



Cook Shire Council
Review of Possible Anti-Competitive Provisions

Subordinate Local Law Amendments 2024

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.*

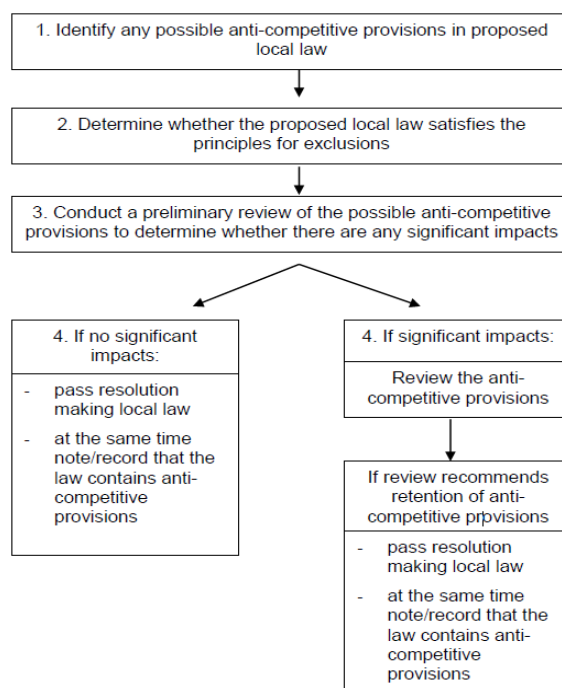
The procedures prescribed under a regulation are set out in section 15 of the *Local Government Regulation 2012* (“Regulation”). Section 15 of the Regulation requires Council to undertake a review of new Local Laws for anti-competitive provisions in accordance with the ‘National Competition Policy Guidelines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

Pursuant to Schedule 4 of the Act, an anti-competitive provision within a Local Law or Subordinate Local Law means a provision that a regulation identifies as creating barriers to:

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

(“an anti-competitive provision”)

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.



Proposed Amendments to Local Laws

Council is proposing to adopt amendments to three (3) Subordinate Local Laws to which section 38 of the Act and section 15 of the Regulation applies (“**the Subordinate Local Laws**”).

The Subordinate Local Laws being amended are:

- *Subordinate Local Law No. 1 (Administration) 2016;*
- *Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2016; and*
- *Subordinate Local Law No. 5 (Parking) 2016,*

(“**the Subordinate Local Law Amendments**”).

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 Subordinate 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 Subordinate Local Law Amendments below.

Subordinate Local Law No. 1 (Administration) 2016

Purpose of amendments

The purpose of the amendments to this Subordinate Local Law is to:

- (a) specify additional conditions that may be imposed on approvals for the commercial use of local government controlled areas and roads, for example to enable a minimum distance to be maintained between analogous business types;

- (b) expand on the statutory framework to apply, assess and approve parking contrary to official traffic signs for additional categories of parking permits, such as Business Parking Permit (Category A), Business Parking Permit (Category B), Food Van Parking Permit and Residential Parking Permit; and
- (c) provide a definition for a commercial vehicle for the purposes of assessing and approving a commercial vehicle identification label.

Possible anti-competitive provisions and application of Relevant Exclusions

Possible Anti-Competitive Provision	Explanatory Comments	Application of a Relevant Exclusion
Schedule 8 – Commercial use of local government controlled areas and roads	Businesses wishing to use local government controlled areas and roads for commercial use already require an approval from the local government to undertake the activity. The proposed amendments are to protect the interests of established businesses in fixed premises, but could arguably create a barrier to entering the market from mobile operators and therefore could be considered anti-competitive.	The proposed amendment is to regulate the behaviour of individuals when operating on local government controlled areas and roads. Therefore, as a relevant exclusion applies, this is not considered to be an anti-competitive provision.
Schedule 28 – Parking contrary to an indication on an official traffic sign regulating parking by time or payment of a fee	The proposed amendments expand on the existing statutory framework to apply, assess and approve parking contrary to official traffic signs for additional categories of parking permits. This amendment could be considered anti-competitive.	The proposed amendments are introduced to regulate the behaviour of individuals and to ensure that public health and safety standards are met. Therefore, these amendments are not considered to be anti-competitive as relevant exclusions apply.
Schedule 29 – Parking in a loading zone by displaying a commercial vehicle identification label	The proposed amendment clarifies the definition of ‘commercial vehicle’ and requires a commercial vehicle permit label to be obtained if parking in a loading zone. This amendment could be considered anti-competitive.	As this is a clarifying amendment and is intended to assist with administrative procedures of the local government only, the amendment is determined not to be anti-competitive as a relevant exclusion applies.

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

Purpose of amendments

The purpose of the amendments to this Subordinate Local Law is to:

- (a) modify the definition of both designated camping areas and recreational vehicle (RV) rest areas for consistency and to remove the requirement for Council to keep a register; and
- (b) to clarify the definition of a recreational vehicle (RV) to ensure ablution and cooking facilities are permanently affixed within the vehicle.

Possible Anti-Competitive Provision	Explanatory Comments	Application of a Relevant Exclusion
Schedule 2 – Restricted activities for local government controlled areas	The proposed amendments are to reflect the change to the definition of a ‘recreational vehicle (RV) rest area’ instead of parking area but could be considered anti-competitive, on the basis of competition with the camping market.	The proposed amendment is for clarifying purposes and to regulate the behaviour of individuals, as well as ensuring public health and safety standards are met. As such, because the specified exclusions apply, this provision has been determined not to be anti-competitive.
Schedule 6 – Definitions of: (a) Designated camping area (b) Recreational Vehicle’ (c) Recreational vehicle (RV) rest area	The proposed amendments are clarifying amendments to the definitions, to remove the requirement for Council to keep a register; to declare ‘designated camping areas’ and ‘recreational vehicle (RV) rest areas’ by way of resolution and notification to the public; and to clarify that ablution and cooking facilities must be permanently affixed to a RV. These amendments could be considered anti-competitive.	The proposed amendments are introduced to regulate the behaviour of individuals and to ensure that public health and safety standards are met. Therefore, as these exclusions apply, this provision has been determined not to be anti-competitive.

Subordinate Local Law No. 5 (Parking) 2016

Purpose of amendments

The purpose of the amendments to this Subordinate Local Law is to:

- (a) remove the Cooktown Racecourse RV parking area from being a declared off-street regulated parking area;
- (b) declare the Webber Esplanade (Lease C) Carpark as a regulated off-street parking area;
- (c) declare the Webber Esplanade Carpark as a regulated off-street parking area; and
- (d) introduce new categories of parking permits and prescribe criteria for persons eligible to apply for those parking permits.

Possible Anti-Competitive Provision	Explanatory Comments	Application of a Relevant Exclusion
Schedule 2 – Declaration of off-street regulated parking areas	The proposed amendments remove a previously declared off-street parking area (Cooktown Racecourse RV parking area), and to introduce two new off-street regulated parking areas. This may be considered anti-competitive.	The proposed amendments are to regulate the behaviour of individuals and therefore is not considered to be anti-competitive as a relevant exclusion applies.

<p>Schedule 3 – Persons who may be issued with a Parking Permit</p>	<p>The proposed amendments are clarifying amendments to the definitions, to remove the requirement for Council to keep a register; to declare ‘designated camping areas’ and ‘recreational vehicle (RV) rest areas’ by way of resolution and notification to the public; and to clarify that ablution and cooking facilities must be permanently affixed to a RV. These amendments could be considered anti-competitive.</p>	<p>The proposed amendments are introduced to regulate the behaviour of individuals and to ensure that public health and safety standards are met. Therefore, as these exclusions apply, this provision has been determined not to be anti-competitive.</p>
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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 Subordinate Local Law Amendments can be excluded from the need to further review them because:

- the proposed amendments are in the interests of regulating the behaviour of individuals;
- the proposed amendments deal solely with internal administrative procedures of the local government; and further or alternatively,
- the provisions are designed to ensure accepted public health and safety standards are met.