

Mat Humfrey  
Town of Cottesloe  
Chief Executive Officer  
PO Box 606  
Cottesloe WA 6911



Dear Sir

## **SUBMISSION**

### **TOWN OF COTTESLOE LOCAL GOVERNMENT PROPERTY LAW**

#### ***Local Government Act 1995 (WA) (the Act)***

#### **Background**

Thank you for the opportunity to comment on the *TOWN OF COTTESLOE LOCAL GOVERNMENT PROPERTY LAW* (the Property Law).

I note that the proposed Property Law has not yet been advertised for public comment, as required by the Act.

I note the Property Law, as adopted on which we are asked to comment, currently regulates:

1. Determinations as to use of local government property and the procedure for undertaking this
2. Discretion to erect signs
3. Enforcing determinations
4. Maintaining a register of determinations.

The current Property Law also regulates activities that can be pursued or can be prohibited on specified local government property. We are advised that Council is concerned to include the regulation of smoking on beaches through this law and that the law may be amended to include such regulation.

The Town has advertised the existing Property Law, without advertising any proposed amendments.

#### **Submissions**

1. **The local law should express that all determinations, or amendment or revocation of determinations, about activities that can be pursued or prohibited on public land in the Town, must come to Council and not be subject to delegated authority, whatsoever. This will ensure that the elected members regulate these activities, and that the decisions are open, accountable and transparent.**

2. Archery, golf, pistol and rifle shooting, flying model aeroplanes, hang gliders, boating should not be permitted without an absolute majority of Council.
3. Smoking should be prohibited on all beaches, beach reserves and surrounds
4. Fees for entry to any public lands should not be charged without the authority of an absolute majority of Council.
5. The register of determinations must include a comprehensive information about the conditions applying to the determination and to whom, including how to contact, the determination applies.
6. All determinations should have a time line after which they lapse, a sunset clause.

Furthermore, the proposed draft of the new local law should be circulated for public comment noting the requirements of the *Local Government Act 1995* (WA) as follows:

**LOCAL GOVERNMENT ACT 1995 - SECT 3.12**

**3.12. Procedure for making 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 and effect of which is summarized in the notice; and

(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;

and

(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 administers 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.

\* 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; and

(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.*

**Sandra Boulter**

## Siobhan French

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**From:**  
**Sent:** Tuesday, 18 August 2015 12:39 PM  
**Subject:** Local Law - Town of Cottesloe Government Property

Thank you for your feedback. Two areas

1. Clarification of POINT 8 grey wording in relation to subclause (4) above
2. Penalty increases

### PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

#### *Division 1 - Determinations*

##### Procedure for making a determination (Page 4)

(3) If no submissions are received in accordance with sub-clause (2)(c), the Council is to decide whether to –

- (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
- (b) amend the proposed determination, in which case sub-clause (5) will apply;
- or
- (c) not continue with the proposed determination.

(4) If submissions are received in accordance with sub-clause (2)(c) “submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication” the **Council is to** –

- (a) consider those submissions; and
- (b) decide –
  - (i) whether or not to amend the proposed determination; or
  - (ii) not to continue with the proposed determination.

(8) **A decision under sub-clause (3) or (4) is not to be delegated by the Council.**

#### *Division 2 Schedule 1 Prescribed offences (page 21)*

Penalties too low - need to be increased

## Siobhan French

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**From:** {  
**Sent:** Tuesday, 18 August 2015 2:02 PM  
**Subject:** RE: TRIM: Local Law - Town of Cottesloe Government Property

Siobhan,  
I sincerely hope that my comment on the first issue makes some sense.  
Too me the wording between point (4) and point(8) below seemed to be contradictory, however with my brain which sees mostly black and white... may be a little tweaking of the wording?  
With many thanks Patricia

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**From:** Siobhan French [<mailto:ago1@cottesloe.wa.gov.au>]  
**Sent:** Tuesday, 18 August 2015 1:50 PM  
**To:**  
**Subject:** RE: TRIM: Local Law - Town of Cottesloe Government Property

Hi Patricia

I'm just writing to confirm receipt of your email. Thank you for your submission.

Regards

**Siobhan French**  
Administration & Governance Officer



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**From:** {  
**Sent:** Tuesday, 18 August 2015 12:39 PM  
**To:** Siobhan French  
**Cc:** Mat Humfrey  
**Subject:** TRIM: Local Law - Town of Cottesloe Government Property

Thank you for your feedback. Two areas  
1. Clarification of POINT 8 grey wording in relation to subclause (4) above  
2. Penalty increases

## PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

### **Division 1 - Determinations** **Procedure for making a determination (Page 4)**

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- (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;

Local Government Act 1995

## 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

**11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN****11.1 SMOKING BAN**

The following motion has been proposed by Cr Pyvis

**That Council in view of the significant adverse environmental impacts of cigarette butts and in the interest of better community health and amenity that Council support a permanent ban on smoking at all Cottesloe beaches to be implemented by the 2015/2016 summer season.**

**Reason:**

Cigarette butts have an enormous adverse affect on beaches and in waterways and the associated health, environmental, social and economic costs are substantial.

As a daily beach swimmer I'm appalled at the number of cigarette butts on the beach which the mechanised beach cleaner cannot scoop up. The butts end up in the ocean where marine life and birds ingest the non-biodegradable plastic (cellulose acetate) which are amongst the 12,000 plastic based fibres contained in cigarette filters.

Butts (the most common item of litter worldwide) also contain hazardous chemicals like cadmium, lead and arsenic that leach into the water. Add these to the rapidly increasing number of micro plastics finding their way into our waterways and embedding themselves in the marine food chain and we have a massive and largely invisible environmental problem.

Vertebrates such as fish are now ingesting microplastics and it is predictable how this will travel up the food chain to humans.

There is clear evidence that passive smoking can affect the health of children and other non-smokers and research shows that where significant adults in a child's life smoke and children observe this behaviour there is an increased risk that they will become a smoker.

Also emerging is recognition of the damaging effects of passive smoking in outdoor areas where previously only indoor areas have been widely documented.

Cottesloe beaches are well used by children (both Surf Clubs' Nippers activities and general community use) and discarded cigarette butts can be swallowed while passive smoking can cause sensory irritations such as eye watering, respiratory problems and asthma.

There is also the inconsistency that smoking is prohibited in many outdoor areas in WA (al fresco areas and within 10metres of children's playgrounds) but not on our beaches.

Many people are unaware that smoking between the flags in patrolled swimming areas is already an offence in WA but I'm unaware of any infringement notice issued for this in Cottesloe.



A beach smoking ban will be difficult for Rangers to enforce (people refuse to give identification) however an internationally recognised no-smoking icon added to existing beach signs would act as a deterrent, give non-smoking beachgoers the right to ask others to butt out, minimise cost and negate the need for additional signage.

Ten Sydney beaches are now smoke-free-zones and Waverley Council has run successful summer education programs where Rangers and Council staff walk the beach educating people about the no-smoking rules.

The environmental group Responsible Runners collected more than 110,000 cigarette butts on Bondi Beach in 18 months and during one 30-minute rubbish clean-up picked up more than 2500 cigarettes butts on the beach.

Victoria has a "Report Litter free mobile App" enabling the public to do in people who throw cigarette butts from cars.

The harms of smoking are well advertised yet over 250,000 Western Australians continue to smoke daily. Cottesloe should be doing its bit to improve the environment and people's health by banning smoking on all its beaches.

In summary, a ban on smoking at Cottesloe beaches supports Council's obligation to promote public health outcomes and its commitment to improve the natural environment and amenity of our Town by reducing the amount of cigarette butt litter.

#### **STAFF COMMENT**

At present, there is no mechanism to simply ban smoking on beaches. Under the various health laws, smoking can be banned in certain outdoor areas, and as indicated above, this includes the patrolled area of a beach. Outside of that, there is no ability to ban smoking in a public place.

There are two local laws that prevail over the beach reserves, being the Beaches and Beach Reserves Local Law and the other being the Local Government Property Local Law. The Beaches Local Law provides that a range of activities can be prohibited by the Town by the placement of signs to that effect, unfortunately, smoking is not one of them. The Local Government Properties Local Law does allow the Town to make a determination on activities that can be prohibited, and item (a) on that list is "smoking on premises". Unfortunately, "premises" is defined as "building, stadium or similar structure which is local government property, but not an open space such as a park or playing field".

Implement such a ban, an amendment to one of our local laws is likely required. At this stage, the simplest way to enable such a ban would be to amend the Local Government Property Local Law, to delete the words on "on premises" and to remove the definition of premises. This would allow the local government to make a determination that smoking was banned from any particular local government property it deemed appropriate.

While such an amendment would allow a smoking ban on beaches, it would also allow it on any other local government property, or part of a local government property. The procedure for implementing such a ban would

involve advertising and the seeking of any objections before resolving to implement such a ban. This mechanism is already contained within the local law.

To implement such a change, a review and amendment of the local law would need to be initiated. The Town's Property Local Law is due for review and so if Council is supportive of the Notice of Motion it would make sense to initiate the review to this local law to capture and address the issues highlighted by Cr Pyvis in the proposed Notice of Motion, to be completed by next summer season.

#### **NOTICE OF MOTION**

**Moved Cr Pyvis, seconded Cr Downes**

**That Council in view of the significant adverse environmental impacts of cigarette butts and in the interest of better community health and amenity that Council support a permanent ban on smoking at all Cottesloe beaches to be implemented by the 2015/2016 summer season.**

#### **AMENDMENT**

**Moved Cr Walsh, seconded Cr Pyvis**

**That these words be added after the word 'season' "*..and that this be done by amending the Town of Cottesloe's Property Local Law as outlined in staff comment*".**

**Carried 7/1**

#### **COUNCIL RESOLUTION**

**That Council in view of the significant adverse environmental impacts of cigarette butts and in the interest of better community health and amenity that Council support a permanent ban on smoking at all Cottesloe beaches to be implemented by the 2015/2016 summer season and that this be done by amending the Town of Cottesloe's Property Local Law as outlined in staff comment.**

**THE AMENDED SUBSTANTIVE MOTION WAS PUT**

**Carried 6/2**