

## PUBLIC INTEREST TEST REPORT LOCAL LAW NO.6 (BATHING RESERVES) 2011

### GENERAL

A public interest test has been conducted as part of the National Competition Policy reforms on anti-competitive provisions identified in proposed *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013*. The public interest test has been conducted against the principles and objectives set by the Competition Principles Agreement (CPA), which were outlined in the public interest test plan (attached).

This public interest test report has been prepared in accordance with guidelines issued by the Queensland Department of Infrastructure and Planning.

### RESULTS OF CONSULTATION PROCESS

Consultation with the public and key stakeholders occurred over a period of 31 days.

An advertisement was placed in the Sunshine Coast Daily on 1 May 2013 and on council's website at the commencement of the consultation period advising of the review and calling for submissions.

Copies of the public interest test plan and proposed *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* were open for inspection at council's libraries and customer service centres. Copies were also available on council's website and upon request.

Key stakeholders were advised of the review and the period provided for receipt of submissions.

No written submissions were received regarding the public interest test plan.

### REASSESSMENT OF ALTERNATIVES

Following assessment of the results of the consultation process it is considered that no grounds were advanced to support the introduction of another regulatory or non-regulatory alternative.

It is considered that the introduction of an alternative control mechanism would have a negative impact on the community in general.

## RECOMMENDATION

In accordance with the Local Government Act 2009, the following is recommended:

1. Schedule 8 of *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* indentified anti-competitive provisions and should be retained in full, as, having regard to the local government duty of good rule and government of its area, Council is of the opinion that:
  - the benefits of these provisions to the community as a whole outweigh the costs; and
  - the most appropriate way of achieving the objectives of the proposed Local Law and Subordinate Local Law is by restricting competition in the way provided in these provisions.

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John Knaggs

Chief Executive Officer

Sunshine Coast Regional Council

**PUBLIC INTEREST TEST PLAN  
AMENDMENT SUBORDINATE LOCAL LAW NO. 2  
(MISCELLANEOUS) 2013**

*INTRODUCTION*

Council is conducting a public interest test on possible anti-competitive provisions identified in *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013*. The public interest test will be conducted against the principles and objectives set by the Competition Principles Agreement (CPA).

Under clause 5(1) of the CPA, all governments agreed to the principle that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

In reviewing legislation that restricts competition, clause 5(9) of the CPA requires that the review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means of achieving the same result including non-legislative approaches.

Without limiting the matters to be taken into account in a review, Clause 1(3) of the CPA sets out matters which should be taken into account, as follows:

- 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.

This public interest test plan has been prepared in accordance with guidelines issued by the Queensland Department of Local Government, Community Recovery and Resilience called up by

regulation under the *Local Government Act 2009* to provide a basis for community consultation. The plan details activities to be conducted during the test and identifies the depth of analysis to be carried out on the possible anti-competitive provisions.

#### *OBJECTIVE OF AMENDMENT SUBORDINATE LOCAL LAW NO. 2 (MISCELLANEOUS) 2013*

The object of proposed *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* is to make a series of amendments to three of the Council's current subordinate local laws. These amendments relate to movable advertising devices, the keeping of animals and the regulation of activities on local government controlled areas and roads.

In relation to the amendments about movable advertising devices, the object is to be achieved by providing for:

- consistent and comprehensive processes for the local government to grant (where required) and regulate approvals for the placement of movable advertising devices; and
- authorised persons to manage the risk presented by the placement of movable advertising devices; and
- provide a self-regulating scheme for the majority of movable advertising devices placed on public and private places.

#### *IDENTIFIED ANTI-COMPETITIVE PROVISIONS*

The anti-competitive provisions identified in the *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* are as follows:

Schedule 8 of *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013*.

This schedule provides that where the placement of a movable advertising device is not an exempt advertising device, an approval from the local government is required.

For further details please see a copy of *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* attached to this plan (Attachment A).

#### *CURRENT ENVIRONMENT*

The proposed *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* provides for a procedural framework to manage the placement of movable advertising devices in the Sunshine Coast region.



The anti-competitive provisions identified in *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* have been assessed against each of the regulatory and non-regulatory alternatives.

**Regulation combined with negative licensing**

The proposed schedule 8 implements a regulatory approach that combines regulation and negative licensing in the one scheme.

The current approach in the local laws is to regulate movable advertising devices through requiring an approval for all devices, with the exception of some devices in the former Noosa area. The proposed amendments will continue to require approvals for the placement of movable advertising devices, but will also exempt certain devices, as discussed under “negative licensing.” The continuation of regulation of advertising devices is necessary due to the potential risks to public safety inherent in other alternatives.

Negative licensing is also incorporated in the amendments through creation of a category of exempt advertising devices that will not require a Council approval.

Under a negative licensing system, the presumption is instead made that an operator has the right to display a movable advertising device provided they comply with prescribed parameters. However where the movable advertising device is not an exempt advertising device regulation through the approval process will be invoked.

*No regulation*

***The alternative approach to the anti-competitive provision selected for consideration in this public interest test is to have no regulation of the placement of movable advertising devices.***

**KEY STAKEHOLDERS AFFECTED BY THE CURRENT SITUATION AND BY A MOVE TO ALTERNATIVE ARRANGEMENTS**

The following key stakeholders have been identified as being affected by the current situation and by a move to the alternative arrangements (no regulation):

<b>Stakeholders</b>	<b>Size</b>	<b>Distribution</b>	<b>Impact, rating and rationale</b>
<b><i>Sunshine Coast Council</i></b>	1	Local Government area	<b><i>Medium/Negative</i></b> Increased risk to safety and amenity leading to increased complaints by members of the public about Council’s approach to movable advertising devices

Stakeholders	Size	Distribution	Impact, rating and rationale
<b>Commercial operators</b> <i>Existing and potential businesses</i>	31,770* registered businesses	Local Government area	<b>Low/Positive</b> Reduced burden of compliance and approval costs
<b>Residents</b>	Population over the age of 18**  210,592 Plus tourist population	Local Government Area	<b>Medium/Negative</b> Residents may be impacted by safety risks from unregulated movable advertising devices placed in dangerous situations (e.g. footpaths, roads)

\*Source: Australian Bureau of Statistics, *Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007*, (Cat no. 8165.0)

\*\* Source: Australian Bureau of Statistics, *Census of Population and Housing, 2006*.

#### TYPE OF ASSESSMENT REQUIRED

The review of anti-competitive provisions in *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* will be conducted as a *minor* assessment. That is, the emphasis will be on qualitative analysis of alternatives.

Given that the type of review is a *minor* assessment, it is considered appropriate that review be an internal (in-house) review conducted by officers of the local government.

#### CONSULTATION PROCESS TO BE UNDERTAKEN

Consultation will be conducted by giving public notice of the review in the local newspaper, on Council's website and inviting submissions. Public notices will also be posted on all notice boards in the Council's public offices.

The public notice will also advise that the consultation on anti competitive provisions is being conducted with the public consultation for *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013*.

A letter will be sent to existing operators, interest groups and to relevant State Government Departments advising of *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013*.

The public interest test plan, *Amendment Subordinate Local Law No. 2 (Miscellaneous) 2013* will be open to inspection on the Council's website and at Council's public office where copies of the public interest test plan will be available free of charge.

*TIMETABLE FOR CONDUCTING THE PUBLIC INTEREST TEST*

Commence public interest test	1 May 2013
Estimate of time for completing public interest test	31 days including consultation period
Consultation period	31 days
Target date for presenting report to local government	Ordinary Meeting of Council July 2013

*CONTENT OF THE PUBLIC INTEREST TEST REPORT*

The public interest test report will include topics covered in this report and will include the following:

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

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John Knaggs

Chief Executive Officer

Sunshine Coast Regional Council

**Dated this**