



Cook Shire Council
Review of Possible Anti-Competitive Provisions

Local Law Amendments 2022

Introduction

Section 38 of the *Local Government Act 2009* (“**Act**”) provides:

38 Anti-competitive provisions

- (1) *A local government must not make a local law that contains an anti-competitive provision unless the local government has complied with the procedures prescribed under a regulation for the review of anti-competitive provisions.*
- (2) *A local law, to the extent that it is contrary to this section, has no effect.*
- (3) *This section does not apply to an interim local law.*

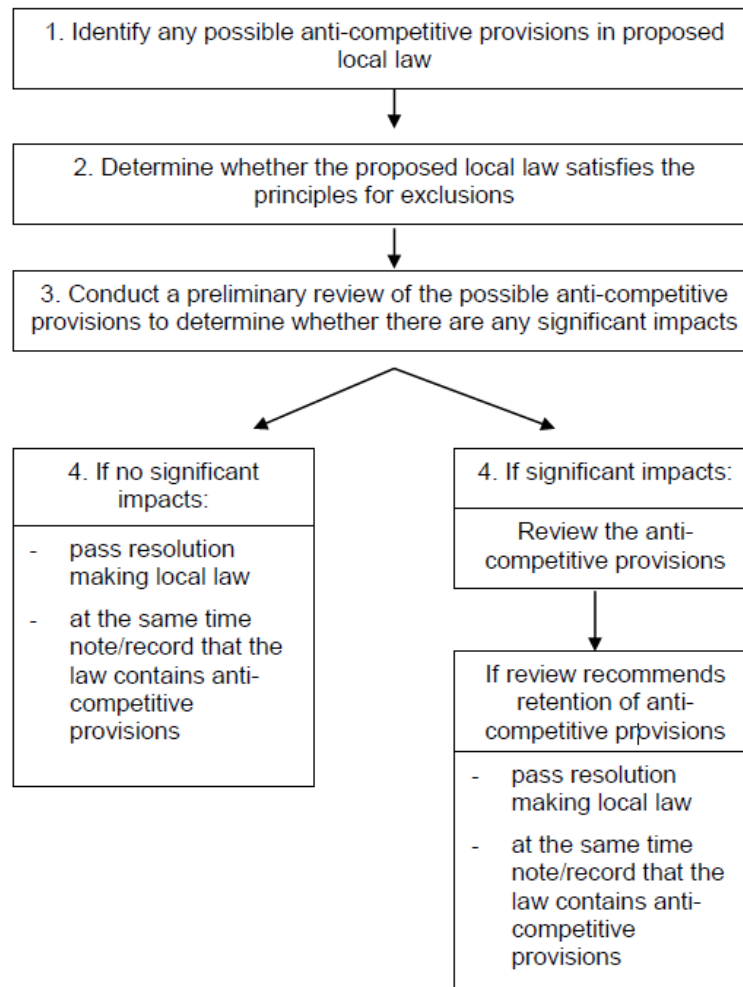
The procedures prescribed under a regulation are set out in section 15 of the *Local Government Regulation 2012* (“**Regulation**”). Section 15 of the Regulation requires Council to undertake a review of new Local Laws for anti-competitive provisions in accordance with the “National Competition Policy Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws – Version 1” (“**Guidelines**”).

An anti-competitive provision in Local Laws (“**anti-competitive provision**”) means provision that a regulation identifies as creating barriers to –

- (a) entry to a market; or
- (b) competition within a market.¹

The process for undertaking a review of anti-competitive provisions in a local law is set out in the Guidelines and is summarised by the below table.

¹ *Local Government Act 2009* (Qld), Schedule 4 - Dictionary



Proposed Amendments to Local Laws

Council is proposing to adopt amendments to Local Laws and Subordinate Local Laws to which section 38 of the Act and section 15 of the Regulation applies (“**the Local Law Amendments**”).

The Local Laws and Subordinate Local Laws being amended are:

- *Local Law No. 1 (Administration) 2016;*
- *Local Law No. 3 (Community and Environmental Management) 2016;*
- *Subordinate Local Law No. 1 (Administration) 2016;*
- *Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2016.*

Step 1 – Identification of Anti-Competitive Provisions

Barriers to Entering the Market

This type of anti-competitive provision in a Local Law involves either prohibiting particular business activities or placing obligations on the operators of business activities.

Restricting Competition in the Market

This type of anti-competitive provision in a Local Law involves giving some benefit or imposing some hindrance on particular business operators.

Step 2 – Determination of Exclusions

In some cases, Local Laws which, on their face, contain anti-competitive provisions are expressly excluded from a requirement to review them.

The particular types of local laws excluded from the review of anti-competitive provisions are:

1. Local Laws that regulate the behaviour of individuals;
2. Local Laws that deal solely with internal administrative procedures of a local government;
3. Local Laws that are intended as a legitimate measure to combat the spread of pest and disease;
4. Local Laws that ensure accepted public health and safety standards are met; and
5. Repealing Local Laws;

(“**Relevant Exclusion**”).

Application of Steps 1 and 2

This part of the Review will seek to identify anti-competitive provisions in the Local Law Amendments and determine whether any Relevant Exclusion applies.

If an anti-competitive provision is identified but a Relevant Exclusion does not apply, this Review will go on to apply the subsequent steps for reviewing anti-competitive provisions as set out in the Guideline.

A number of possible anti-competitive provisions have been identified in the Local Law amendments below.

Local Law No. 1 (Administration) 2016

Purpose of amendments

The purpose of the amendments to this Local Law is to predominately include camping on private property as a prescribed activity. The amendments also expand on Council’s ability to seize and impound a structure or other material left on Council controlled areas or roads.

Possible anti-competitive provisions and application of Relevant Exclusions

Possible Anti-Competitive Provision	Explanatory Comments	Application of a Relevant Exclusion
Schedule 2, Part 1 (Prescribed activities) and Part 2 (Definitions of prescribed activities).	The prescribed activity could arguably affect businesses that offer camping on their allotment and therefore could be considered anti-competitive.	<p>The provision would be excluded from the review of anti-competitive provisions because it is:</p> <ul style="list-style-type: none"> • in the interests of regulating the behaviour of individuals for public safety purposes; and further or alternatively; • intended to ensure accepted public health and safety standards are met.

Local Law No. 3 (Community and Environmental Management) 2016

Purpose

The purpose of the amendments to this Local Law is to remove outdated provisions in respect to declared local pests. The amendments to this Local Law do not create a barrier to entering the market, nor restrict competition in the market.

On that basis, the Local Law does not contain anti-competitive provisions and so no further analysis is required.

Subordinate Local Law No. 1 (Administration) 2016

Purpose

The purpose of the amendments to this Subordinate Local Law is to include provisions that regulate camping on private property and remove and expand on the regulations surrounding the approval of temporary entertainment events.

Possible anti-competitive provisions and application of Relevant Exclusions

Possible Anti-Competitive Provision	Explanatory Comments	Application of a Relevant Exclusion
Schedule 2 (Categories of prescribed activities for the purposes of maximum penalties) Part 1 (Category 1 activities), Item 6 (Prescribed	<p>The insertion of 'prescribed camping activity' as a category 1 activity places limitations, requirements and conditions on an approval required by a person who intends to camp on private property for more than 2 weeks in a year.</p> <p>The provisions may restrict a landowner's ability to obtain a commercial gain by:</p>	<p>The provision would be excluded from the review of anti-competitive provisions because it is:</p> <ul style="list-style-type: none"> • in the interests of regulating the behaviour of individuals for public safety purposes; and further or alternatively; • intended to ensure accepted public

<p>camping activity) and Schedule 31 (Prescribed camping activity).</p>	<ul style="list-style-type: none"> • restricting the amount of person/s permitted to camp at the site; • restricting the period of the stay; • placing requirements on the fit-out and map of the site; and • restricting the permitted behaviour of person/s camping at the site. <p>The provisions may be considered anti-competitive to the extent they impose barriers to entry to markets.</p>	<p>health and safety standards are met.</p>
<p>Schedule 18 (Operations of temporary entertainment events)</p>	<p>The amendments to Schedule 18 exclusively remove activities that do not require approval and expand the requirements, criterion and conditions imposed on approval of temporary entertainment events.</p> <p>The provisions may be considered anti-competitive to the extent they impose or increase existing barriers to entry to markets.</p>	<p>The provision would be excluded from the review of anti-competitive provisions because it is:</p> <ul style="list-style-type: none"> • in the interests of regulating the behaviour of individuals for public safety purposes; and further or alternatively • intended to ensure accepted public health and safety standards are met.

Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2016

Purpose

The purpose of the amendments to this Subordinate Local Law is to expand on prohibited and restricted activities relating to Council controlled areas or roads.

The Subordinate Local Law does not create a barrier to entering the market, nor restrict competition in the market. On this basis, the Subordinate Local Law does not contain anti-competitive provision and so no further analysis is required.

Exclusions

Notwithstanding the conclusion drawn above, it is further concluded that even if the Subordinate Local Law were to be considered anti-competitive, the Subordinate Local Law would be excluded from review under Step 2. This is because the purpose of the Subordinate Local Law is to regulate the behaviour of individuals, combat the spread of pest and disease and ensure accepted public health and safety standards are met.

Step 3 – Preliminary Review of Anti-Competitive Provisions for Local Laws

Relevant Exclusions were applied to the anti-competitive provisions identified in Steps 1 and 2 above. Accordingly, Council is not required to undertake further assessment of the anti-competitive provisions.

Summary of Review

Council has concluded in all respects, the anti-competitive provisions identified in the Proposed Local Laws can be excluded from the need to further review them because:

- the provisions are in the interests of regulating the behaviour of individuals for public safety purposes; and further or alternatively;
- the provisions are designed to ensure accepted public health and safety standards are met.