

COMMITTEE OF COUNCIL MEETING: 16 APRIL 2019

**C.C.4/4/19 TRADING PERMIT GUIDELINES – UPDATE AND REVIEW (NL)
(REPORT 7)**

Council could potentially adopt a Policy under the Property of Public Places Local Law to restrict the issuing of Trading Permits to only Mandurah or Peel Region residents.

However, if enforced, such a condition on a permit or a refusal could be the subject of an appeal to the State Administrative Tribunal. Advice received by officers suggests that the SAT is likely to overturn such a decision on the following grounds, given the Local Law;

- a) does not require an applicant to be a resident of the City or the Peel Region; and
- b) does not stipulate the location of an applicant's residence as a relevant consideration in the determination of an application of the imposition of conditions; and
- c) does require consideration of the Competition Policy Agreement, which in general terms provides that legislation should not restrict competition.

If Council resolved to modify the Local Law to restrict the issuing of Trading Permits to Mandurah or Peel Region residents, advice received by officers suggests that the Joint Standing Committee on Delegated Legislation who are required to approve the Local Law may not on the basis that such a restriction is likely to be beyond the scope at the City's legislative power under the Local Government Act as:

- a) it is unlikely to satisfy the test of 'reasonable proportionality' applied to subsidiary legislation;
- b) it would contain matter more appropriately included in legislation as it would introduce a fundamental change to existing policy and circumscribe the rights and liberties of potential permit applicants not resident in the City of Peel Region; and
- c) it would arguably be inconsistent with section 46 of the Competition Code text applied by the Competition Policy Reform Act.