

COUNCIL OF THE CITY OF GOLD COAST
PUBLIC INTEREST TEST PLAN
SUBORDINATE LOCAL LAW NO. 16.8 (ADVERTISING DEVICES) 2016

INTRODUCTION

As part of the National Competition Policy reforms, Council is conducting a public interest test on possible anti-competitive provisions identified in *Subordinate Local Law No. 16.8 (Advertising Devices) 2016*. 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 Department of Local Government and 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.

PURPOSE OF THE SUBORDINATE LOCAL LAW

The purpose of the proposed subordinate local law identified in the Schedule is specified in the subordinate local law a copy of which is available for inspection with this public interest test plan.

POSSIBLE ANTI-COMPETITIVE PROVISIONS

The possible anti-competitive provisions in the subordinate local law are also identified in the Schedule.

CURRENT ENVIRONMENT

Particulars of the current environment impacted by the proposed subordinate local law is specified in the Schedule.

TYPE OF ASSESSMENT AND LEVEL OF RESOURCES REQUIRED

The assessment of the anti-competitive provisions in the subordinate local law will be conducted as a minor review. The emphasis will be on qualitative analysis of alternatives with key impacts expressed in monetary terms where data is available.

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

EXTENT OF CONSULTATION TO BE CONDUCTED

Consultation will be conducted by giving public notice of the review in the local newspaper and inviting submissions. Public notices will also be posted on all public notice boards at Council's Customer Contact Centres. The public notice will also advise that the consultation on anti-competitive provisions is being conducted with the public consultation for the proposed subordinate local law.

Council will consult with existing representative bodies whose members will be impacted by the proposed subordinate local law.

The public interest test plan will be open to inspection at the Council's public office and available for purchase.

TIME-FRAME FOR CONDUCTING THE PUBLIC INTEREST TEST

Commence public interest test	July 2016
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 3 months after the commencement of the public interest test.

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
- Recommendations

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:



Dale Dickson
Chief Executive Officer, Council of the City of Gold Coast

Dated: ___/___/2016

Schedule — Advertising Devices

IDENTIFIED POSSIBLE ANTI-COMPETITIVE PROVISIONS

The possible anti-competitive provisions identified in *Subordinate Local Law No. 16.8 (Advertising Devices) 2016* are as follows:

- section 5 (Prescribed criteria)
- section 6 (Exemption from requirement for a licence)
- section 7 (Application for licence)
- section 8 (Deciding application for licence)
- section 9 (Conditions of a licence)
- section 10 (Transfer of a licence)

CURRENT ENVIRONMENT

The business environment has failed to operate competitively by not including in the product/service cost, the impact that advertising devices have on public safety and on the local amenity/environment. To ensure business includes these costs, *Local Law No. 16 (Licensing) 2008* identifies, as a regulated activity, advertising device which is defined to mean:

- (a) the placing, building or erection of a temporary advertising device on premises that is visible from a public place;
- (b) the placing, building or erection of a permanent advertising device on premises that is visible from a public place;
- (c) the display or change in display of advertising on premises that is visible from a public place.

The regulation of the regulated activity is supported by *Subordinate Local Law No. 16.8 (Advertisement) 2008*. The proposed subordinate local law repeals and replaces *Subordinate Local Law No. 16.8 (Advertisement) 2008*. The purpose of the proposed subordinate local law is to ensure that the impact that advertising devices have on public safety and on the local amenity/environment are included in the product/service costs of business.

In particular, the object of the proposed subordinate local law is to ensure that the placing, building erection and display of advertising devices, including temporary advertising devices and permanent advertising devices, does not create, or increase, a risk to human health or safety, road safety or the safety of pedestrians while providing for the functional advertisement requirements of business and ensuring that the built form and natural attributes of the local government area are maintained and not unreasonably compromised.

Without the restriction contemplated in each of the current subordinate local law and the proposed subordinate local law, costs would be imposed on the community when essentially they should be included as part of the original transaction between business and consumers. The costs potentially imposed are a decrease in public safety and an increase in visual pollution.

Public safety is maintained by:

- regulating the structural integrity of advertising devices by specifying requirements relevant to device type, dimensions, maintenance, positioning and construction; and

- ensuring structures do not obstruct or detract vehicular and pedestrian traffic.

Amenity standards are maintained by:

- prescribing the dimensions of the advertising devices to ensure they bear a reasonable relationship with surrounding buildings thereby ensuring they are not dominating and oppressive and do not unreasonably obstruct existing views; and
- the advertisement complements the character and streetscape or the area, minimises visual clutter and protects the scenic, historic, architectural, scientific and cultural interest of the area.

The anti-competitive provisions restricting the display of advertising devices are generally restrictive and impact on all businesses. As a result, no particular product will be identified and Council will refer to the market in general.

CONFIRM IDENTIFIED PROVISIONS ARE ANTI-COMPETITIVE

The sections are confirmed as anti-competitive and no errors in analysis were made in the identification stage.

REALISTIC REGULATORY AND NON-REGULATORY ALTERNATIVES TO THE PROPOSED SUBORDINATE LOCAL LAW

The objective of regulating the prescribed activity is to ensure that the display of advertising devices, including temporary advertising devices and permanent advertising devices, does not create, or increase, a risk to human health or safety, road safety or the safety of pedestrians while providing for the functional advertisement requirements of business and ensuring that the built form and natural attributes of the local government area are maintained and not unreasonably compromised.

The proposed subordinate local law, in conjunction with *Local Law No. 16 (Licensing) 2008* achieves this using a combination of conventional and negative licensing. Some form of government intervention is required to ensure that advertising devices displayed meet the standards expected by the community and in meeting these standards that the onus of cost is on business and not the community.

The market is unable to self regulate or impose restrictions due to lack of solidarity within the market (there is no specific industry) and no common business theme or interest to create dependence between businesses.

By meeting the objective detailed above, the proposed subordinate local law, in conjunction with *Local Law No. 16 (Licensing) 2008* does not induce strongly anti-competitive conduct in the market place or confer monopoly power on a business. Considering the need to monitor the display of advertising devices for quality and environmental reasons, other types of intervention which are considered realistic are:

- **Negative licensing** was considered to be a viable alternative at this stage. Negative licensing is a system whereby participants can enter the market if they meet the standards or “rules” set for the particular business activity. There is no requirement to first obtain a permit or similar approval. There is, therefore, no barrier to entry to the market. Under a negative licensing regime, the local law would need to be changed to remove the requirement to hold a licence and prescribe a range of generic standards or “rules”. Of necessity, the standards will need to be output standards as opposed to specifying how to meet the output. The local law could retain offences and penalties for non-compliance.

Under the pure model of negative licensing, no fees are paid and no permits are issued. However, the penalties for non-compliance are high and should be applied immediately. Some uncertainty exists as to whether large penalties can be obtained due to the inability to set minimum penalties in local laws (only maximum penalties can be set in local laws) and the tendency of judges to apply small fines, particularly for first offences.

- **Community empowerment** - Local government would act as facilitator rather than regulator of advertising devices. No regulation would exist for the display of advertising devices with the exception of advertising devices on public land or in areas covered by State legislation. Information guidelines would be produced for businesses in relation to the display of advertising devices, but these would not be enforced.

In assessing the viability of the realistic alternatives, Council considers community empowerment to be non-viable. The community empowerment alternative fails to provide voluntary compliance by business to a minimum level of environmental and public safety standards. Over time, the level of information and interest in maintaining these standards is expected to erode. Council considers the benefits enjoyed by ensuring some level of environmental and quality standard far outweigh the benefits given to business under a system of voluntary compliance.

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

The following stakeholders have been identified:

Stakeholders/broad impacts	Approximate size of group	Distribution of group	Impact rating and rationale
<p>Local Government</p> <p>Council would be impacted if there was a change from the current regime which is proposed to be varied by Council to an alternative regime, and in particular, a negative licensing regime.</p>	<p>Council</p>	<p>Local government area</p>	<p>Moderate – A change to a negative licensing regime would require the amendment of <i>Local Law No. 16 (Licensing) 2008</i> and the proposed subordinate local law and would have an impact on staff duties.</p>
<p>Business - Existing and Potential</p> <p>Existing and potential businesses are impacted because of the use advertising devices to advertise business products and services and a change in the regulatory regime would have an impact.</p>	<p>57,000</p>	<p>Local government area</p>	<p>Medium - The number of businesses dependent on this type of advertising is high. The affect on each business is low.</p>

Stakeholders/broad impacts	Approximate size of group	Distribution of group	Impact rating and rationale
<p>Consumers</p> <p>Consumers are impacted because <i>Law No. 16 (Licensing) 2008</i>, in conjunction with the proposed subordinate local law impact on product/service choice and the level of advertising of business product.</p>	560,000	Local government area	<p>Low - Consumers are impacted by changes to the price of available products and services which are advertised by way of an advertising device.</p>
<p>Home owners</p> <p>Home owners are impacted because the regulation of the display of advertising devices has the potential to decrease the monetary and aesthetic value of their homes.</p>	150,000	Local government area	<p>Low - Only impacts on a small number of total home owners.</p>
<p>Conservationists</p> <p>Conservationists have an interest in any changes to environmental protection laws.</p>	5	Local government area	<p>Low - Only impacts on how environmental standards are enforced not the level of enforcement.</p>