

North Burnett Regional Council
Public Interest Test Plan
Local Law No.6 (Waste Management) 2017

1. Introduction

In accordance with its obligations under section 38 of the *Local Government Act 2009* (Qld), the North Burnett Regional Council (**Council**) is conducting a public interest test on possible anti-competitive provisions identified in proposed *Local Law No.6 (Waste Management) 2017*.

The public interest test process was instituted as a result of the National Competition Policy reforms which commenced in the mid-1990s. The test will be conducted against the principles and objectives set by the Competition Principles Agreement (**CPA**) which was entered into between the States and Territories and the Commonwealth of Australia as part of those reforms.

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

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

Under clause 5(9) of the CPA, a public interest test of legislation (including local laws) that restricts competition is required to:

- 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 the *National Competition Policy Guidelines for conducting reviews on anti-competitive provisions in local laws*, version 1 (**the Guidelines**), issued by the Queensland Department of Local Government, Community Recovery and Resilience (as it was at the time the Guidelines were issued) and called-up under the *Local Government Regulation 2012*. The Guidelines set out the criteria for identifying possible anti-competitive provisions and the process for conducting reviews of those provisions.

In preparing this public interest test plan, Council has also had regard to the *Public Benefit Test Guidelines* dated October 1999 issued by Queensland Treasury.

This public interest test plan details the activities to be conducted during the test and identifies the depth of analysis to be carried out on the possible anti-competitive provisions.

2. Definitions

The following expressions used in this plan have the following meanings:

Council means the North Burnett Regional Council.

PLL6 means the proposed *Local Law No.6 (Waste Management) 2017*.

3. Objective of PLL6

The object of this local law is to protect the public health, safety and amenity related to waste management by—

- (a) regulating the storage, servicing and removal of waste; and
- (b) regulating the disposal of waste at waste facilities; and
- (c) ensuring that an act or omission does not result in—
 - i. harm to human health or safety or personal injury; or
 - ii. property damage or loss of amenity; or
 - iii. environmental harm or environmental nuisance.

Specifically, the proposed local law is aimed at replacing the expiring clauses in Chapter 5A of the *Environmental Protection Regulation 2008* and section 7 in Part 2A of the *Waste Reduction and Recycling Regulation 2011*.

Chapter 5A of the *Environmental Protection Regulation 2008* provides Council with the ability 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 waste facilities:

- unlawful disposal
- burning waste

- restrictions at the waste facility
- ability to give direction to a waste transporter.

Section 7 of the *Waste Reduction and Recycling Regulation 2011* enables Council to designate waste collection areas. Council has twenty-four (24) such areas:

- Gayndah, Ideraway, Woodmillar and Gayndah-Mundubbera Road;
- Mundubbera, Mount Perry, Beronne Road, Wetheron Road, Bon Accord, Byrnestown, Gooroolba and Mingo;
- Eidsvold, Mulgildie, Monto (West of Burnett Highway);
- Abercorn, Waruma Dam, Monto (East of Burnett Highway);
- Gayndah area of Brian Pastures, Ban Ban Springs, Biggenden, Coalstoun Lakes, Degilbo and Dallarnil.

4. Details of anti-competitive provisions

The possible anti-competitive provisions which have been identified in **PLL6** are identified in the table which forms **Attachment 'A'** to this plan.

5. Current environment

PLL6 deals with waste management issues which impact on lifestyle. Its object in doing this is to protect the environment and public health, safety and amenity within the local government area. This purpose or object is achieved by providing for the elimination or reduction of risks and threats to the environment and public health, safety and amenity.

Without **PLL6** in place, on the expiry of Chapter 5A of the *Environmental Protection Regulation 2008*, waste management may not be regulated or controlled to an extent necessary to protect the environment and public health, safety and amenity within the local government area. There is, potentially, an environmental, public health, safety and amenity risk which **PLL6** addresses. Without **PLL6**, risks associated with the regulation and control of waste management may be transferred to the general community with a resultant increase in risk to the environment, public health, safety and amenity within the local government area.

As noted above, **PLL6** is aimed at replacing the expiring section 7 of part 2A of the *Waste Reduction and Recycling Regulation 2011*. In particular, section 5 of **PLL6** gives Council the power to:

- designate areas within the local government area of Council in which Council may conduct general waste or green waste collection; and
- decide the frequency of general waste or green waste collection in the designated areas.

Residential locations of Council's local government area are currently designated as an area in which Council will conduct general waste collection.

Section 5 of **PLL6** is an integral, and crucial, part of how Council regulates waste management in Council's local government area.

In respect of each area which is designated as an area in which Council will conduct general waste collection, Council may, at a practical level, achieve better protection of the

environment, public health and amenity. Absent the power to designate an area as an area in which Council will conduct general waste collection:

- 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.

The control that **PLL6** gives the Council, potentially, a barrier to entry to a market and a restriction on the conduct of commercial operations as follows:

- Owners and occupiers of premises, including domestic premises and commercial premises are obliged to supply waste containers for the premises, however, Council, or its contractor, may supply the waste containers and the reasonable cost of supplying the waste containers is a debt payable by the owner or occupier of the premises to Council.
- Council prescribes requirements for storing general waste in containers at premises, including domestic premises and commercial premises.
- Council prescribes requirements for keeping waste containers at serviced premises, including domestic premises and commercial premises.
- Council prescribes other requirements for storing general waste at particular serviced premises, including domestic premises and commercial premises.
- Council may give the occupier of premises notice about the removal of general waste, including the removal of general waste from domestic premises and commercial premises.
- Council may prescribe requirements for the storage of industrial waste at premises.
- Council prescribes requirements about the treatment of industrial waste generated at commercial premises which is to be disposed of at a waste facility.
- Council prescribes requirements about the disposal of waste at waste facilities and requirements about the use of waste facilities.

In the context of waste management, it is unlikely that **PLL6** will:

- impact on the business environment in terms of size, distribution and participation in the market; or
- place restrictions on business ownership, structural form, business behaviour or product/service quality.

In the context of waste management, the extent to which **PLL6** impacts on Council's local government area will be dictated by the extent to which Council, under section 5 of **PLL6**:

- designates areas within its local government area in which Council may conduct general waste or green waste collection; and
- decides the frequency of general waste or green waste collection in the designated areas.

PLL6 makes no distinction between commercial and non-commercial activities. **PLL6** is anti-competitive to the extent that the provisions identified as possible anti-competitive provisions

may have the effect of regulating some business activity. The business activity may be a business activity undertaken at premises by the owner or the occupier of the premises which results in the production of general waste. The business activity may also consist of the collection of general waste by a contractor of Council pursuant to a contractual arrangement entered into between Council and the contractor.

PLL6 may also have an impact on the undertaking of the business activity of the collection of general waste from premises used for commercial activities or non-commercial activities by a contractor other than a contractor which has entered into a contractual arrangement with Council about the collection of general waste. Such a waste contractor would have limited opportunities to compete with Council services in the waste collection market within a designated collection area.

However, there are opportunities to enter a competitive tender process to win Council waste collection contracts.

PLL6 is in addition to, and does not derogate from, State laws about environmental management and protection. This reduces the application of **PLL6** in respect of commercial activities.

Without **PLL6** in place, Council would be required to rely upon other mechanisms: other local laws, State legislation, common law action etc to control nuisances arising from the unregulated collection and storage of waste. Without an effective method of controlling the storage and collection of waste, environmental, health and safety risks would be imposed on the community in the local government area.

PLL6 prescribes requirements about the disposal of waste at waste facilities and requirements about the use of waste facilities. Compliance with these requirements may have the effect of regulating some business activity. In particular, contractors who are engaged in the business of the collection of waste and the delivery of waste for disposal at waste facilities may be impacted by the imposition of an obligation to comply with requirements about the disposal of waste at waste facilities and requirements about the use of waste facilities.

6. Confirm sections are anti-competitive

At this stage, the possible anti-competitive provisions that have been identified are still considered to be anti-competitive. The provisions will be reviewed again at the conclusion of the public consultation process.

7. Determination of exclusions

PLL6 is not excluded from the review of anti-competitive provisions under the Guidelines.

8. Preliminary assessment

A preliminary assessment has been conducted in accordance with the Guidelines. Council is not presently satisfied that there will not be any significant impacts from the possible anti-competitive provisions. Accordingly, the review process will be conducted in accordance with the principles set out in the Guidelines.

9. Realistic regulatory and non-regulatory alternatives

The objects of **PLL6** are specified above.

Regulation is considered to be an effective and appropriate means of achieving the objectives of **PLL6**. The utility of the proposed regulation is limited, absent the inclusion in **PLL6** of section 5, which gives Council the power to designate areas in which Council will conduct general waste collection and decide the frequency of general waste or green waste collection in the designated areas.

Regulatory and non-regulatory alternatives available to Council which may achieve the objectives of **PLL6** are listed in the Guidelines. The following alternatives were considered to be “realistic” alternatives and given further consideration:

- regulation — public vs private action;
- public information and education programs.

Council identified a further alternative of relying on the **planning scheme** to control storage and collection of waste issues relating to the undertaking of commercial activities.

After giving careful consideration to these alternatives all were considered to be not viable for the following reasons:

- **Regulation - public vs. private action** - This regime would involve a change to **PLL6** to provide that where more than three complaints were received, Council would take action. Up to and including the third complaint, Council would not take action but it would be open to individuals to take action in respect of a nuisance caused by unsatisfactory storage and collection of waste practices. In this way, Council would only be acting in genuine situations of nuisance rather than having to respond to what are, for example, vexatious complaints.

While the alternative may provide some benefit to Council, it was considered to be only nominally less anti-competitive than the proposed regime. There was also concern that some genuine complaints would not be acted upon under this regime thereby limiting the rights of individuals and the community in respect of public health and safety and amenity. It may also be conceived by the community as an abrogation of local government responsibility and duty of care.

- **Public information and education program** - Consideration was given to this alternative but it was felt that Council does not have the necessary resources available to undertake an appropriate education program. It was also considered that some form of regulatory control was necessary in order for Council to act immediately in situations posing an unacceptable risk to public health and safety or causing a nuisance.
- **Planning scheme** - This alternative would require the local law to be amended to specify that its application relates to non-commercial activities only. Regulation of storage and collection of waste and nuisance issues with respect to commercial activities would be by way of planning instruments.

There are several impacts which would arise from this alternative. The main difficulty with moving to use of the planning scheme relates to the question of whether Council would have adequate control over existing businesses. Under the planning scheme, where new developments require some kind of approval, Council could place

conditions on the approval dealing with issues such as storage and collection of waste. However, in relation to existing businesses, unless an approval under the planning scheme was required and unless that original approval made provision for the activities covered by **PLL6**, Council would have no power under the planning scheme to control the activities covered by **PLL6**. Council may have recourse to a variety of powers under State legislation, for example, the *Environment Protection Act 1994* but it would depend on the individual situation as to whether these or other Acts could be invoked and the degree of their effectiveness is uncertain.

Also, the planning scheme cannot provide for a once-off occasion of significant intensity where the undertaking of a business activity may result in increased, or exceptional, storage and collection of waste issues, which could be the subject of Council regulation under **PLL6**.

10. Key stakeholders affected by the current situation and by a move to alternative arrangements

While no alternative has been identified as being viable at this stage, the stakeholders involved in this review are considered to be the following:

- Local government
- State
- Owners and occupiers of premises used for domestic purposes at which general waste is generated
- Owners and occupiers of commercial premises at which general waste is generated
- Potential owners and occupiers of commercial premises at which general waste is generated
- Business interest groups/representative bodies (e.g. local Chamber of Commerce.)
- Conservation/environment groups
- Residents in close proximity to premises used for the undertaking of commercial activities
- Contractors who enter into commercial arrangements for the collection of general waste from premises used for commercial purposes and premises used for non-commercial purposes (other than a contractor which has entered into a commercial arrangement with Council about the collection of general waste in Council's local government area).

11. Type of assessment and level of resources required

The assessment will comply with the following principles set out in the Guidelines:

1. Consultation with relevant businesses about the anti-competitive provisions;
2. Examination of the reasonable alternatives to the anti-competitive provisions;
3. A cost benefits analysis that involves calculating the value of the impacts, both positive and negative, of the anti-competitive provisions.
4. Determining whether on balance the anti-competitive provisions should be retained in the proposed local law in the overall public interest.

In conducting the assessment Council will also have regard to the Public Benefit Test Guidelines dated October 1999 by Queensland Treasury. The assessment will be conducted by Council as a minor assessment. The emphasis will be on qualitative analysis with key impacts expressed in monetary terms where data is available.

The review will be conducted in-house by a team of Council officers.

12. Extent of consultation to be conducted

Consultation will be conducted by giving public notice of the proposed new local law in the local newspaper and inviting submissions. Public notices will also be posted on the public notice boards in Council's Customer Contact Centres, on Council's website and letters will be sent to representative bodies advising of the proposed local law and inviting submissions. The public notice will also advise that the consultation on anti-competitive provisions is being conducted with the public consultation for **PLL6**.

The public interest test plan and copies of **PLL6** will also be open to inspection at Council's Customer Contact Centres.

13. Determine time-frame for conducting the public interest test

The time-frames for conducting the public interest test will be as follows:

Commence public interest test	Submissions from Thursday 9 November 2017
Estimate of time for completing public interest test	2 months, including consultation period.
Consultation period	Minimum of 3 weeks (21 days)
Target date for presenting report to local government	The Council meeting to be convened by Council 2 months after the commencement of the public interest test.

14. Determine content of the public interest test report

The public interest test report will provide:

- 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.

15. Public interest test plan approval

This decision has been delegated by Council to the Chief Executive Officer. The *Local Government Act 2009* allows this decision to be delegated by Council. Council will not delegate any decision in respect of recommendations contained in the actual public interest test report.

Approved by:



Mark Pitt
Chief Executive Officer, North Burnett Regional Council

Dated: 31/10/2017

LOCAL LAW NO. 6 (WASTE MANAGEMENT) 2017 LIST OF LIKELY ANTI-COMPETITIVE PROVISIONS

ATTACHMENT A

Local Law: Local Law No. 6 (Waste Management) 2017

Object: The object of the local law is to protect the public health, safety and amenity related to waste management by

- (a) regulating the storage, servicing and removal of waste; and
- (b) regulating the disposal of waste at waste facilities; and
- (c) ensuring that an act or omission does not result in—
 - i. harm to human health or safety or personal injury; or
 - ii. property damage or loss of amenity; or
 - iii. environmental harm or environmental nuisance.

Anti-competitive provisions	Relevant criteria	Explanatory Comments
Local Law, section 5	5 – prescribed standard 7 – business restriction	The local government may designate areas within its local government area to conduct general waste or green waste collection and decide on the frequency of those collections. Compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 6(1)	5 – prescribed standard 7 – business restriction	The local government may prescribe requirements about the supply of standard general waste containers and waste containers other than general waste containers. Compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 7(1) and (2)	5 – prescribed standard 7 – business restriction	Requirements are prescribed for the storage of general waste in waste containers. Compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 8(1) and (2)	5 – prescribed standard 7 – business restriction	Requirements are prescribed for the keeping of waste containers at serviced premises. Compliance with the requirements may have an impact on the conduct of a business activity.

Anti-competitive provisions	Relevant criteria	Explanatory Comments
Local Law, section 9(1) and (2)	5 – prescribed standard 7 – business restriction	Requirements are prescribed for the storage of general waste at particular services premises and compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 11	5 – prescribed standard 7 – business restriction	Requirements may be prescribed for the depositing and disposal of general waste at premises other than services premises. Compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 12(1)	5 – prescribed standard 7 – business restriction	Requirements are prescribed for the storage of industrial waste. Compliance with the requirements may have an impact on the conduct of a business activity.
Local Law, section 13	5 – prescribed standard 7 – business restriction	Requirements may be prescribed about the treatment of industrial waste for disposal. Compliance with the requirements may have an impact on the conduct of a business activity.

