

Proposed Amendment to Local Government Property Local Law 2016 - Smoking Ban
Summary of Submissions Received

#	Name	Summary of Comments	Staff Comment
1	Philippa Wiggins	Agrees with proposal to ban smoking on beaches.	Noted.
2	Margaret Wilkes	Agrees with proposal to ban smoking on beaches.	Noted.
3	Hayden Strzina	Agrees with proposal to ban smoking on beaches. Cigarettes are common pieces of litter and it is not fair to those wanting to enjoy the beach.	Noted.
4	Jonathon Strzina	Agrees with proposal to ban smoking on beaches. Cigarettes are common pieces of litter.	Noted.
5	Victor Strzina	Agrees with proposal to ban smoking on beaches. Requests that ban extends to all areas of Cottesloe.	Noted.
6	Barbara Pascoe	Agrees with proposal to ban smoking on beaches. Cigarette butts cause litter. Proposal eliminates exposure to smoking to beach users and reduces risks to marine life.	Noted.
7	Kerry Strzina	Agrees with proposal to ban smoking on beaches. Cigarette butts cause litter and eliminates exposure to smoking to beach users. Cost of cleaning is passed onto residents.	Noted.

Elizabeth Nicholls

From: Pippa Wiggins
Sent: Friday, 6 May 2016 5:31 PM
To: council
Subject: Cigarette butts

I totally agree with Council in making Cottesloe beach a smoke free zone. During the summer months I daily pick up cigarette butts that are not picked up by those responsible for cleaning the beach of debris.

Philippa Wiggins

Elizabeth Nicholls

From:
Sent: Friday, 6 May 2016 7:05 PM
To: council
Subject: Smoking ban

It will be good to have clean smoke free air on our lovely beach

Sent from my iPad

Elizabeth Nicholls

From: Hayden Strzina
Sent: Friday, 13 May 2016 4:45 PM
To: council
Subject: Please prohibit cigarette smoking on Cottesloe beaches

Hi there,

Please add my name to the list of people who are keen to rid Cottesloe beaches of cigarettes.

They are one of the most common pieces of litter I see on Cottesloe beaches. Smokers aren't playing by the rules; they have been polluting both the air and the sand at our beaches for long enough.

It's not fair for those wishing to enjoy the beach, especially those who might be trying to kick the habit... let alone those with kids nearby or asthma.

Smoking is banned in Perth CBD shopping malls (Hay & Murray St), please ban it at Cottesloe beaches.

Thank you,
Hayden Strzina

Elizabeth Nicholls

From: Jonathon Strzina
Sent: Saturday, 14 May 2016 4:22 PM
To: council
Subject: Smoking on our Beaches

Hi there,

Please add my name to the list of people who are keen to rid Cottesloe beaches of cigarettes.

I consider our beaches a sacred place yet I see cigarette butts littering them regularly. I believe the best method to reduce this is to ban smoking on our beaches.

Thank you,
Jonathon Strzina

Elizabeth Nicholls

From: Strzina, Victor
Sent: Monday, 16 May 2016 9:08 AM
To: council
Subject: Support for Smoking Ban on Cottesloe Beach

To:

Mayor, Councillors and staff:

I fully support the complete ban on smoking on Cottesloe Beach and would request that council consider a further extension of that ban to include all public areas in Cottesloe.

Regards,

Victor Strzina

Address:

Office:

Mobile:

Email:

TOWN OF COTTESLOE

18 MAY 2016

RECEIVED

Dear Mat,

I am writing in response to the advertisement in the current edition of The Post.

I wish to make a formal statement, as invited, regarding the proposed changes to reducing litter from cigarette butts, eliminating exposure to cigarette smoke by beach users and reducing the risk to marine life of ingesting the cigarette butts.

Most of my working life has been as a respiratory physiotherapist, so I am well aware of the colossal impact that smoking has, both for the individual concerned and for all those around them.

This is aside from all the reasons that are listed in your purpose for the amendment.

At all costs, a community should be doing everything within its power to encourage healthy lifestyles.

Cottesloe can really look at showing initiative in this area by addressing the dangerous practice of allowing smoking and butt disposal in heavily used public places.

If this change should take place it will be a huge success for Cottesloe.

In the meantime, could there be some cigarette butt disposal bins placed in the areas where people sit, picnic and currently smoke.

Thank you,

Barbara Pascoe

15/5/2016

Elizabeth Nicholls

From: Kerry Strzina
Sent: Friday, 3 June 2016 4:34 PM
To: council
Subject: Cigarettes on Cottesloe Beach

Hi,

I support the banning of cigarettes and tobacco use (pipes, etc.) on Cottesloe Beach.

It is not right to leave cigarette butts on the beach as it is a potential hazard to sea life. It is not fair that other beach users suffer from the smoke and see the litter left behind by smokers. It is also unfair that Cottesloe rate payers cover the cost of cleaning up cigarette butts.

Sincerely,

Kerry Strzina

Elizabeth Nicholls

From: Garry Bird
Sent: Thursday, 13 October 2016 10:11 AM
To: Elizabeth Nicholls
Subject: FW: Mr Mat Humfrey - Department of Local Government and Communities - Comments on Proposed Local Government Property Amendment Local Law 2016

From:
Sent: Wednesday, 29 June 2016 11:49 AM
To: Mat Humfrey
Cc: Garry Bird
Subject: Att: Mr Mat Humfrey - Department of Local Government and Communities - Comments on Proposed Local Government Property Amendment Local Law 2016

Dear Mr Humfrey and Mr Bird

This email is in response to your letter dated 13 May 2016 addressed to the Minister for Local Government regarding the Town's proposed local law.

The Department's comments are noted below. Please contact me if you have any queries regarding the comments.

Local Government Property Amendment Local Law 2016

1. Best drafting practices for amendment local laws

Clause 4 should be redrafted to reflect best drafting practices. Clause titles are not interpreted to be an operative part of the local law itself, and thus have no legislative effect. The body of each clause must clearly indicate which clause in the principal local law is amended, deleted or inserted.

The Joint Standing Committee on Delegated Legislation has previously recommended amendment local laws be disallowed where this practice has not been followed. Clause 4 has been redrafted below as an example for the Town's consideration. Please note that the title for clause 4 has also been amended to reflect the correct clause (see comment 5(d) below).

4. Clause 2.8 amended

Clause 2.8 is amended as follows –

- (a) in subclause (3) delete ", but not an open space such as a park or a playing field." and insert:
"and all beaches and beach reserves."

2. Jurisdictional boundaries – beaches and beach reserves

The Department notes from the Council minutes provided that it is the Town's intention that the definition of "premises" be changed to include "all beach foreshore reserves and other recreation reserves **in the Town boundary**" (emphasis added). The Town should be sure that the beaches and beach reserves are actually within its district boundaries. On coastlines (including beaches and beach reserves), the district boundary usually ends at the low water mark. The Town should keep this in mind and ensure that its authorised persons are aware of the district boundaries when issuing infringement notices under the local law.

The *Local Government Act 1995* provides under section 3.5(2) that a local law may only apply to the local government's district. The Town should ensure that the foreshores (for example) of the beaches and beach reserves are within the Town's district boundaries.

If the beaches and beach reserves are not within the Town's boundaries, then in accordance with section 3.6 of the Act, the Town must obtain the Governor's approval to make a local law outside the district. Without the Governor's approval, the local law would only apply to the area of the beach or beach reserve that lay within the district boundaries.

The Town may wish to insert a new defined term, "beach", to make it clear what constitutes a beach within its district for the purposes of the local law. The City of Joondalup included the following definition in its *Local Government and Public Property Local Law 2014*, gazetted on 14 January 2015:

"**beach** means the area of sandy shoreline from the low-water mark to either the toe of the sand dune or the commencement of vegetation or a man-made structure".

The Town may wish to include a similar definition. If the Town chooses to make this change, the Town should ensure that the definition accurately reflects the appropriate geographical features of its own beaches and that the definition makes sense and refers to the correct area within its district. If the Town does choose to include a new defined term, a suggested draft amendment clause has been included for the Town's consideration.

"4. Clause 1.2 amended

Clause 1.2 is amended as follows –

(a) insert the following in alphabetical order: "**beach** means ...";

3. Banning smoking in public places

It is unclear how the Committee will view the Town's intention to ban smoking in a public place such as a beach or beach reserve. The Committee may consider this an inappropriate use of power, particularly as the previous definition of "premises" in the principal local law explicitly excluded open spaces such as parks and playing fields. The Department is unable to advise definitively as to how the Committee is likely to view this amendment, as there have been very few attempts to ban smoking on beaches previously. The City of Joondalup, in its *Local Government and Public Property Local Law 2014*, gazetted on 14 January 2015, did include a clause banning smoking on beaches within its district, at clause 5.5. An excerpt of this clause as it appeared in the Joondalup local law is below for the Town's information.

"5.5 Persons to comply with signs and directions

(1) A person must –

(a) not act in contravention of a sign erected on a beach under clause 5.3(1)(c);

(b) ...

(c) ...

(d) ...

(2) A person must not smoke in contravention of a sign erected on a beach which prohibits the act of smoking."

The Department has reviewed the Town's principal local law. Clauses 2.3 "Discretion to erect sign" and 4.6 "Signs" give the Town the power to erect a sign on local government property which gives notice of the effect of a determination applying to that property. One option for the Town may be to include a new subclause 4.6(4) to specifically refer to smoking on beaches, such as the example given above. Should the Town wish to do so, an example amendment clause for the Town's consideration is:

"5. Clause 4.6 amended

Clause 4.6 is amended as follows –

- (a) insert new subclause 4.6(4): "A person must not smoke in contravention of a sign erected on a beach which prohibits the act of smoking."

However, it remains unclear whether the Committee would allow the local law, even with the inclusion of such a clause. It is also uncertain whether inclusion of the suggested clause above would constitute a "significant change" to the local law as originally proposed – see comment 4 below.

4. Significantly different from originally proposed local law

The Department is aware that the effect of its suggestion at comment 3 above may have the potential for the local law to be significantly different than the local law that was originally advertised by the Town. Where the final local law to be adopted by Council is significantly different, then the s 3.12 procedure must be restarted in accordance with s 3.13 of the Act. While the Department is not able to advise definitively on this matter, as it is considered by the Committee, the general rule has been that it would be prudent to restart the process where any revisions change any obligations under the local law. Amendments relating to grammatical or formatting changes, or changes which remove inconsistencies with Acts or Regulations, are unlikely to be considered significantly different.

5. Minor edits

The following minor edits are suggested:

- (a) in the enactment clause, insert the word "local" after the word "following";
- (b) at clause 3, the date of publication of the principal local law needs to be inserted in place of the blank space. It would appear that the *Town of Cottesloe Local Government Property Local Law 2001* was published in the *Government Gazette* on 15 January 2001;
- (c) at clause 3, the phrase "principal local law" should be written as "Principal local law" in the clause title and in lowercase – "principal local law" – in both instances as it appears in the body of the clause;
- (d) at clause 4, the clause title states "Clause 11.13 amended". This should be changed to reflect that the Town is actually amending clause 2.8:

4. Clause 2.8 amended

- (e) if the Town chooses to make the suggested amendments listed at comments 2 and 3 above, the numbering of the remaining clauses will change. The Town should ensure that the clauses are numbered correctly and the suggested amendments inserted in the correct order.

Minister's Directions – pursuant to s 3.12(7) of the Local Government Act 1995

Please note: once the Town has published a local law in the *Government Gazette*, the Town must comply with the requirements of the Minister's *Local Laws Explanatory Memoranda Directions 2010*. The Town must, within 10 working days of the Gazette publication date, forward the signed Explanatory Memoranda material to the Committee at the current address:

Committee Clerk
Joint Standing Committee on Delegated Legislation
Legislative Council Committee Office
GPO Box A11
PERTH WA 6837
Email:
Tel
Fax: 9222 7805

A copy of the Minister's Directions and Explanatory Memoranda forms can be downloaded from the Department of Local Government and Communities website at www.dlgc.wa.gov.au. Failure to comply with the Directions may render the local law inoperable.

Please note that my comments:

- have been provided to assist the Town with drafting matters in relation to the local law;
- do not constitute legal advice;
- have been provided in good faith for the Town's consideration; and
- should not be taken as an approval of content.

The Town should ensure that a detailed editorial analysis of the proposed local law has been undertaken and that the content of the local law is in accordance with the Town's policies and objectives.

Kind regards,
Tara

Tara Mahoney

Senior Legislation and Strategy Officer

Local Government Legislation

Department of Local Government and Communities

Tel:

Fax:

Email:

Web: www.dlgc.wa.gov.au

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TOWN OF COTTESLOE



LOCAL GOVERNMENT PROPERTY

AMENDMENT LOCAL LAW 2016

Town of Cottesloe

Local Government Property Amendment Local Law 2016

Under the powers conferred by the *Local Government Act 1995* and all other powers conferred upon it, the Council of the Town of Cottesloe resolved on _____ to make the following law.

1. Citation

This local law may be cited as the *Town of Cottesloe Local Government Property Local Law 2016*.

2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

3. Principal Local Law

In this local law, the *Town of Cottesloe Local Government Property Local Law 2001* published in the *Government Gazette* on _____ is referred to as the Principal Local Law. The Principal Local Law is amended.

4. Clause 11.13 amended

Delete clause 2.8 (3) and replace with the following:

2.8 (3) In this clause -

“**premises**” means a building, stadium, or similar structure which is local government property and all beaches and beach reserves.

Dated this day of .

THE COMMON SEAL of)
the Town of Cottesloe is)
hereunto affixed by)
authority of a resolution)
of Council in the presence of)

JOSEPHINE DAWKINS
MAYOR

MAT HUMFREY
CHIEF EXECUTIVE OFFICER