

**12.6 UNDERTAKINGS RELATING TO THE LOCAL GOVERNMENT PROPERTY LOCAL LAW 2021**

**Attachments:** 1. JSCDL Letter - Local Government Property Local Law 2021 - Confidential

**RECOMMENDATION:**

**That Council:**

1. **RESPONDS to the Joint Standing Committee on Delegated Legislation indicating its agreement to the following undertakings:**
  - 1.1 **Within six months:**
    - 1.1.1 **correct the typographical errors in clauses 4.4(2); 5.13; 5.14; 6.1(e); 6.3(1); 9.3(2); 9.7(1)(f) and 9.11(1);**
    - 1.1.2 **amend clauses 6.8 and 5.16(c) and (d); and**
    - 1.1.3 **delete clause 13.2(1)(b);**
  - 1.2 **Provide feedback on the rationale for clause 5.3(l);**
  - 1.3 **The clauses specified in undertaking 1 (Recommendation 1.1) will not be enforced in a manner contrary to undertaking 1;**
  - 1.4 **Ensure any consequential amendments arising from undertaking 1 (Recommendation 1.1) will be made; and**
  - 1.5 **Where the local law is made publicly available by the City, whether in hard copy or electronic form, ensure that it is accompanied by a copy of the undertakings; and**
2. **NOTES that Administration will provide a further report to Council to approve the commencement of adoption the Local Government Property Amendment Local Law 2022, once drafted.**

**PURPOSE OF REPORT:**

For Council to consider responding to the Joint Standing Committee on Delegated Legislation regarding requested undertakings in relation to the Local Government Property Local Law 2021.

**BACKGROUND:**

At its 28 July 2020 Meeting, Council resolved (Item 12.7) to provide public notice of its proposal to repeal the City of Vincent Local Government Property Local Law 2008 and replace it with the Local Government Property Local Law 2020.

At its 20 October 2020 Meeting, Council approved (Item 9.4) the adoption of the Public Health Plan 2020-2025 (PHP). To align with the PHP objective to achieve 'Smoke-free Town Centres by 2025', the Local Government Property Local Law 2020 was put on hold due to requiring a number of changes.

At its 22 June 2021 Meeting, Council approved (Item 12.2) the recommencement of the process of repealing the Local Government Property Local Law 2008 and adopting the Local Government Property Local Law 2021.

Local public notice of the Local Government Property Local Law 2021 was given with submission period open between 30 July 2021 and 24 September 2021.

A number of minor changes were made due to public submissions and advice from the Department of Local Government, Sport and Cultural Industries (DLGSC).

At its 16 November 2021 Meeting, Council approved the making of the Local Government Property Local Law 2021.

At the same Meeting, Council was informed that the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation may exercise its discretion to disallow part or all of the Local Government Property Local Law 2021.

The Local Government Property Local Law 2021 was published in the Government Gazette on 30 November 2021 edition No. 201.

Local public notice of adoption of the Local Government Property Local Law 2021 was published on 4 December 2021, noting that the local law will becoming operation on 14 December 2021.

The Local Government Property Local Law 2021, relevant documents, and advice from DLGSC were provided to the Joint Standing Committee on Delegated Legislation (JSCDL) on 10 December 2021 for their review of the local law.

On 24 February 2022, the JSCDL considered the local law and advised Mayor Emma Cole that the undertakings be actioned, and a letter be provided in agreeance with the undertakings by 14 March 2022.

The Local Government Property Local Law 2021, as Gazetted, can be [viewed here](#).

#### **DETAILS:**

The Joint Standing Committee on Delegated Legislation is a joint committee of the Parliament of Western Australia. The committee has been delegated, by Parliament, the task of scrutinising subsidiary legislation. Local laws are subsidiary legislation that are capable of disallowance by either House of Parliament under section 42 of the *Interpretation Act 1984*.

The JSCDL did not disallow the Local Government Property Local Law 2021.

Where the committee has expressed concerns about a local law, rather than disallowing the law, the relevant local government is requested to provide the committee with a satisfactory written undertaking to address the concerns by amending or repealing parts of the local law.

In fulfilling the requested undertakings, the City is required to make the Local Government Property Amendment Local Law 2022 within six months. This would be made in accordance with all mandatory procedural steps contained in section 3.12 of the *Local Government Act 1995*.

The process for making the Local Government Property Amendment Local Law 2022 is as follows:

1. Council would be presented with a draft Local Government Property Amendment Local Law 2022 to approve commencing advertising of the proposed amendment local law;
2. Local public notice will be provided and submission on the proposed amendment local law will be open for a minimum six-week period;
3. Council would then be presented with all submissions and would be requested to approve by absolute majority the making of the amendment local law;
4. The adopted amendment local law would then be published in the Government Gazette and copies provided to DLGSC and JSCDL; and
5. Local public notice would be provided to specify the date the amendment local law would come into operation.
6. The JSCDL would respond to the Mayor with approval or any concerns they may have regarding the amendment local law.

For the purpose of this Item, Council is requested to respond to the JSCDL in agreeance of the undertakings requested. A further report will be presented to Council for commencing adoption of the Local Government Property Amendment Local Law 2022 and approval to advertise a proposed amendment local law.

#### **The requested undertakings**

*Correct the typographical errors in clauses 44(2); 5.13; 5.14; 6.1(e); 6.3(1); 9.3(2); 9.7(1)(f) and 9.11(1).*

The JSCDL have requested the following be corrected:

Clause	Current	Correction Requested	Reason
44(2)	(2) A person shall not behave in or any local government property in a way which is or might be detrimental to the property	(2) A person shall not behave in or <b>on</b> any local government property in a way which is or might be detrimental to the property	To correct an error.
5.13	The following design requirements apply for an awning, balcony or verandah erected over a thoroughfare are -	The following design requirements apply for an awning, balcony or verandah erected over a thoroughfare <b>are</b> -	To correct an error.
5.14	5.14 Maintenance and public safety The owner and occupier for the time being of any building to which any awning, balcony or verandah is attached shall keep the awning, balcony or verandah clean, painted, watertight and in a sound and safe structural condition and in good and substantial repair.	5.14 Maintenance and public safety The owner and occupier for the time being of any building to which any awning, balcony or verandah is attached <b>that is erected over a thoroughfare</b> shall keep the awning, balcony or verandah clean, painted, watertight and in a sound and safe structural condition and in good and substantial repair.	To clarify that the awning, balcony or verandah referred to applies to those over thoroughfares.
6.1(e)	<i>Minor nature development</i> means a sign that is characterised as (i) not exceeding 500mm in height nor 0.5m <sup>2</sup> in area, on any side, and which will not unduly adversely affect the local government property; (ii) of a temporary nature occurring on one off occasions (although may occur on a number of days) but not of any permanent nature or reoccurrence; and (iii) uses which will not adversely affect the amenity, streetscape or day-to-day activities of the local government property or any other use which, in the opinion of the local government, constitutes a minor use.	<i>Minor nature development</i> means a sign that is characterised as (i) not exceeding 500mm in height nor 0.5m <sup>2</sup> in area, on any side, <b>and which will not unduly adversely affect the local government property;</b> (ii) of a temporary nature occurring on one off occasions (although may occur on a number of days) but not of any permanent nature or reoccurrence; and (iii) <b>uses which will</b> not adversely affecting the amenity, streetscape or day-to-day activities of the local government property or any other use which, in the opinion of the local government, constitutes a minor use.	To remove the duplication of unduly/adversely affecting local government property in (i) and (iii).  JSCDL have also asked for clarity on why this type of sign has been named a 'minor nature development'.
6.3(1)	6.3 Portable direction signs (1) Subject to subclause (2), a person shall not, without a sign permit, erect or place portable direction sign on local government property.	6.3 Portable direction signs (1) Subject to subclause (2), a person shall not, without a sign permit, erect or place <b>a</b> portable direction sign on local government property.	To correct an error.
6.3(2)	(2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which is - (a) a minor nature development; (b) does not exceed 750mm in height nor 0.55qm in area, on any side; and (c) placed or erected on a thoroughfare or local government property on an in frequent or occasional basis and only to direct attention to a place, activity or event during the hours of that activity or event;...	(2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which is - (a) a minor nature development; <b>or</b> (b) does not exceed 750mm in height nor 0.55qm in area, on any side; and (c) placed or erected on a thoroughfare or local government property on an in frequent or occasional basis and only to direct attention to a place, activity or event during the hours of that	To clarify that a portable direction sign cannot be both a minor nature development and not exceeding 750mm.

Clause	Current	Correction Requested	Reason
		activity or event;...	
9.3(2)	(2) On a failure to comply with a Notice issued under subclause (1), the local government may recover the costs referred to in the Notice as a debt due to in a court of competent jurisdiction	(2) On a failure to comply with a Notice issued under subclause (1), the local government may recover the costs referred to in the Notice as a debt due to <b>it</b> in a court of competent jurisdiction	To correct an error.
9.7(1)(f)	9.7 Permitted landscaping features Unless otherwise approved by the local government. the following restrictions apply to landscaping features installed in a verge - (1) raised garden beds, seating or benches, decorations and lighting must- (a) be constructed of durable material, securely installed with no sharp edges, corners or fixtures; (b) be built to a height not exceeding 0.5 metres; (c) provide a minimum 0.5 metre setback from any street tree; (d) provide a minimum 0.5 metre setback from the face of the kerb; (e) maintain clear access for parked cars at all times; and (f) only solar lighting is permitted within a verge;	9.7 Permitted landscaping features Unless otherwise approved by the local government. the following restrictions apply to landscaping features installed in a verge - (1) raised garden beds, seating or benches, decorations and lighting must- (a) be constructed of durable material, securely installed with no sharp edges, corners or fixtures; (b) be built to a height not exceeding 0.5 metres; (c) provide a minimum 0.5 metre setback from any street tree; (d) provide a minimum 0.5 metre setback from the face of the kerb; (e) maintain clear access for parked cars at all times; and (f) only <b>be</b> solar lighting <del>is permitted within a verge;</del>	For clarity of reading.
9.11(1)	Public works on verges (1) For the purpose of carrying out any works the local government or any authority empowered by law to dig up a thoroughfare or carry out any other works on a thoroughfare, may without notice and without being liable to compensate any person, dig up all or part of a thoroughfare and disturb any verge treatment placed there by an owner or occupier of adjacent land.	Public works on verges (1) For the purpose of carrying out any works, the local government or any authority, empowered by law to dig up a thoroughfare or carry out any other works on a thoroughfare, may, without notice and without being liable to compensate any person - (a) dig up all or part of a thoroughfare; and (b) disturb any verge treatment placed there by an owner or occupier of adjacent land.	For clarity of reading.

Administration has no concerns with these requested corrections.

Amend clauses 6.8 and 5.16(c) and (d).

The JSCDL have requested the following be amended:

Clause	Current	Amendment	Reason
6.8	6.8 Election signs The local government may issue a permit for the erection or display of an election sign on local government property.	Clause 6.8 can be amended to include conditions of erection or display of election signs as noted in the City of Vincent's Election Sign Policy.	<i>Clause 6.8 is very open ended and uncertain in its application. As drafted, the clause permits the City attaching any conditions to a permit to display an election sign. These could include conditions which may infringe the principle of the implied constitutional freedom of political communication.</i>
5.16(c) and (d)	A 'smoke free area' is defined as being limited to: (a) An Activity Centre (as defined in the State Planning Policy 4.2-Activity Centres for Perth and Peel); (b) A Public Open Space that is local government property (recreation, sport and nature spaces defined by the Department of Local Government, Sport and Cultural Industries Public Open Space Classification); (c) A thoroughfare adjacent to a business or facility where there is activity that caters for children and/or young people; and (d) A thoroughfare adjacent to a business or facility where trading with an outdoor eating area as an extension of food premises or licensed premises.	Clause 5.16 can be amended after consideration of appropriate words to use instead of 'thoroughfares'. This would prevent the legislation being applicable to people smoking in their cars.	<i>By including thoroughfares, the wording of clause 5.16(c) and (d) is too broad. Making a road a smoke free area could cover drivers smoking in their cars as well as pedestrians passing by or bystanders. They would be unaware when they are passing through a local government district with such a ban. Furthermore, due to the significant number of drivers who smoke in their cars and the fact it is their private property, regulation at a State, rather than a local level would be more appropriate.</i>

Administration notes that amendments to clause 5.16 will affect the implementation of the City's proposed Smoke Free Town Centres project.

The City's intention in actioning the Smoke Free Town Centres is to ban smoking on footpaths, not in people smoking in their cars on the road. Prohibiting smoking on the footpaths would include pedestrians passing by or bystanders. The Smoke Free Town Centres would include significant signage to alleviate the concern of pedestrians being unaware of the smoking ban.

After phone discussions with Parliament staff, Administration has determined that prevailing concerns of the Committee are that the clause may have unintended consequences for people smoking within their cars.

Administration will consider opportunities to amend the clause to encompass Council's intent that footpaths and verges in town centres be smoke free. Administration can propose that clause 5.16 be amended to change 'thoroughfares' to more appropriate wording. This, however, may create difficulty in including laneways, such as Electric Lane, in the Smoke Free Town Centres project, as they often do not have verges or footpaths.

Delete clause 13.2(1)(b).**13.2 Persons may be refused admission or directed to leave local government property or a community facility**

- (1) Subject to subclause (2), an authorised person or Manager may refuse to allow entry, suspend admission or direct a person to leave local government property where:
  - (a) the authorised person or Manager reasonably suspects that the person has –
    - (i) contravened a provision of this local law;
    - (ii) behaved in a disorderly manner;
    - (iii) used indecent, offensive, profane or insulting language;
    - (iv) created or taken part in any disturbance whereby a crowd has gathered;
    - (v) committed an act of indecency; or
  - (b) the person has been deemed undesirable by the local government or the authorised person by reason of his or her past conduct.
- (2) The refusal or suspension referred to in subclause (1) can be for a period of up to 12 months as decided by the authorised person or Manager.
- (3) A person shall, on being requested by the authorised person to leave the local government property, do so immediately, quietly and peaceably.
- (4) A person who fails to comply with a request under subclause (3) may be removed from the local government property by an authorised person or a Police Officer.

The JSCDL have addressed concern with clause 13.2(1)(b) and have recommended it be removed. The Committee has noted that the clause is open to subjective interpretation and could operate to discriminate against particular people or groups of people. There is no definition as to what constitutes an 'undesirable person' and which aspects of 'past conduct' are relevant or reasonable.

Administration has no concerns with this requested deletion.

Provide feedback on the rationale for clause 5.3(l)

### **5.3 Responsibilities of users of a community facility**

A person while in the administration centre or a community facility, shall not –

- (a) consume foodstuffs or drinks in any specific area in which food or beverage consumption is prohibited;
- (b) climb up or upon any roof, fence, wall, partition or other structure not intended for climbing;
- (c) enter the premises if suffering from a contagious, infectious or cutaneous disease or whilst in an unclean condition;
- (d) use soap or shampoo in any part of the premises other than in a change-room;
- (e) use any detergent, substance or oil in any pool or spa;
- (f) foul or pollute the water in any shower, pool or spa;
- (g) bring into any part of the pool premises or place thereon any chemical substance, liquid or powder;
- (h) bring into any part of the pool premises any glass containers;
- (i) deliberately waste or wastefully use fresh or potable water in a community facility;
- (j) spit or expectorate in any part of a community facility, other than in a water closet;
- (k) enter a pool or spa on the pool premises in a dirty or unclean condition; and
- (l) use a mobile phone, camera or other similar recording device in a change room at a community facility.

The JSCDL have expressed concerns with 5.3(l) in that it is too broad and may be unreasonable in its application. The Committee has requested further information on the rationale for this clause as well as information on any existing or planned measures to facilitate compliance.

The intent of clause 5.3(l) is to prohibit a person taking images of another person without their permission within a change room. The practical rationale for the clause is to protect adults and children from having their image captured without consent while in an exposed moment.

Administration could respond to the Committee's request for clarification and suggest the clause be amended to:

- (l) record or photograph the image of another person in a change room at a community facility without their express permission.

**CONSULTATION/ADVERTISING:**

Following later Council approval of commencement of the process of adopting the Local Government Property Amendment Local Law 2022, the City will be required to provide local public notice in accordance with section 3.12(3) of the *Local Government Act 1995* for a period of at least six weeks.

**LEGAL/POLICY:**

Section 3.12 of the *Local Government Act 1995* sets out the procedural requirements for the making of a local law:

- (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.*
- (2a) *Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.*
- (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 local 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.*
- (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 the local law is published on the local government's official website and that copies of the local law may be inspected at 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.*

**RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to respond to the Joint Standing Committee on Delegated Legislation regarding requested undertakings in relation to the Local Government Property Local Law 2021.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any specific sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*.

**PUBLIC HEALTH IMPLICATIONS:**

This is in keeping with the following priority health outcomes of the *City's Public Health Plan 2020-2025*:

*Reduced smoking*

**FINANCIAL/BUDGET IMPLICATIONS:**

There are nominal costs associated with making the local law, including advertising and Gazettal which can be expended from the City's operating budget.