

EXTRACT OF COUNCIL MEETING MINUTES (LOCAL LAW) 28 JUNE 2018

ITEM 10 MATTERS FOR CONSIDERATION – GOVERNANCE & ADMINISTRATION

10.1 Joint Standing Committee on Delegated Legislation Undertakings relating to Animals, Environment and Nuisance Local Law 2017

Meeting Date	28 th June 2018
Responsible Officer	Acting CEO Mr Allen Cooper
Reporting Officer	Acting CEO Mr Allen Cooper
Attachments	Correspondence for the Joint Standing Committee
Owner/Applicant	Shire of Quairading
Disclosure of Interest	Nil

MATTER FOR CONSIDERATION

The report considers advice received from the Parliamentary Joint Standing Committee (JSC) on Delegated Legislation requesting the Council to make minor amendments to the Shire of Quairading Animals, Environment and Nuisance Local Law 2017. The amendments relate to: -

1. Clause 4.11(1) - Affixing any letter figure, device, poster, sign or advertisement on any buildings, fences or posts - The Committee assumes that it was not the Shire's intention to prohibit the placing of house numbers, 'no junk mail' signs, 'beware of the dog' signs and other such signage on all buildings, fences or posts without Shire approval. If this assumption is correct, the Committee considers that clause 4.11(1) has an unintended effect and contravenes Committee Terms of Reference 10.6(b), namely 'whether the instrument has no unintended effect on any person's existing rights or interests' or alternatively is not within power.
2. Clause 2.16(1)(b) – Typographical error in this clause, as it should refer to Clause 2.17 instead of clause 2.14.
3. Clause 2.17 – Formatting error in paragraphs (1)(b)(iii) and (iv), and should be renumbered (1)(c) and (1)(d).
4. Clause 3.6 – Amend the words 'building or development site' to 'building site or development site' to be consistent with the definition of those terms in the local law.

In light of the above, the Joint Standing Committee on Delegated Legislation seeks the following undertakings from Council:

1. Within 6 months, amend the Local Law to:
 - (a) Delete clause 4.11(1) of the Shire of Quairading Animals, Environment and Nuisances Local Law 2017.
 - (b) Correct the typographical errors in clauses 2.16, 2.16 and 3.6.
 - (c) Make all necessary consequential amendments.
2. Until the Local Law is amended in accordance with undertaking 1:
 - (a) Not enforce the Local Law in a manner contrary to the undertakings that the Council gives.
 - (b) Where the Local Law is made publicly available, whether in hard copy or electronic form (including on the Shire's website, ensure that it is accompanied by a copy of these undertakings.

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BACKGROUND

Following the statutory consultation period, the Council at its meeting held on 22nd February 2018 resolved to make the Shire of Quairading Animals, Environment and Nuisances Local Law 2017.

The Local Law was subsequently published in the Government Gazette on 26th March 2018. The statutory law making process under Section 3.12 of the Local Government Act 1995 requires the Shire to advise the Parliamentary Joint Standing Committee on Delegated Legislation of the Shire of Quairading Animals, Environment and Nuisances Local Law 2017 in the prescribed manner following gazettal.

The Committee's role is to oversee the making of delegated legislation, such as local laws, including whether the local law under consideration is authorised or contemplated under the empowering enactment. The Joint Standing Committee on Delegation Legislation's Terms of Reference require that it cannot recommend to Parliament that a local law be amended where it contains provisions that conflict with existing legislation and as a consequence it must move to disallow the Local Law in its entirety.

Terms of Reference 10.6(b) of the Joint Standing Committee on Delegated Legislation requires the Committee to, in its consideration of an instrument, to "inquire whether the instrument has no unintended effect on any person's existing rights or interests". The Joint Standing Committee on Delegated Legislation has scrutinised the Local Law and formed the view that clause 4.11(1) needs to be deleted, and other minor drafting amendments be rectified, in order for the local law to comply with their Terms of Reference.

STATUTORY ENVIRONMENT

Joint Standing Committee on Delegated Legislation Terms of Reference

Local Government Act 1995 – S3.12(7)

3.12. Procedure for making of local laws

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
- (3) The local government is to —
 - (a) give statewide public notice stating that-
 - (i) the local government proposes to make a local law the purpose of which is summarised in the notice;
 - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;
 - (b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administer the Act under which the local law is proposed to be made, to that other Minister; and
 - (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
- (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
- (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law* as proposed or make a local law* that is not significantly different from what was proposed.

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*** Absolute majority required.**

- (5) After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
- (6) After the local law has been published in the Gazette the local government is to give local public notice —
 - (a) stating the title of the local law;
 - (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
 - (c) advising that copies of the local law may be inspected or obtained from the local government's office.
- (7) **The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.**
- (8) In this section —

making in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

POLICY IMPLICATIONS

There are no policy implications for this item at this stage.

FINANCIAL IMPLICATIONS

The amendment to the Local Law will result in additional advertising and gazettal costs.

STRATEGIC IMPLICATIONS – Strategic Community Plan 2017 - 2027

Up to date and relevant local laws are an important cornerstone of good governance. Local Government has a statutory and moral obligation to ensure that the regulation of local matters is conducted in a fair, efficient and reasonable manner.

COMMUNITY CONSULTATION

Nil.

RISK ASSESSMENT – Risk Management Policy and Risk Management Governance Framework Applicable.

Financial - Low Risk

Health – Low Risk

Reputation – Low Risk

Operation – Low Risk

Natural Environment – Low Risk.

EXECUTIVE SUMMARY/COMMENT

The Joint Standing Committee on Delegated Legislation is a committee of the Western Australian Parliament comprising 8 members with equal representation from the Legislative Council and Legislative Assembly.

Once a local law is gazetted, it is referred to the Committee for consideration under its Terms of Reference. Where the Committee finds that a local law offends one or more of its Terms of Reference it will usually seek a written undertaking from the local government to amend or repeal the instrument in question.

Where a local government does not comply with the Committee's request for an undertaking the Committee may, as a last resort, resolve to report to the Parliament recommending the disallowance of the instrument in the Legislative Council.

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A local law will cease to have effect from the date on which it is disallowed. Where the local law amended or repealed another local law the earlier local law will be revived on and after the day of disallowance.

Undertakings represent commitments made by local governments, government departments or agencies to the Committee that certain actions will be completed within a certain time frame.

The requesting of undertakings relating to Instruments from local governments, departments and agencies is a serious matter. The Committee allows Instruments to pass unimpeded into law subject to the commitment that the relevant local government, department or agency will abide by the undertakings they give.

The Committee accepts undertakings provided on the following terms:

- all consequential amendments arising from the undertakings will be made;
- offending clauses will not be enforced in a manner contrary to the undertakings given;
- the undertakings will be completed within six months of the date the local government, department or agency's letter provides the undertakings;
- where the instrument is made publicly available, whether in hard copy or electronic form, it be accompanied by a copy of the undertakings; and
- in the case of a local government, it will provide a copy of the minutes of the meeting at which the relevant council resolves to provide the undertakings.

Every six months, the Committee conducts a review of the Internet Undertakings List for viewing by Local Governments and the Internet Undertakings List for viewing by Departments and Agencies to check for compliance with provided undertakings. Reminders are sent to local governments, departments or agencies where compliance with undertakings has not occurred within the required time.

OFFICER RECOMMENDATION

RESOLUTION: 230-17/18

MOVED Cr McGuinness SECONDED Cr Haythornthwaite

That the Council of the Shire of Quairading undertakes to the Joint Standing Committee on Delegated Legislation that the Shire will: -

1. Within 6 months, amend the Shire of Quairading Animals, Environment and Nuisance Local Law 2017 to:
 - (a) Delete Clause 4.11(1);
 - (b) Correct the typographical errors in clauses 2.16, 2.17 and 3.6; and
 - (c) Make all necessary consequential amendments.
2. Until the Local Law is amended in accordance with undertaking 1:
 - (a) Not enforce the Local Law in a manner contrary to undertaking 1; and
 - (b) Where the Local Law is made publicly available, whether in hard copy or electronic form (including on the Shire's website), ensure it is accompanied by a copy of these undertakings.

CARRIED BY ABSOLUTE MAJORITY 8/0