



**Mount Isa City Council
Review of Possible Anti-Competitive Provisions**

***Amendments to Local Law No. 2 (Animal Management) 2013
Local Law No. 7 (Aerodromes) 2018***

Introduction

Section 38 of the *Local Government Act 2009* (“**the 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.

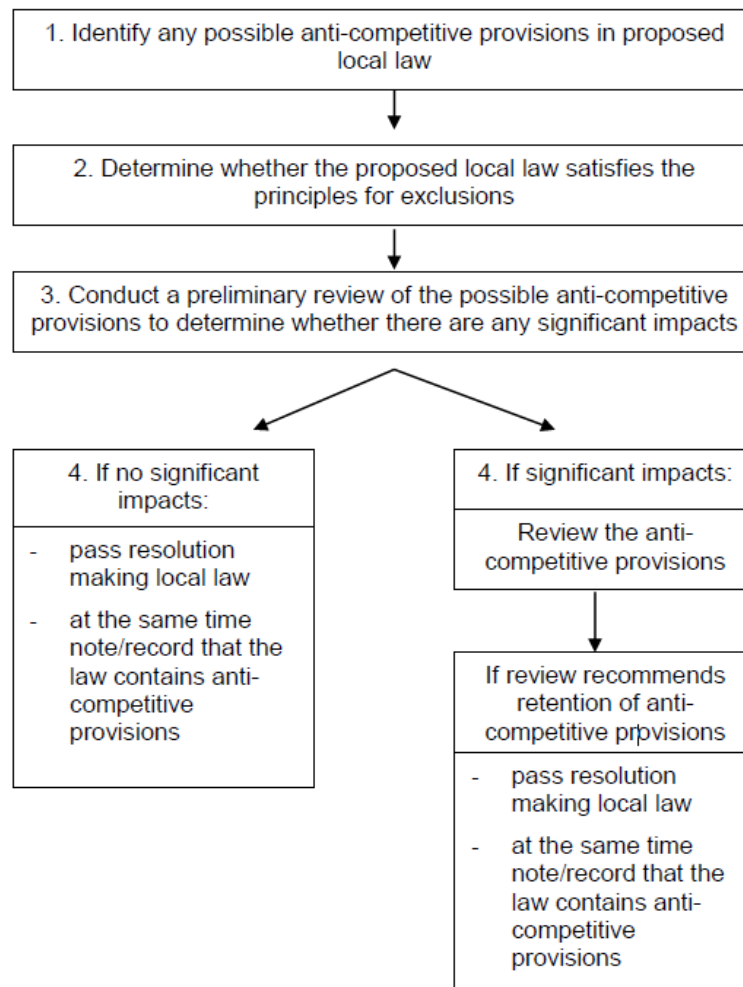
The procedures prescribed under a regulation are set out in section 15 of the *Local Government Regulation 2012* (“**Regulation**”). Section 15 of the Regulation requires Council to undertake a review of new Local Laws for anti-competitive provisions in accordance with the “National Competition Policy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

Council is proposing to adopt new Local Laws to which section 38 of the Act and section 15 of the Regulation apply.

These are:

- an Amending Local Law to amend Council’s existing *Local Law No. 2 (Animal Management) 2013*;
- a new Local Law, being *Local Law No. 7 (Aerodromes) 2018*;

(“the New Local Laws”).

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 New Local Laws, 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.

Amendments to Local Law No. 2 (Animal Management) 2013

Purpose

The amendments proposed to *Local Law No. 2 (Animal Management) 2013* (“**LL2**”) create a framework for enabling Council to register cats in its local government area.

The primary purpose of the amendments is to ensure cats are appropriately regulated in the Mount Isa local government area, thereby reducing and/or allowing Council to better manage the risk associated with unwanted and feral cats.

Other consequential amendments are also proposed to be made to LL2.

Possible anti-competitive provisions and application of Relevant Exclusions

The purpose of the proposed amendments to LL2 is to ensure acceptable public health and safety standards are met, and to combat the spread of pests and disease.

The local law is intended to regulate the behaviour of individuals, not businesses.

The amendments to LL2 represent legitimate measures to combat the spread of pests and disease, and to ensure acceptable public health and safety standards are met.

In view of that, the amendments to LL2 are subject to a Relevant Exclusion, and so further review of their anti-competitive nature need not be carried out.

Local Law No. 7 (Aerodromes) 2018

Purpose

The purpose of *Local Law No. 7 (Aerodromes) 2018* (“LL7”) is to regulate the use and operation of aerodromes controlled by Council.

The purpose is to be achieved by—

- protecting the public against risk of injury and the community against damage; and
- ensuring that activities at the aerodromes are undertaken in an orderly and safe manner and do not create a hazard to public health or a threat to property; and
- controlling the public use of the aerodromes to the extent that the use is consistent with the rights, expectations and safety of the local community; and
- protecting the obstacle limitation surfaces (OLS) and minimising hazards to aircraft; and
- providing for—
 - fees and charges for the rights described above; and
 - the powers and authority of persons authorised by Council for the purposes of the local law; and
 - penalties for breaches of the local law; and
 - liability arising out of use of the aerodromes.

Possible anti-competitive provisions and application of Relevant Exclusions

A number of possible anti-competitive provisions have been identified in LL7.

These are listed below.

Possible Anti-Competitive Provisions	Explanatory Comments	Application of a Relevant Exclusion
Section 5 – Use by aircraft	Aspects of section 5 which restrict or prohibit particular aircraft from operating at aerodromes during particular times may	The provision would be excluded from anti-competitive provisions because it is in the interests of regulating the behaviour of

	be considered anti-competitive. These aspects may be considered to be both creating a barrier to entering the market, and also restricting competition in the market, for participants in markets that wish to use aerodromes.	individuals for public safety purposes.
Section 11 – Conduct of persons on the airside area of an aerodrome	Aspects of section 11 which restrict or prohibit persons from entering or remaining upon airside areas, or bringing or leaving property or materials on an airside area, may be considered anti-competitive. These aspects may be considered to be both creating a barrier to entering the market, and also restricting competition in the market, for participants in markets that wish to use aerodromes for the purpose apprehended by section 11.	The provision would be excluded from anti-competitive provisions because it is in the interests of regulating the behaviour of individuals for public safety purposes.
Section 13 – Special events	The provision may be considered anti-competitive to the extent that it creates a barrier to entering the market (in requiring payment of a fee or requires a permit to be obtained), for participants in markets that wish to use aerodromes for the purpose apprehended by section 13.	No exclusion identified.
Section 14 – Fees and charges	The provision may be considered anti-competitive to the extent that it creates a barrier to entering the market (in requiring payment of a fee), for participants in markets that wish to use aerodromes.	No exclusion identified.
Section 21 – Approval of temporary structures etc	Aspects of section 21 which enable Council to issue a permit for the installation of a temporary structure in certain circumstances, and impose conditions on a permit, may be considered anti-competitive. These aspects may be considered to be both creating a barrier to entering the market, and also restricting competition in the market, for participants in markets that wish to use aerodromes for the purpose apprehended by section 21.	The provision would be excluded from anti-competitive provisions because it is in the interests of regulating the behaviour of individuals for public safety purposes.

Following a review of all other provisions of LL7, it is concluded that no other provisions, on their reasonable and ordinary construction, can be treated as either creating a barrier to entering a market, or restricting competition to a market.

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

Under the Guidelines, if a Relevant Exclusion is not applied to an anti-competitive provision under Steps 1 and 2, Council must undertake an assessment of the anti-competitive provisions to determine whether significant impacts will exist if the provisions are adopted.

In determining whether significant impacts exist, Council must consider the following factors:

1. the probability of impacts occurring;
2. the size and characteristics of the affected businesses;
3. the intensity of the potential impact on affected business;
4. whether particular businesses will incur a disproportionate impact;
5. the duration of the impact (for example ongoing or “one off”).

Examples of potentially significantly impacts include:

- where a Local Law will impact on a relatively significant number of business;
- where a Local Law will impose significant restrictions on business operating in the local government area;
- where businesses will be required to pay a substantial yearly licencing fee to operate;
- where one type of business will be regulated to a lesser degree than other businesses providing the same or similar products.

Where no significant impacts are identified from the anti-competitive provisions, Council is not required to undertake any further review, but must notify the community of the existence of the anti-competitive provisions when making the Local Law.

If significant impacts are identified the local government is required to review the anti-competitive provisions in line with the guidelines developed by the Department of Local Government, Racing and Multicultural Affairs for conducting public benefit tests for legislation.

LL7, section 13 and 14

The only potentially anti-competitive provisions to which an exclusion was not identified as part of Steps 1 or 2 were sections 13 and 14 of LL7.

Both sections can be dealt with together, as they deal with substantially similar subject matter, and an analysis of their anti-competitive nature turns on largely identical issues.

Context

Section 13 allows Council to take certain steps for a special event at an aerodrome.

Section 14 allows Council to set fees and charges for rights of use of local government-controlled aerodromes.

Factors that must be considered

Consideration	Impact, rating and rationale
Probability of impacts occurring	The probability of impacts occurring are high, insofar as businesses who use local government-controlled aerodromes are concerned.
The size and characteristics of the affected businesses	The proposed provisions apply equally to all businesses who seek to obtain rights of user over local government-controlled aerodromes.
The intensity of the potential impact on affected businesses	<p>The proposed provisions constitute reasonable management action to ensure the appropriate use of local government-controlled aerodromes.</p> <p>The proposed provisions are in the context of an industry that is subject to substantial regulation on a number of levels, and the proposed provisions do not materially increase, or impose more intense burdens on, those businesses that participate in the aviation industry.</p>
Where particular businesses will incur disproportionate impact	<p>The local law is applied to all businesses who seek to use local government aerodromes and no disproportionate impacts were found.</p> <p>With respect to fees, Council is entitled to charge a commercial fee associated with the use of local government-controlled infrastructure. The fee is proposed to be applied “across the board”, and no disproportionate impacts have been identified.</p>
Duration of the impact	The impact on businesses will be ongoing in respect of those businesses to which the provision applies.

Conclusion

In assessing the anti-competitive provision, it is determined that no significant impacts will exist if the provisions are adopted.

Summary of Review

No significant impacts on businesses have been identified in this Review.