

**COUNCIL OF THE CITY OF GOLD COAST**  
**PUBLIC INTEREST TEST PLAN**  
***PARKS AND RESERVES (AMENDMENT) SUBORDINATE LOCAL LAW***  
***(NO. 1) 2016***

## **INTRODUCTION**

As part of the National Competition Policy reforms, Council is conducting a public interest test on possible anti-competitive provisions identified in *Parks and Reserves (Amendment) Subordinate Local Law (No. 1) 2016* (amending subordinate local law). 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 AMENDING SUBORDINATE LOCAL LAW**

The purpose of the proposed amending subordinate local law identified in the Schedule is specified in the amending 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 amending subordinate local law are also identified in the Schedule.

## **CURRENT ENVIRONMENT**

Particulars of the current environment impacted by the amending subordinate local law are specified in the Schedule.

## **TYPE OF ASSESSMENT AND LEVEL OF RESOURCES REQUIRED**

The assessment of the anti-competitive provisions in the amending 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 advertising in the local newspaper, giving public notice of the review on Council's website 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 amending subordinate local law.

Council will consult with existing licence holders and representative bodies whose members will be impacted by the amending subordinate local law.

The public interest test plan will be open to inspection at the Council's Customer Contact Centres.

## **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:



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

Dated: \_\_\_/\_\_\_/2016

## **Schedule — Parks and Reserves (Amendment) Subordinate Local Law (No. 1) 2016**

### **IDENTIFIED POSSIBLE ANTI-COMPETITIVE PROVISIONS**

The possible anti-competitive provisions identified in *Parks and Reserves (Amendment) Subordinate Local Law (No. 1) 2016* are as follows:

- section 5 - insertion of new section 10A Excluded parks
- section 6 - amendment of section 15 (Prescribed criteria for a permitted business)
- section 7 - insertion of new schedule 1A Excluded parks

### **CURRENT ENVIRONMENT**

The business environment has failed to adequately take into account the impact of the business activity of commercial fitness activity and in particular, has not included in the product/service cost, the impact that commercial fitness activities have on public health and safety and on the local amenity/environment. To ensure business includes these costs, *Local Law No. 9 (Parks and Reserves) 2008* identifies, as a regulated activity, permitted business including a commercial fitness activity as that expression is defined in *Subordinate Local Law No. 9.1 (Parks and Reserves) 2008*.

The regulation of commercial fitness activities is supported by *Parks and Reserves (Amendment) Subordinate Local Law (No. 1) 2016*. The amending subordinate local law amends *Subordinate Local Law No. 9.1 (Parks and Reserves) 2008*. The purpose of the amending subordinate local law is to ensure that the impact that commercial fitness activities have on public health and safety and on the local amenity/environment are included in the product/service costs of business.

In particular, the amending subordinate local law specifies those parks and reserves, and parts of parks and reserves, where commercial fitness activities are prohibited from operating all of the time or during specified times and days, to ensure public health, safety and amenity of park users and neighbouring residents is not unreasonably impacted by commercial fitness activities at the specified parks and reserves.

Without the restriction contemplated in the amending 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 amenity.

Public safety is maintained by:

- prohibiting the use of specific parks and reserves for commercial fitness activities that pose safety risks if used for these activities.

Amenity standards are maintained by:

- prohibiting the use of specific parks and reserves for commercial fitness activities in circumstances where neighbouring residents and park users are sensitive to, or impacted by, these activities.

The anti-competitive provisions prohibiting commercial fitness activities from using specific parks and reserves, or part thereof, are specifically restrictive and impact on all commercial fitness activity businesses.

The amending subordinate local law also regulates the conduct of commercial fitness activities by changing the criteria prescribed for the grant of a permit for the conduct of a commercial fitness activity.

### **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 AMENDING SUBORDINATE LOCAL LAW**

The objective of regulating the prescribed activity is to ensure that the use of parks and reserves to conduct commercial fitness activities does not create, or increase, a risk to human health or safety or impact on the amenity of park users and neighbouring residents while providing fitness activities commensurate with Council's 'Healthy and Active' community goals.

The amending subordinate local law, in conjunction with *Local Law No. 9 (Parks and Reserves) 2008* achieves this using conventional licensing and prohibition. Some form of government intervention is required to ensure that commercial fitness activities 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 bodies tying all commercial fitness activities together) and no common business theme or interest to create dependence between businesses.

By meeting the objective detailed above, the amending subordinate local law, in conjunction with *Local Law No. 9 (Parks and Reserves) 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 operation of commercial fitness activities for compliance with community expectation, 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 permit 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 commercial fitness activities. No regulation would exist for the operation of commercial fitness activities within parks and reserves with the exception of areas covered by State legislation. Information guidelines would be produced for businesses in relation to the operation of commercial fitness activities, 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><b>Local Government</b></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>	Council	Local government area	<b>Moderate</b> – A change to a negative licensing regime would require amendment to each of <i>Local Law No. 9 (Parks and Reserves) 2008</i> and <i>Subordinate Local Law No 9.1 (Parks and Reserves) 2008</i> and would have an impact on staff duties.
<p><b>Business - Existing and Potential</b></p> <p>Existing and potential businesses are impacted because of the prohibition of commercial fitness activities from specific locations and a change in the regulatory regime would have an impact.</p>	600	Local government area	<b>Medium</b> - The number of businesses dependent on this type of activity is high. The affect on each business is significant.
<p><b>Consumers</b></p> <p>Consumers are impacted because <i>Subordinate Local Law No 9.1 (Parks and Reserves) 2008</i>, impacts on product/service choice and where consumers can access commercial fitness activities within parks and reserves.</p>	5000	Local government area	<b>Medium</b> - Consumers are impacted by changes to the available location of commercial fitness activities.

Stakeholders/broad impacts	Approximate size of group	Distribution of group	Impact rating and rationale
<p><b>Park users</b></p> <p>Park users are impacted because <i>Subordinate Local Law No 9.1 (Parks and Reserves) 2008</i>, impacts on both allowing and restricting the use of parks for commercial fitness activities.</p>	560,000	Local government area	<p><b>Low</b> – Park users are impacted by changes to allow commercial fitness activities to occur in parks. This impact is somewhat offset by restricting the significance of the impact of commercial fitness activities on other park users.</p>
<p><b>Home owners</b></p> <p>Home owners are impacted because the regulation of commercial fitness activities in neighbouring parks has the potential to decrease the monetary and aesthetic value of their homes.</p>	150,000	Local government area	<p><b>Low</b> - Only impacts on a small number of total home owners.</p>
<p><b>Conservationists</b></p> <p>Conservationists have an interest in any changes to environmental protection laws.</p>	5	Local government area	<p><b>Low</b> - Only impacts on how environmental standards are enforced not the level of enforcement.</p>