



ABN 59 004 233 489

25 September 2009

Mr Ian Church
Chief Executive Officer
Tablelands Regional Council
PO Box 573
Atherton QLD 4883

Dear Mr Church

Review of Planning Scheme/Local Laws – advertising devices regulation

It has come to our attention that Tablelands Regional Council is reviewing its Local Laws and Planning Schemes following its amalgamation of three former councils. We commend the Council on its reform efforts and would like to contribute by lodging the following submission concerning the regulation of advertising devices.

Content restriction in Mareeba Shire Council Local Law

Mareeba Shire Council *Local Law No 4 on Control of Advertising* contains the following clause:

Clause 5(2): The classification of advertisements as permitted advertisements may be based on 1 or more of the following criteria –
(b) the **content** of the advertisement...(emphasis added)

Its *Subordinate Local Law* on the control of advertising, consistently with this, contains the following clause:

Clause 3: For the purposes of section 5 of the Local Law, the following advertisements are classified as permitted advertisements –
(a) A “For Sale” notice which stands on the land to which it relates...
(b) A “To Let” notice not more than 0.56 square meters...
(c) Advertising matter relating to a Commonwealth, State or Local Government election.

By these instruments the former Shire Council has sought to restrict content; ie to prevent the advertising of third parties simply by virtue of its nature.

The OMA submits that this behaviour is an anti-competitive restriction in contravention of both the *Local Law Act 1993* and of the *Integrated Planning Act 1997* (even as modified by the recent *Sustainable Planning Act 2009*), and that Tablelands Regional Council should in its reforms eliminate this restriction.

Prohibition of content restrictions

Division 5, part 2 of Chapter 12 of the Local Government Act contains the requirement for local governments when reviewing local laws to identify any possible anti-competitive provisions. If a local law contains any anti-competitive provisions and the local government wishes to retain them, it must pass a resolution that it is in the public interest to do so and that their inclusion is the most appropriate way of achieving the local law's objectives (see also Local Law Manual ed 3, April 2003, page 3).

Plan Making Implementation Note No. 10, version 1.1, August 2007, on Advertising Devices, made under the Integrated Planning Act, describes inappropriate regulation as including regulation of content. The rationale is that content is reviewable by the Advertising Standards Board, whereas local government may regulate only matters such as size, height, illumination, location and amenity of advertising devices. In addition, such regulation is preferably to be done via planning schemes rather than local laws. If the latter are to be retained, they may only address matters such as licensing.

Recommendation

In light of the above, the OMA recommends that the content restriction in Mareeba Shire Council's local laws be removed, and that regulation of advertising devices be transferred to a new Planning Scheme that covers amenity and other associated issues regarding the effects of development.

Background on OMA and the outdoor advertising industry

The OMA is the industry association for outdoor media companies which advertise on public transport, billboards, and street furniture. The industry contributes to the economy through employment, community awareness and government advertising, and support including to local small and medium business.

We are grateful for the opportunity to be heard on the above issues, and look forward to the response to our submission and progress in Council's reforms. Please do not hesitate to call to discuss this matter further on tel (02) 8356 9000.

Yours sincerely



Helen Willoughby
Chief Executive Officer

copy to Coordinator General and Director General of DLGPSR, QLD