-responsive regulation is not a viable option. Parking regulations require clear rules that are proactively enforced.

### No regulation

Under this approach there would be no local law but, rather, Council would issue information or guidelines, without regulatory force, to raise awareness and encourage behavioural change.

This is not an option for Council to regulate *amplified music venue noise, building work noise or building site delivery noise*, because if Council chose not to make a local law to regulate these matters, the relevant State laws will simply continue to regulate the activity.

However, this option is a potential alternative to the local law about *temporary placement of a shipping container*. This is discussed in Table 2 below.

### Conclusions about viable options and cost-benefits

Based on the above analysis, the four courses of action considered do not present as feasible alternative means for achieving the objectives of any of the four groups of proposed local law amendments other than those for the temporary placement of a shipping container. For each of the other matters, local laws are either essential if local government is to be involved in regulating these matters or, in the case of parking, essential to amend existing provisions.

Because the underlying object of the provisions is for Council to regulate these matters, the only further issue to be addressed therefore is whether any anti-competitive effect they have may be justified by their benefits to businesses and the community. This further question is now addressed.

Regulation of the prescribed activities of *building work noise* and *operation of an amplified music venue within a special entertainment area* creates opportunities and advantages for businesses through liberalising restrictions in State legislation. In the case of building work noise, operators in the construction industry will have an opportunity, where exceptional circumstances apply, to work outside of hours currently permissible under State legislation. In the case of a music venue in a special entertainment precinct, there is an opportunity for fewer restrictions to apply to the playing of amplified music than currently apply under State legislation. Although it will be necessary to obtain a permit from Council and comply with any permit conditions, establishing a permit system will allow the Council to exercise discretion in the particular circumstances in a way that blanket

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<sup>6</sup> See Note 5 above.

regulation, such as that currently in State legislation, cannot achieve. This allows Council to weigh the interests of all those likely to be affected by an activity if a permit is granted and to impose conditions that will minimise inconvenience and protect relevant interests. Although the addition to local laws of further prescribed activities and the costs of complying with those laws, generally on account of the need to secure Council approvals, may present as impediments to business activity which could be seen as anti-competitive, Council considers that the benefits to be derived from effectively liberalising existing restrictions in State legislation will outweigh any negative impacts.

The same reasoning applies to regulation of the prescribed activity of *building site delivery noise*. The only difference is that this is not an activity currently explicitly regulated (through a 'noise standard' in legislation), although noise of this type that could potentially constitute an offence (as an 'environmental nuisance') under State legislation. The regulation of this activity in a local law, effectively negating the offence created in State legislation, will provide an opportunity for business operators in the construction or transportation industries to obtain a permit to conduct the activity where exceptional circumstances apply. Council also considers that this represents a benefit to businesses which would outweigh any associated costs.

In respect of *parking permits*, the Council considers that the minor adjustments made to the categories of parking for which permits may be issued are required to better meet the demand for parking, particularly to ensure that health practitioners and providers of community services have access to parking to deliver these important services. It is therefore also considered that the benefits that better managed on-street parking is expected to deliver will outweigh any negative impacts.

In relation to the *temporary placement of a shipping container*, a more detailed assessment of the viability of each alternative course of action for achieving the objective of that prescribed activity is undertaken in **Table 2** below, with reference to the impacts on three groups of stakeholders: residents seeking to place shipping containers on their property for business related purposes; the general community, including those who may be affected by the activity such as adjoining property owners; and the Council.

The assessment of impacts on stakeholders as *low*, *moderate* or *high* is based on a qualitative analysis taking into account factors such as:

- the likelihood of the impact occurring as described;
- the magnitude of the monetary implications of the impact, if this is able to be estimated;
- the likely breadth of the impact – for example, the proportion of stakeholders within the group that could be affected;
- the significance of the impact to the stakeholder group's core values and aspirations;
- the time profile of the impact (short, medium or long-term).

For each option, an 'overall assessment' of the impact on a stakeholder is arrived at by reference to the number and significance of the positive and negative impacts on the stakeholder for that option. For example, several low or moderate positive impacts balanced against only one low negative impact results in an overall assessment of 'moderate positive'.

Table 2 – Assessment of proposed local law option and reasonable alternatives to regulate temporary placement of shipping containers

OPTIONS	Impact on stakeholders (costs and benefits)		
	Residents seeking to place shipping containers on their property for business-related activities	General community (including residents of properties adjoining those with shipping containers)	Council
<p><b>A. Proceed with proposed local law</b> (create prescribed activity)</p> <p><b>NET POSITIVE IMPACT</b> (This is the recommended option)</p>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Clarity for residents about the scope for temporarily siting a shipping container on their properties as of right and provision of an option to seek Council approval for the activity in other circumstances (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Residents wanting to use a shipping container for longer than the exempt period will need to obtain an approval, which will incur some cost and time (moderate negative)</li> <li>Residents are subject to local law regulation and liable to compliance action and penalties for breaches (moderate negative)</li> </ol>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Improvements in amenity and aesthetics in the Sunshine Coast Council area as a result of the regulation of this activity (moderate positive)</li> <li>Clarity about requirements will provide certainty about when neighbours or residents can submit feedback/complaints to Council about non-compliance (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Increase in the overall regulatory burden in the Council area (low negative)</li> </ol>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Clarity for Council officers and the community about the requirements for temporarily siting shipping containers as of right (high positive)</li> <li>Scope for Council to exercise discretion to accommodate particular circumstances (high positive)</li> <li>An efficient and effective regulatory mechanism exists to ensure compliance with the requirements (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Possible criticism of Council for restricting the use of shipping containers which are being used to support home-based businesses (moderate negative)</li> </ol>
<p><b>B. No local law</b> (rely on planning scheme instead)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Planning scheme provides clarity about requirements for the activity (moderate positive)</li> <li>Absence of a local law reduces the likelihood of fast and decisive enforcement action being taken for non-compliance with planning provisions (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>The time lag in amending the planning scheme (to clarify its application) means the current regulatory gap regarding this activity remains, potentially impeding business planning and operations (moderate negative)</li> <li>The flexibility afforded by the opportunity to seek a permit from Council to allow the activity may not be</li> </ol>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Improvements in amenity and aesthetics in the Sunshine Coast Council area as a result of the regulation of this activity (moderate positive)</li> <li>Scope to have input into changes to planning scheme during consultations and clarity of requirements provides a basis to provide feedback/complaints to Council (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Amenity and aesthetics could be adversely affected before changes to the planning scheme are able to progress and be implemented, and the prospect of impending regulation may encourage a proliferation of</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>The planning scheme provides clarity about requirements for the activity (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Amending the planning scheme is a complex exercise and reliance on planning provisions is less efficient and effective than local law regulation (moderate negative)</li> <li>Risk of lower rate of compliance with planning requirements than a local law because of slower response mechanisms for breaches, and regulatory failure would be difficult for Council to remedy, given the legal processes, time and costs associated with securing the removal of illegal containers (moderate negative)</li> </ol>

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	Impact on stakeholders (costs and benefits)		
OPTIONS	Residents seeking to place shipping containers on their property for business-related activities	General community (including residents of properties adjoining those with shipping containers)	Council
	<p>available under the planning scheme (moderate negative)</p> <p>5. Proceedings for contravention of planning requirements could potentially have more severe consequences than enforcement under a local law (moderate negative)</p>	<p>shipping containers before it takes effect (moderate negative)</p>	<p>4. Possible criticism of Council for restricting the use of shipping containers which residents may seek to use to support home-based businesses (low negative)</p>
<p><b>C. Modified local law containing minimum standards</b> (no proactive enforcement, complaint-responsive regulation)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Clarity provided about minimum requirements for the placement of shipping containers (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Prospect of minimum standards being enforced against residents (moderate negative)</li> <li>A degree of regulatory uncertainty may remain if the standards are not sufficiently specific, leaving room for misinterpretation, and the extent of enforcement is not known (low negative)</li> </ol>	<p><b>Overall: Low positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Possible improved amenity and aesthetics in the Sunshine Coast Council area as a result of the regulation of this activity (low positive)</li> <li>Minimum standards provide clarity about Council's expectations concerning the placement of shipping containers and a basis for public feedback/complaints to Council about compliance issues (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Minimal regulation, without proactive enforcement may result in low levels of compliance, adversely affecting the amenity and aesthetics of the Council area (moderate negative)</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>Clarity is provided about minimum requirements for the activity (moderate positive)</li> <li>Less coercive approach provides opportunity for more positive engagement with residents and may build a more cooperative regulatory culture (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>Risks that a less coercive regulatory approach will compromise compliance and lead to greater costs for Council in addressing any regulatory failure (moderate negative)</li> <li>Minimum standards may not provide sufficient regulatory certainty for residents, leading to time-consuming interactions between Council staff and residents (moderate negative)</li> <li>Possible increased resources will be required to respond to feedback/complaints, in addition to any enforcement activity, as compared with Option A (moderate negative)</li> <li>Possible criticism of Council for not instituting more decisive and effective regulation, which may create uncertainty for home-based businesses (low negative)</li> </ol>

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	Impact on stakeholders (costs and benefits)		
OPTIONS	Residents seeking to place shipping containers on their property for business-related activities	General community (including residents of properties adjoining those with shipping containers)	Council
<p><b>D. No regulation</b> (rely on information, guidelines etc to raise awareness and encourage behavioural change)</p> <p><b>NET NEGATIVE IMPACT</b></p>	<p><b>Overall: Moderate positive impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. No applicable regulation where placement of shipping containers is temporary (high positive)</li> <li>2. Information provided about Council's expectations provides opportunity for residents to understand the need for compliance and take the initiative to comply (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>3. Lack of effective regulation could result in activities against the interests of property owners, e.g. the siting of multiple containers, affecting property value and complicating any relocation (low negative)</li> </ol>	<p><b>Overall: Low negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Information about Council's expectations concerning the placement of shipping containers provides clarity, a basis for both possible compliance by owners and public feedback/complaints to Council about issues with compliance (low positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. Risk that absence of coercive regulation could result in failure to adequately address amenity and aesthetics issues associated with shipping containers on residential properties and potentially cause growth in the activity (moderate negative)</li> </ol>	<p><b>Overall: Moderate negative impact</b></p> <p><b>Positive:</b></p> <ol style="list-style-type: none"> <li>1. Clarity is provided about expectations for the activity and there are opportunities for positive engagement with residents to potentially build a more cooperative regulatory culture (moderate positive)</li> </ol> <p><b>Negative:</b></p> <ol style="list-style-type: none"> <li>2. Risk of low compliance could cause proliferation of containers, adversely affecting the amenity and aesthetics of the Council area and creating consequences for Council in addressing any regulatory failure (moderate negative)</li> <li>3. Resources would be required for awareness raising and responding to complaints, which may rise on account of the absence of regulation and in response to which Council will have not regulatory levers (moderate negative)</li> <li>4. Possible criticism of Council for not instituting a form of regulation (moderate negative)</li> </ol>

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### Summary of net impacts of the anti-competitive provisions and alternative options

**Table 2** in the previous section has calculated the positive and negative impacts on the key stakeholders of proceeding with the local law containing anti-competitive provisions pertaining to *temporary placement of a shipping container* on residential land (Option A) and the three reasonable alternatives (Options B, C and D).

The analysis shows that **Option A** – proceeding with the local law – has an overall low negative impact on *residents* seeking to undertake this activity. While it provides certainty about what is and is not permitted, also providing an opportunity to obtain a Council permit to expand permissible uses, the existence of regulation necessarily imposes restrictions and these may negatively impact home based-business owners relying on shipping containers for purposes such as storing stock or equipment. However, for the *general community*, including residents affected by the presence of containers in a residential area or even on adjoining properties, the overall impact is assessed as positive in terms of providing regulation which is expected to lead to improved amenity and aesthetics, even though a new prescribed activity will add to the overall regulatory burden. The impact is also assessed as positive for the *Council*, which will be in a position to decisively regulate the activity relying on the ready enforcement mechanisms in local laws. Overall, *the net impact across all stakeholders is positive for this option.*

The analysis shows that **Option B** – not proceeding with the local law and regulating through the planning scheme – may have less immediate impact on *residents* seeking to use shipping containers due to the longer timeframe before changes to the planning scheme can be effected, although, ultimately, the activity will be restricted in some way, producing an overall negative effect for such residents. For the *general community*, the introduction of a form of regulation would have a positive impact through potentially improved amenity and aesthetics, notwithstanding a small risk that the longer timeframe to institute planning provisions could encourage a proliferation of shipping containers on residential properties in the interim. For *Council*, the impact is assessed as moderately negative primarily because of the delay represented by amending the planning scheme and, in particular, the associated absence of more effective regulatory tools available under a local law. The assessment acknowledges that the consequences for Council of regulatory failure could be significant in terms of the legal and practical issues associated with potentially having to force the removal of shipping containers, if that became necessary. *This option therefore has a net negative impact.*

**Option C** – modifying the local law to regulate the activity through minimum standards only, to be enforced based on identified need through public feedback or complaints – provides several positive impacts across all stakeholders in terms of establishing a set of standards to regulate the activity, encouraging a more cooperative regulatory environment and allowing public feedback (particularly complaints) to drive enforcement activity. However, the approach raises questions about whether minimum standards would provide regulatory certainty and that, in combination with the fact that they are nevertheless enforceable under local laws, produces an overall low negative impact for *residents*. For the *general community*, the risk that an absence of proactive enforcement would reduce the effectiveness of the standards reduces the overall impact to low positive. The negative aspects of the impact on *Council*, particularly the risks of reduced certainty and effectiveness, together with possible increased expenditure on complaint-responsive

regulation, results in an overall moderately negative impact on Council. Overall, *this option was assessed as having a net negative impact.*

**Option D** — an approach entailing no form of regulation, but relying on awareness raising through information or guidelines to prompt behavioural change – was assessed as having a moderately positive effect on *residents* wishing to site shipping containers on their land on account of the complete absence of regulation combined with the empowerment represented by the opportunity to be informed and independently take the initiative to choose compliance or otherwise. The only negative impact was the risk that residents may capitalise on a lack of regulation by making poor choices – for example, siting multiple containers for an expanding business on residential land, instead of securing suitable commercial premises, which could ultimately jeopardise their property value and ease of relocation at a future time. For the general *community*, there are positive impacts associated with the availability of clear information about Council's expectations regarding this activity and the potential they hold for compliance by residents and as a basis for public feedback or complaints to Council. Balanced against this is the significant risk of an absence of regulation leading to a proliferation of shipping containers affecting the amenity and aesthetics of an area or adjoining properties, resulting in an overall low negative impact for the general community. The fundamental risk associated with an absence of regulation was also the basis for assessment of the overall impact on *Council* as moderately negative. Like Options B and C, *this option has a net negative impact.*

## 7. Conclusion

This report completes a public interest review undertaken, in accordance with a statutory requirement, of proposed local law amendments identified as potentially anti-competitive. The provisions were identified as anti-competitive in accordance with the prescribed criteria of whether they may create a barrier to a market or restrict entry within a market. However, the identification was made based on the superficial, rather than substantive, effects of the provisions. In each instance, except in relation to parking permits, they prohibit certain activities – in whole or in part – without an approval from Council. However, the substantive effect of the provisions is to liberalise areas of regulation from restrictions under State legislation, providing opportunities for businesses to conduct activities which would remain unavailable in the absence of the proposed local law. This is the case for each of the prescribed activities other than the *temporary placement of a shipping container*, that is: the activities of *building work noise*; *building site delivery noise*; and *operating an amplified music venue within a special entertainment area*. The substitute regulation of these activities under the proposed local law nevertheless incorporates limitations on the activities to protect the interests of third parties and the general community. The analysis undertaken in this paper has not been able to identify alternative avenues the Council could pursue to achieve the objective of assuming regulation over these matters to better meet the needs of the Sunshine Coast Council area. It is also considered that the overall potential benefits to businesses available through the regulation of these activities under local laws outweighs any anti-competitive effects the relevant provisions may have.

In relation to the temporary placement of a shipping container on residential property (for a purpose other than as a temporary residence), which has the potential to impact home-based businesses, this report has undertaken a cost-benefit analysis of the alternative options available for Council to respond. The analysis reveals that regulation as proposed in the local law is the



optimal approach to meet Council's objective to address issues associated with this increasingly prevalent activity.

The final group of amendments in the proposed local law identified as having a potentially anti-competitive effect entail changes to parking regulations. The provisions modify categories of permits, with potentially negative impacts on any individuals who might currently be eligible to apply for a permit in connection with a business activity, but who will not be able to under the proposed law. Any anti-competitive effects of these provisions are expected to be minimal and this review was unable to identify any alternative means for the Council to achieve its objective of having a more targeted approach to the parking needs of various categories of road users to better manage demand for on-street parking.

In summary, it is concluded that the benefits to the community of any anti-competitive effects of the proposed local law and subordinate local law will outweigh the costs and provide the most appropriate way of achieving the overarching object of better protecting community health, safety and amenity and preventing environmental harm.

## 8. Recommendation

The anti-competitive provisions in the proposed local law should be retained in the public interest.