



Public Interest Review Consultation Paper

Proposed Amendment Local Law No. 1 (Community Health and Environmental Management) 2017

October 2017



Purpose of this document

Before making a local law, local governments are required to review any laws that restrict competition to ensure that they are in the public interest. At its meeting on 12 November 2017, the Sunshine Coast Council proposed to make Amendment Local Law No. 1 (Community Health and Environmental Management) 2017. This law will amend existing local laws by inserting a new part dealing with waste management in the Sunshine Coast Council area, to replace State Government waste management laws that will expire in 2018.

The proposed amendment local law contains provisions that have the potential to restrict competition (i.e. they may be 'anti-competitive provisions'), so the Council is consulting with the community – especially businesses that might be affected – about whether the proposed law is in the overall public interest. The purpose of this document is to:

- provide further information about the potentially anti-competitive provisions; and
- seek community feedback to help the Council decide whether the potentially anti-competitive provisions should be retained in the proposed local law in the overall public interest.

Background to public interest reviews

Why are public interest reviews required?

In April 1995, all Australian governments committed to the National Competition Policy 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 National Competition Policy 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.

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.

Possible anti-competitive provisions in the local law

An analysis of the new part 7A to be inserted by the proposed amendment local law into *Local Law No. 3 (Community Health and Environmental Management) 2011* has identified the following provisions that are possibly anti-competitive.

New Part 7A provision	Effect of provision	Possibly anti-competitive effect
s 25B	Council may designate 'waste collection areas' in which it may conduct general waste or green waste collection, and decide the frequency of such collections.	The effect of designation of a waste collection area may limit opportunities for waste contractor businesses to compete with Council services. However, waste contractors may have the opportunity to compete for Council waste collection contracts when advertised.
s 25D	Council may prescribe requirements on owners/occupiers of premises to supply waste containers or may supply the waste containers itself and recoup the reasonable cost from owners/occupiers.	Compliance with the requirements may have an impact on the conduct of a business activity.
s 25E	Prescribes requirements for the storage of general waste in waste containers.	Compliance with the requirements may have an impact on the conduct of a business activity as they will apply to both commercial and domestic premises.
s 25F	Prescribes requirements for the keeping of waste containers at serviced premises.	Compliance with the requirements may have an impact on the conduct of a business activity as they will apply to both commercial and domestic premises.
s 25G	Council may impose requirements for the storage of general waste at particular serviced premises other than single detached dwellings.	Compliance with the requirements may have an impact on the conduct of a business activity, especially at commercial premises.
s 25I	Owners/occupiers of premises that are not serviced must obtain an approval to deposit or dispose of waste through a method other than deposit or disposal at a waste facility.	Requirement for an approval may impact on the conduct of a business activity or create an additional barrier to entry to a market.
s 25J	Council may require the occupier of premises where there is industrial waste to supply industrial waste containers, keep them at a required place and keep them clean and in good repair.	Compliance with the requirements may have an impact on the conduct of a business activity.

s 25K	Council may prescribe requirements about the treatment of industrial waste for disposal at a waste facility.	Compliance with the requirements may have an impact on the conduct of a business activity, such as a business seeking to dispose of industrial waste.
s 25L	Prohibits disposal of certain waste at a local government waste facility.	Compliance with the requirements may have an impact on the conduct of a business activity.

Anti-competitive provisions excluded from the review

The Public Interest Review guidelines indicate that the following types of anti-competitive provisions may be excluded from a public interest review:

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

The Council has excluded section 25L from the review on the grounds that, in prohibiting disposal of hazardous waste, it is specifically concerned with ensuring public health and safety standards are met in the use of local government waste facilities.

Although many of the other anti-competitive provisions may be characterised as intended to combat the spread of pests and disease and ensure accepted public health and safety standards are met, the Council has decided not to exclude them from the review on this basis. Regulating activities to promote and protect community health and amenity is always a balancing act with minimising 'red tape' that potentially impacts on business activities. The Council takes the view that it is important to have a public discussion around laws that seek to strike this balance.

Preliminary assessment of significance of impacts of anti-competitive provisions

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.

However, the Council's preliminary assessment is that it cannot rule out that there may be significant impacts from the anti-competitive provisions. Therefore, it is prudent to conduct a full public interest review of all of the anti-competitive provisions, other than the excluded section 25L.

Discussion of the anti-competitive provisions

Objective of the provisions

The object of the amendment local law is to protect community health, safety and amenity and the environmental values of the region by providing for:

- (a) the regulation of storage and removal of waste from premises; and
- (b) the regulation of the receiving and disposal of waste at waste facilities.

The local law largely replicates existing State Government provisions in Chapter 5A of the *Environmental Protection Regulation 2008* and section 7 in Part 2A of the *Waste Reduction and Recycling Regulation 2011*. Those provisions are due to expire in July 2018, and the State has specifically empowered local governments to make local laws to replace them.

The amendments will ensure that the provisions of Chapter 5A of the *Environmental Protection Regulation 2008* are replicated in sections 25C to 25O of *Local Law No. 3 (Community Health and Environmental Management) 2011*. They empower the Council to take action for matters relating to:

- supply of waste containers
- storage of general waste
- storage/keeping of waste containers
- removal of general waste
- storage and treatment of industrial waste

The provisions also address the following matters at local government waste facilities:

- prohibited types of waste
- restrictions on burning waste
- restrictions on behaviour at the waste facility
- ability to give directions to a waste transporter.

The new section 25B inserted by the amendments will replace section 7 of the *Waste Reduction and Recycling Regulation 2011*, which enables Council to designate waste collection areas in which the local government may conduct general waste or green waste collection, and decide the frequency of general waste or green waste collection in a waste collection area. Under section 7, Sunshine Coast Council has currently designated its entire local government area as a waste collection area, and this designation will continue to have effect under the new local law regime because of the transitional provision in section 25P of the amendment local law.

Rationale for the anti-competitive provisions

The local law amendments will not introduce new regulation of waste management issues, as they are designed to replicate the State laws that are lapsing in 2018. There is only one change of substance introduced by the local law provisions, which is discussed further below.

The guiding purpose of the amendments is to retain an effective local government regime for regulating waste management in a way that protects the environment and public health, safety and amenity within the Sunshine Coast region. If the amendment local law was not put in place, on the expiry of Chapter 5A of the *Environmental Protection Regulation 2008* next year, waste management may not be regulated or controlled to the extent necessary to protect the community.

The key provision is section 25B, which enables the Council to designate serviced areas where the Council may provide waste collection services. Without this power:

- the owners and occupiers of premises at which general waste (including commercial waste) is generated are left to make ad hoc arrangements about the collection of general waste (including commercial waste); and

- ad hoc arrangements may result in an increase in noise nuisance, a loss of amenity and an increase in public health and safety problems; and
- issues such as those identified above will arise in circumstances where the premises at which general waste collection activities are undertaken are situated in close proximity to each other, and in circumstance where, for example, commercial waste is collected from premises used for commercial purposes and the premises are situated in close proximity to premises which are used for domestic purposes.

While the designation of serviced waste collection areas is aimed at public health and amenity issues and not at commercial activities, it potentially has the following impact on businesses:

- (a) Commercial waste contractor businesses will be excluded from competing with the Council for the collection of general waste in a designated area. On the other hand, commercial waste contractors may have the opportunity to tender for Council waste collection contracts.
- (b) Businesses operating in the designated area and producing general waste will be required to comply with the Council's requirements for general waste collection from serviced premises, which may result in costs to these businesses. As indicated above, the types of requirements that the local laws will impose (or enable the Council to impose) include:
 - an obligation to supply waste containers of a certain standard or pay for Council supplied waste containers (s25D)
 - requirements around use of waste containers (s25E)
 - requirements about where on premises to keep waste containers and where and how long they can be placed for collection (s25F)
 - special requirements for owners of some premises to supply stands and enclosures for waste containers plus hose facilities (s25G)
 - requirements for obtaining an approval for non-serviced premises to dispose of waste other than by taking it to a waste facility (s25I)
 - requirements for storing industrial waste (s25J) and treating industrial waste for disposal (s25K)

The costs of complying with the requirements in (b) above will be the same for all commercial premises and domestic premises in the area, although they may differ from the costs for businesses operating from premises in other local government areas. Despite their potential indirect impacts on businesses, the Council takes the view that the requirements outlined for waste collection are essential minimum standards to address public health and safety risks around waste management in the region.

The only substantive change to the lapsing State provisions is that the local law will be more specific about the allowable timeframes for leaving a waste collection container at the waste collection point (i.e. kerbside). Whereas section 81ZH(2) of the *Environmental Protection Regulation 2008* says an occupier can place a waste container at the waste collection point for no longer than "is reasonably appropriate before and after the collection", section 25F(2) will say that the container may not be placed there "outside of the period commencing 24 hours before the scheduled collection day and ending 24 hours after the scheduled collection day." The Council considers that public amenity and environmental health will be better protected if waste bins are not left at kerbs outside premises for lengthy periods.

Examination of reasonable alternatives to the anti-competitive provisions

Planning scheme

A possible alternative regulatory means of regulating waste management would be through the Council's planning scheme. Under this approach:

- for commercial activities, the planning scheme and development approvals issued under it would regulate storage and collection of waste and associated nuisance issues – the local law would not apply to these
- for non-commercial premises, the local law provisions would still need to apply

The disadvantage of this approach would be that Council would have limited ability to regulate *existing* businesses, as planning scheme requirements would only be applicable to new developments. It would also result in a potentially uncertain dual system of regulation using the planning scheme and the local laws.

Complaint-responsive regulation

An alternative to stipulating universal requirements applicable to premises for waste storage and collection would be to institute minimalist standards that Council would only enforce based on repeated (for example, three) complaints about nuisances caused by waste storage and collection. Rather than proactive Council regulation, Council action would only follow complaints by private citizens. This would be less onerous for Council but may still result in regulatory impacts on businesses. A reliance on private complaints, may also lead to inconsistency in when the regulation is applied. Further, the more passive and reactive role of the local government under this approach might not achieve the goal of protecting the public from risks to public health and amenity posed by poor practices in waste storage and collection.

Public information and education

An alternative to any regulatory scheme is to encourage the desired behaviour and practices through public information and education. This option is considered highly resource-intensive and holds no guarantee that it will result in uniform adoption of good standards of waste management by owners and occupiers of premises. The Council considers that clearly stated standards and requirements enforceable by local law are necessary to enable immediate Council action in situations posing unacceptable risks to public health, safety or amenity.

Current assessment of alternatives

On balance, the Council currently does not believe the above alternatives to instituting the anti-competitive local law provisions will adequately achieve the objective of protecting the public interest in safe and effective waste management. However, as part of this further review of the anti-competitive provisions during the public consultation process, the Council is keen to hear the views of businesses and residents about the anti-competitive provisions, their potential impacts and any reasonable alternatives.

Item 8.7.1 Proposed amendment to Local Law No.1 (Community Health and Environmental Management) 2017

Attachment 1 Public Interest Review Consultation Paper Proposed Amendment Local Law No. 1 (Community Health and Environmental Management) 2017

Call for feedback about the anti-competitive provisions

The Council invites feedback from residents and businesses about potential impacts of Amendment Local Law No. 1 (Community Health and Environmental Management) 2017, especially:

- any costs of compliance for businesses;
- any reasonable alternatives to the anti-competitive provisions and the comparable costs of these alternatives;
- the benefits to the community from the anti-competitive provisions.

Community feedback will assist the Council to decide whether, on balance, the anti-competitive provisions should be retained in the proposed local law in the overall public interest.

The due date for submissions is **22 December 2017**. Options for making submissions online, by email or by post can be found at: www.sunshinecoast.qld.gov.au