



City of Busselton
Geographe Bay

LATE ITEMS

Council Agenda

25 February 2015

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

CITY OF BUSSELTON

LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 25 FEBRUARY 2015

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14. FINANCE AND CORPORATE SERVICES REPORT

14.1 AMENDMENT OF THE CITY OF BUSSELTON DOGS LOCAL LAW 2014

SUBJECT INDEX:	Local Laws
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	5.1.3. Ensure regulatory requirements are met
REPORTING OFFICER:	Legal Services Coordinator - Cobus Botha
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Nil

PRÉCIS

Council resolved on 12 November 2014 to make the *City of Busselton Dogs Local Law 2015 (Dogs Local Law)*. Following gazettal of the Dogs Local Law the Joint Standing Committee on Delegated Legislation (JSC) notified the City that it has a concern with certain wording of the Dogs Local Law and subsequently requests Council to provide the JSC with undertakings in relation to interim enforcement of the Dogs Local Law pending amendment thereof.

The purpose of this report is for Council to consider the request from the JSC and to resolve whether to provide the requested undertakings and to commence the process of amending the Dogs Local Law in accordance with these undertakings.

BACKGROUND

Council resolved on 12 November 2014 to make the Dogs Local Law which was subsequently gazetted on 24 November 2014 and which came into operation 14 days after its publication in the Government Gazette.

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament appointed the JSC to undertake an overseeing role on its behalf, which includes the power to scrutinise and recommend the disallowance of local laws to the Parliament.

The JSC scrutinised the Dogs Local Law at its meeting on 25 February 2015 and resolved to write to the City about clause 3.1(1)(c) which states:

“3.1 Dogs to be confined

(1) An occupier of premises on which a dog is kept must –

(a)...

(b)...

(c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;”

The JSC expressed its concern with the underlined part of this clause, advising as follows:

“While, the intention of the clause is clear – to keep dogs confined – the clause makes it an offence for and owner or occupier to open a gate at any time when a dog is on the premises, including when the owner or occupier temporarily opens a gate to leave their yard.”

The JSC is of view that the current wording of clause 3.1(1)(c) potentially modifies the rules of fairness, could lead to an unreasonable outcome and therefore causes it to fall outside the empowering enactment. As a solution the JSC proposed that Council amend this clause in the manner of the text underlined below:

*“(c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (**unless the gate is temporarily opened in a manner that ensures that the dog remains confined**), and is fitted with a proper latch or other means of fastening it;”*

The JSC further requested that Council provide the JSC by Friday 6 March 2015 with an undertaking:

- To within 6 months amend clause 3.1(1)(c) to read as drafted above;
- Not enforce the above clause in a manner contrary to the undertaking;
- Make any consequential amendments arising from the undertaking; and
- Where the Local Law is made publicly available, whether in hard copy or electronic form, that the law be accompanied by a copy of these undertakings.

The purpose of this report is for Council to consider the request from the JSC and to resolve whether to provide the requested undertaking and to commence the process for amending the Dogs Local Law accordingly.

STATUTORY ENVIRONMENT

Under its Terms of Reference the JSC has the power to recommend to Parliament that a local law, which is considered to be beyond giving effect to a purpose authorized or contemplated by the empowering enactment be disallowed. Therefore should Council resolve not to provide the undertakings as requested, it may result in the Dogs Local law being disallowed by Parliament.

Section 3.12(8) of the *Local Government Act 1995 (Act)* stipulates that the procedure for amending the text of a local law is the same as for making a local law. The procedure for making local laws is set out in sections 3.12 to 3.17 of the Act and regulation 3 of the *Local Government (Functions and General) Regulations 1996*. The person presiding at a Council meeting is to give notice of the purpose and effect of a proposed local law by ensuring that —

- the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- the minutes of the Council meeting include the purpose and effect of the proposed local law.

The purpose and effect of the proposed amendment local law is as follows:

Purpose:

To amend clause 3.1(1)(c) of the *City of Busselton Dogs Local Law 2014* to clarify the intended operation of the clause.

Effect:

To ensure that the wording of clause 3.1(1)(c) of the *City of Busselton Dogs Local Law 2014* operates fairly as intended and as such achieve consistency with the empowering legislation under which the local law is made.

Statewide and local public notice is to be given by advertising the proposed amendment in accordance with the requirements of sections 3.12(3) and (3a) of the Act. The submission period must run for a minimum period of six weeks after which Council, having considered any submissions received, may resolve to make an amendment local law in accordance with the proposed amendment.

RELEVANT PLANS AND POLICIES

None

FINANCIAL IMPLICATIONS

Costs associated with the advertising and gazettal of an amendment local law will come from the legal budget. These costs are unlikely to exceed \$2,000 and there are sufficient funds in the draft legal budget for this purpose.

STRATEGIC COMMUNITY OBJECTIVES

The proposal aligns with the *City of Busselton Strategic Community Plan 2013* as follows:

6.2 Governance systems that deliver responsible, ethical and accountable decision making.

RISK ASSESSMENT

The requested undertakings and proposed amendment of the Dogs Local Law does not involve any significant changes from current practices and is therefore considered low risk.

CONSULTATION

No external consultation has been sought. If Council resolve to commence the law making process, public submissions will be invited as part of the statutory consultation process prescribed under Sections 3.12 (3) and (3a) of the Act.

OFFICER COMMENT

The City's Dogs Local Law is based on the WALGA pro-forma or "model" Dog Local Law, with the current wording of clause 3.1(1)(c) of the Dogs Local Law essentially the same as the WALGA pro-forma local law. The JSC acknowledged this and indicated that it has already informed WALGA accordingly and suggested that this clause of WALGA's pro-forma Dog Local Law be amended.

The JSC's terms of reference 3.6(a) and 3.6(b) state:

In its consideration of an instrument, the Committee is to inquire whether the instrument—

(a) is authorized or contemplated by the empowering enactment;

(b) has an adverse effect on existing rights, interests or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment

The terms of reference authorise the JSC to express an opinion on what Parliament contemplated when passing legislation. Although it has never been the intention with clause 3.1(1)(c) to 'criminalise' the opening of a gate by an owner or occupier when a dog is on the premises, it can be contemplated that a strict interpretation and application of this clause could potentially allow this to happen. Therefore the suggested amendment of clause 3.1(1)(c) of the Dogs Local Law is considered necessary to achieve consistency with the rules of fairness and is recommended.

CONCLUSION

In order to avoid the unintentional but potential unreasonable effect of clause 3.1(1)(c) of the City's Dogs Local Law, this clause should be amended in accordance with the wording recommended by the JSC and the requested undertakings in relation thereto provided to the JSC.

OPTIONS

In addition to the Officer Recommendation, Council have the following options:

Option 1

Council can resolve not to amend the Dogs Local Law as requested, but rather to make a submission to the JSC to the effect that the intention of clause 3.1(1)(c) of the Dogs Local Law is clear – to keep dogs confined and not to 'criminalise' otherwise lawful behaviour by owner or occupiers temporarily opening gates on premises where dogs are kept. For the reasons discussed under OFFICER COMMENT above this is not recommended and will in all likelihood result in the Dogs Local Law being disallowed by Parliament.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Council is requested to provide the required undertakings to the JSC by Friday, 6 March 2015. In accordance with the undertakings the required amendment of the Dogs Local Law will have to be completed within 6 months from providing these undertakings.

OFFICER RECOMMENDATION

That the Council:

1. Provides, in relation to the *City of Busselton Dogs Local Law 2014*, the following undertakings to the Joint Standing Committee on Delegated Legislation:
 - a) To amend within 6 months from this resolution clause 3.1(1)(c) to read as follows:

“(c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined), and is fitted with a proper latch or other means of fastening it;”
 - b) Not enforce the above clause in a manner contrary to the undertaking;
 - c) Make any consequential amendments arising from the undertaking; and
 - d) Where the Local Law is made publicly available, whether in hard copy or electronic form, that the law be accompanied by a copy of these undertakings.
2. Commences the law-making process for amending the *City of Busselton Dogs Local Law 2014*, the purpose and effect of the local law being as follows:

Purpose: To amend clause 3.1(1)(c) of the *City of Busselton Dogs Local Law 2014* to clarify the intended operation of the clause.

Effect: To ensure that the wording of clause 3.1(1)(c) of the City of Busselton Dogs Local Law 2014 operates fairly as intended and as such achieve consistency with the empowering legislation under which the local law is made.

3. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the Local Government Act 1995, by –
 - a) giving Statewide public notice and local public notice of the proposed amendment of the Local Law; and
 - b) giving a copy of the proposed amendment local law and public notice to the Minister for Local Government.

4. That the CEO, after the close of the public consultation period, submit a report to the Council on any submissions received on the proposed amendment of the Local Law to enable the Council to consider the submissions made and to determine whether to make an amendment local law in accordance with section 3.12(4) of the Act.

17. CONFIDENTIAL REPORTS

The reports listed below are of a confidential nature, in accordance with section 5/23(2) of the Local Government Act 1995. These reports have been provided to Councillors, the Chief Executive Officer and Directors only.

RECOMMENDATION

That the meeting is closed to members of the public to discuss the following items which are confidential for the reasons as shown.

**17.1 PROPOSED TERMINATION OF SUBLEASE I126939 GRANTED TO DA & JL COUCH
IN RESPECT OF THE ICE CREAM KIOSK AT THE BUSSELTON FORESHORE**

This report contains information of a confidential nature in accordance with Section 5.23(2)(e)(ii) of the Local Government Act 1995, as it contains information relating to a matter that if disclosed, would reveal information that has a commercial value to a person, where the information is held by, or is about, a person other than the local government