

**Proposed Amendment to Local Government Property Local Law - Balloon and Smoking Ban
Summary of Submissions Received - Closing date 11 September 2017**

#	Name	Summary of Comments	Staff Comment
1	Patricia Carmicheal	Supports proposed amendment to the Local Government Property Local Law. Queries how the law will be enforced.	Noted.

**Proposed Amendment to Local Government Property Local Law - Balloon and Smoking Ban
Summary of Submissions Received - Closing date 18 July 2017**

#	Name	Summary of Comments	Staff Comment
1	Amy Motherwell	Agrees with proposed law to ban balloon releases. Petitioning for a nationwide ban. Provided extensive information regarding the environmental impact of balloons.	Noted.
2	Kim Ribbink	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons and smoking.	Noted.
3	Bianca MacIntyre	Agrees with proposal to ban balloon releases on Council land.	Noted.
4	Chilla Bulbeck	Supports proposal to prohibit the release of balloons and limit public smoking. Recommends to significantly increase the penalties. Requested information regarding how the proposed law would be enforced.	Noted.
5	John Hammond and Yvonne Hart on behalf of Cottesloe Residents and Ratepayers Association	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons and smoking. Recommendation to significantly increase the penalties to give credibility and ensure compliance.	Noted.
6	Helen Sadler	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons and smoking on Council land.	Noted.
7	Jacqui Lang	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons and smoking on Council land.	Noted.
8	Karen Fairweather	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons. Provided information regarding the environmental impact of balloons.	Noted.
9	Karen Joynes on behalf of No Balloon Release Australia <i>(two submissions received)</i>	Supports proposed law to ban balloon releases. Petitioning for a nationwide ban. Provided extensive information regarding the environmental impact of balloons.	Noted.

10	Sharon Macarthur	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons.	Noted.
11	Michael and Susan Hesford	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons.	Noted.
12	Catherine Franconi	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons.	Noted.
13	Lisa Hills	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons.	Noted.
14	Lisa McBride	Supports proposed amendment to the Local Government Property Local Law to prohibit the release of balloons. Provided information regarding the environmental impact of balloons.	
15	Andrea Holden	Agrees with proposed law to ban balloon releases.	

**Proposed Amendment to Local Government Property Local Law - 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.

Town of Cottesloe
Local Government Property Amendment Local Law 2017

1. Clause headings

- a) In line with best drafting practices, the Town may like to consider inserting clause headings before clauses 5 to 8. Whilst clause headings have no legislative effect, they are generally included to be a guide to those reading the local law, and so clauses can be easily distinguished and referenced.

The Town may also like to consider placing the clause number before the clause title as follows: “**1. Citation**”.

- b) It is suggested that clauses that amend the same clause in the principal local law appear under the same heading. For example, clauses 5 to 8 be included as subclauses under clause 5, for example:

5. Clause 2.8 amended

- (1) In clause 2.8(1)(a), insert after the word “premises” the words “or within a 5 metre radius of any entrance, exit or aperture of premises”.
- (2) In clause 2.8(1)(g), delete the word “and”.
- (3) In clause 2.8(1)(g), insert the word “and” after the semicolon appearing at the end of the clause.
- (4) In clause 2.8(1), insert the following additional subclauses:
- (i) releasing an unsecured balloon inflated with a gas that causes it to rise in the air; and
 - (j) smoking in contravention of a sign which prohibits the act of smoking.

2. Clause 7

Clause 7 requires that the word “and” be inserted after the semicolon in clause 2.8(1)(j). Subclause (1)(j) is the last paragraph of this clause and currently ends in a full stop. It is not necessary to insert a semicolon or the word “and” to this paragraph as there are no paragraphs that follow subclause (1)(j).

It is suggested that clause 7 is deleted as it is not necessary.

3. Clause 5 and 8 – Determination Devices

Clause 8 proposes to expand on the activities which may be prohibited by a determination of the local government on specified local government property under clause 2.8(1).

While the Delegated Legislation Committee has allowed determination devices in the past, it has been reluctant to expand beyond the categories of determinations which are already present in the WALGA model (the activities already outlined in clause 2.8(1)).

The Town may like to consider the following alternatives instead:

- remove the inclusion of the paragraphs from clause 2.8(1) and add an equivalent paragraph in clause 3.13(1) - Activities needing a permit, or
- prohibit the activity absolutely under a separate clause.

Since these clauses do not rely on any determinations, it is less likely to be an issue.

In regards to the smoking clause, the City of Joondalup selected the second option outlined above and prohibited a person from smoking within a 5 metre radius of any entrance, exit or aperture of premises on local government property. Please refer to clause 4.17 of the *City of Joondalup Local Government and Public Property Local Law 2014*.

The Town should be aware however, that the Committee is not prevented from raising issues in local laws because previous local laws have contained the same or similar clauses. In the event that these clauses are retained, there is a possibility that they may be raised as an issue by the Committee. If this occurs, the Town will need to be prepared to provide justification for whether these clauses are necessary.

4. Minor Edits:

- It is suggested that a full stop follow the clause number in the amendment local law, for example “1.”.
- Enabling clause – delete the word “proposed”.
- Clause 1 – delete the quotation marks and place the following in italics: *Town of Cottesloe Local Government Property Amendment Local Law 2017*.
- Clause 4:
 - Delete “clause” and insert “clauses”.
 - Delete the hyphen between “5” and “8” and insert “to”.
- Clause 7 – delete the semicolon at the end of the sentence and insert a full stop.

The Town should ensure all clause references are accurate and updated if any changes are made to the local law.

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.

Elizabeth Nicholls

From: David Nicholson <dnicholson@mcleods.com.au>
Sent: Monday, 18 September 2017 10:01 AM
To: Garry Bird
Cc: Lyn Corbett
Subject: RE: Local Government Property Local Law Amendments (40423)
Attachments: Delegated Legislation Committee.pdf

Hi Garry,

As discussed at our recent meeting, the Department raised the issue of “determination devices” in relation to the proposed Local Government Property Amendment Local Law. Whilst the proposed amendments do not introduce any new ‘determination device’ to the Local Law they do expand the types of activities in relation to which the Town may make a determination prohibiting the activity, being smoking on premises and the release of balloons.

The Committee has in the past, from time to time, object to the inclusion of determination devices in local laws. However, the Town’s Local Government Property Local Law is based on the WALGA model, which does incorporate determination devices that enable local governments to regulate various types of activities on local government property. The Department has suggested that the Committee could potentially not support the expansion of the categories of activities on local government property in relation to which determinations may be made. Whilst this possibility cannot be entirely precluded, I do not think that this conclusion should necessarily be drawn from the Committee’s most recent discussion paper on the subject: Report 87 – Observations arising from the Committee review of the City of Joondalup Local Government and Public Property Amendment Local Law 2015 (copy attached). The Report certainly does not indicate an unequivocal opposition to determination devices, such as those appearing in the WALGA model local law and the Town’s Local Law.

After citing the provisions in the Joondalup local law containing the determination devices (comparable to the provisions in the Town’s Local Law), the Report stated:

“2.7 It must be pointed out that these provisions are not novel or unique. Indeed, they are based almost entirely on a template local law produced by the Western Australia Local Government Association (WALGA). As a result, the same or similar provisions appear in many other local laws across the State. Judicious and temperate use of determination devices provides a significant administrative advantage to local governments, which might otherwise have been forced to go through the legislative procedures necessary to make or amend a local law simply in order to enforce minor localised restrictions on behaviours.”

The Amendment Local Law considered in the Report expanded the list of activities in relation to which a prohibition could be made by determination by adding a further subclauses authorizing determinations to be made to prohibit “the placing or maintaining of a collection bin” on local government property. The City subsequently resolved (after gazettal of the Amendment Local Law) to prohibit all collection bins being placed on local government property.

Importantly for present purposes the Committee did not object to the addition of a further category of activities in relation to which a prohibition could be made by determination, stating:

“2.21 Members took account of the fact that the Amendment Local Law, in and of itself, is not legislatively offensive and did not offend against the Committee’s Term of Reference 10.6(a), which reads:

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

(a) is within power.”

2.22 The ‘good governance’ powers of a local government (paragraph 1.1 above) require it to eliminate activities that are causing a nuisance to local residents, and it is not uncommon to see charity collection bins abused or looted, with resultant mess and inconvenience. This particular instrument simply amends the part of the existing Principal Local Law which allows the City Council to make a determination as to conduct in its district. This, in the Committee’s view, was within power. Thus, the Committee found, widening the power to make a determination on this subject matter was not unreasonable — it is the subsequent exercise of that power that may be, in that the ban could and should have been particularised towards individual problem locations rather than all-encompassing.”

In other words, the Committee did *not* have a problem with the amendment to clause 2.8 to widen the power to make a determination in relation to activities on local government property (in this case the placing of charity bins), rather

what it suggested may have been beyond power was the subsequent determination of the Council to entirely prohibit the placing of collection bins on any local government property, but in any event it did not have legislative authority to adjudicate that.

The Committee's position does not appear to be that the categories of activities in relation to which determinations may be made are necessarily closed, but rather that any determination device should be framed in the form of the WALGA model local laws, which incorporate publication and consultation requirements. Thus the Committee further stated:

"3.20 As has been seen, the Committee had taken the view that only determination devices as framed in the WALGA model local laws would be permitted in local government property local laws, and only to the extent that they reflected the detailed WALGA model provisions with their publication and consultation requirements.

3.21 In more recent times, the Committee has been willing to recognise other forms of subdelegation devices when, in purely practical administrative terms, it made sense to do so."

In the present case, the determination device contained in the Town's Local Law is consistent with the WALGA model local law, in that it incorporates consultation and publication requirements in relation to the making of determinations. Given that is the case, I do not think the Committee is likely to oppose the inclusion of additional activities in relation to which prohibitions may be made, provided these otherwise fall within the proper legislative scope of local government powers under the LG Act. Whilst the current Joondalup Local Government and Public Property Local Law 2014 does not add smoking in contravention of a sign to the categories of activities in respect of which a determination may be made, but rather it prohibits it outright, this arguably makes the local government less accountable as it can erect signs prohibiting smoking wherever it chooses on local government property. In the case of the Town's amendment it would first need to pass a determination (subject to the usual consultation and publication requirements) and only then could erect signs. So the amendment proposed by the Town arguably affords less discretion and requires more accountability /transparency of the local government.

For the reasons set out above I consider it unlikely that the Committee would disallow the Amendment Local Law on the basis that it expands the categories of activities in respect of which a determination may be made prohibiting an activity.

I will get back to you shortly with the modifications to the Amendment Local Law in light of the Department's comments.

Regards,

David Nicholson | Partner
McLeods | Barristers & Solicitors

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From: Garry Bird [mailto:MCCS@cottesloe.wa.gov.au]
Sent: Wednesday, 13 September 2017 4:17 PM
To: David Nicholson <dnicholson@mcleods.com.au>
Cc: Elizabeth Nicholls <ao2@cottesloe.wa.gov.au>
Subject: Local Government Property Local Law Amendments

Hi David,

Further to our meeting just now, can I please request the following:

1. A brief summary of your advice on determinations vs the general prohibition/signage option and implications for our current draft amendments; and
2. Redraft the Amendment Local law to reflect minor edits noted in the correspondence received from the Department.

Thank you.

Garry Bird
Manager, Corporate and Community Services



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LOCAL GOVERNMENT ACT 1995

Town of Cottesloe

LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the Town of Cottesloe resolved on _____ 2017 to make the following local law.

1. Citation

This local law may be cited as the *Town of Cottesloe Local Government Property Amendment Local Law 2017*.

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 published in the *Government Gazette* on 15 January 2001 is referred to as the Principal Local Law.

4. Principal Local Law Amended

The Principal Local Law is amended as set out in clause 5 of this local law.

5. Clause 2.8(1)(a) of Principal Local Law Amended

- (1) In clause 2.8(1)(a) insert after the word “premises” the words “or within a 5 metre radius of any entrance, exit or aperture of premises”.
- (2) In clause 2.8(1)(g) delete the word “and”.
- (3) In clause 2.8(1)(h) replace the full stop at the end of the subclause with a semi-colon.
- (4) In clause 2.8(1) insert the following additional subclauses after subclause (h):
 - “(i) releasing an unsecured balloon inflated with a gas that causes it to rise in the air; and
 - (j) smoking in contravention of a sign which prohibits the act of smoking.”.

Dated this day of 2017.

The Common Seal of the **Town of
Cottesloe** was affixed by authority of a
resolution of the Council in the
presence of -

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer