

10.3 UNDERTAKINGS RELATING TO THE ANIMAL LOCAL LAW 2022

Attachments: 1. Letter from JSCDL on undertakings of Animal Local Law 2022 - Confidential

RECOMMENDATION:

That Council:

1. **RESPONDS to the Joint Standing Committee on Delegated Legislation indicating its agreement to the following undertakings in respect to the City of Vincent Animal Local Law 2022:**
 - 1.1 **Provide feedback to the Committee by 14 April 2023, about how clause 3.2(2)(a) would operate in practice, including consideration of the *Animal Welfare Act 2002*;**
 - 1.2 **Within 6 months, repeal the local law and make a new local law complying with all requirements in section 3.12 of the *Local Government Act 1995* which does not contain a provision equivalent to clause 3.7(1)(b);**
 - 1.3 **Ensure the local law will not be enforced in a manner contrary to Recommendation 1.2;**
 - 1.4 **Ensure all consequential amendments arising from Recommendation 1.2 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.**
2. **NOTES that Administration will provide a further report to Council to approve the commencement of advertising the Animal Local Law 2023 (including repeal of the 2022 Local Law), once drafted.**

PURPOSE OF REPORT:

For Council to consider its response to State Parliament's Joint Standing Committee on Delegated Legislation regarding requested undertakings in relation to the Animal Local Law 2022.

BACKGROUND:

At its 13 December 2022 Meeting (item 10.3), Council approved the making of the Animal Local Law 2022.

At the same Meeting, Council was informed that the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation (JSCDL) may exercise its discretion to disallow part or all of the Animal Local Law 2022.

The Animal Local Law 2022 was published in the Government Gazette on 3 February 2023, edition No. 12.

Local public notice of adoption of the Animal Local Law 2022 was published on 16 February 2023, noting that the local law will becoming operational on 17 February 2023.

The Animal Local Law 2022, relevant documents and advice from Department of Local Government, Sport and Cultural Industries (DLGSC) were provided to the JSCDL on 17 February 2023 for their review of the local law.

On 23 March 2023, the JSCDL considered the local law and advised Mayor Emma Cole of its findings and seeking a commitment to several undertakings. The JSCDL requires a letter from the Mayor by 14 April 2023 agreeing to the undertakings.

The Animal Local Law 2022, 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 has resolved to give a Notice of Motion in the Legislative Council to disallow the Animal Local Law 2022, for the following reasons –

- To protect the Parliament's right to disallow the local law should the Committee recommend Disallowance.
- To provide the Committee with additional time to scrutinise the local law and, if necessary, obtain further information.

The giving of the notice should not be taken as indicating that the Committee has resolved to recommend disallowance at this stage.

Where the committee has expressed concerns about a local law the relevant local government is requested to provide the committee with a satisfactory written undertaking to address the concerns. This could be by clarifying the intent / implementation of clauses, amending the local law or by repealing the local law and adopting a replacement.

In fulfilling the requested undertakings, the City is required to repeal the Animal 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 clauses questioned by JSCDL

Clause	Current	Reason
3.7(1)(b)	(1) Every licence is issued subject to the following conditions – (b) each cat must be contained on the premises unless under the effective control of a person.	<p>Inconsistent with Cat Act 2011 – Committee term of reference 10.6(a).</p> <p>Clause 3.2 states: 3.2 Keeping of Cats for which a licence is required (1) Subject to subclause (3), a person is required to have a licence to– (a) keep more than 3 cats at a premises; or (b) use any premises as a cattery or cat management facility.</p> <p>(2) A person who breeds cats may, with the written approval of the City, keep up to 6 adult breeding cats on any premises in the district, subject to– (a) each cat being permanently confined in an effective cage system on the premises; and (b) the terms and conditions in Schedule 3 or any conditions the City considers appropriate.</p> <p>(3) A licence is not required under subclause (1) if the premises concerned are– (a) a refuge of the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia or any other incorporated animal welfare organisation; (b) a veterinary surgery; or (c) a pet shop.</p> <p>Clause 3.7(1)(b) states: 3.7 Conditions (1) Every licence is issued subject to the following conditions– (b) each cat must be contained on the premises unless under the effective control of a person;</p>

		<p><i>Effective control</i> is defined in clause 1.4 as:</p> <p>Effective control in relation to a cat means any of the following methods–</p> <ul style="list-style-type: none"> (a) held be a person who is capable of controlling the cat; (b) securely tethered; (c) secured in a cage; or (d) any other means of preventing escape. <p>Section 79 of the <i>Cat Act 2011 (Act)</i> empowers local governments to make local laws for the management of cats. Section 79(1) states:</p> <p>(1) <i>A local government may make local laws prescribing all matters that are required or permitted to be prescribed for it to perform any of its functions under this Act.</i></p> <p>Section 79(3) contains a number of specified local law making powers, including:</p> <ul style="list-style-type: none"> • Section 79(3)(f), which provides that a local law may be made: <ul style="list-style-type: none"> (f) <i>specifying places where cats are prohibited absolutely</i> • Section 79(3)(g), which provides that a local law may be made: <ul style="list-style-type: none"> <i>requiring that in specified areas a portion of the premises on which a cat is kept must be enclosed in a manner capable of confining cats.</i> <p>By sections 79(3)(f) and 79(3)(g), the Parliament has delineated the scope of valid local laws concerning the prohibition of cats on public land and the confinement of cats. Any local laws which place conditions on cats being on public land beyond those provided for in the Act are inconsistent with the Act and not authorised.</p> <p>Clause 3.7(1)(b), in requiring cats to be ‘under effective control’ in public represents a further step in policy beyond that authorised by the Act and infringes Committee term of reference 10.6(a).</p> <p><u>Administration Comment</u> The City has sought legal advice which concurs with the JSCDL view and agrees an amendment is required.</p>
<p>3.2(2)(a)</p>	<p>(2) <i>A person who breeds cats may, with the written approval of the City, keep up to 6 adult breeding cats on any premises in the district, subject to –</i></p> <ul style="list-style-type: none"> (a) <i>each cat being permanently confined in an effective cage system on the premises</i> 	<p>The Committee has concerns about cats suffering distress by being permanently confined in a cage and unable to move and exercise freely.</p> <p>The Committee notes sections 19(1) and 19(3)(b)(ii) of the <i>Animal Welfare Act 2002</i> state:</p> <p>19. Cruelty to animals</p> <p>(1) <i>A person must not be cruel to an animal.</i></p> <p><i>Penalty: Minimum - \$2,000.</i></p> <p><i>Maximum - \$50,000 and imprisonment for 5 years.</i></p> <p>(3) <i>Without limiting subsection (1) a person in charge of an animal is cruel to an animal if the animal –</i></p> <ul style="list-style-type: none"> (b) <i>is confined, restrained or caught in a manner that –</i> (ii) <i>causes, or is likely to cause, it unnecessary harm;</i> <p>The permanent confinement of a cat may cause, or is likely to cause, unnecessary harm to an animal.</p>

		<p>The Committee is also of the view section 79(3)(g) of the <i>Cat Act 2011</i> authorises the temporary confinement of seized cats impounded in a cat management facility or an isolation cage in a cattery. Section 79(3)(g), or the <i>Cat Act 2011</i> in general, may not, however, authorise permanently confining cats in a cage on a premises.</p> <p>An <i>effective cage system</i> is not defined in the local law. The Committee requests further information about how cats subject to section 3.2(2)(a) would be confined. For instance:</p> <ul style="list-style-type: none"> • What are the type and dimensions of cages that can be used to permanently confine cats? • Would all cats be in the same cage or confined in separate cages? • Will cats be able to move and exercise freely? <p><u>Administration Comment</u> The City has sought legal advice which concurs with the JSCDL view that clarification (potentially by amendment) is required.</p>
<p>3.12(4) and 3.13 of the <i>Local Government Act 1995</i></p>	<p>Section 3.12(4) provides: <i>(4) After the last day for submissions, the local government is to consider any submissions made and may make the local law, (absolute majority required), as proposed or make a local law, (absolute majority required), that is not significantly different from what was proposed.</i></p> <p>Section 3.13 of the <i>Local Government Act 1995</i> states: Procedure where significant change in proposal <i>If during the procedure for making a proposed local law the local government decides to make a local law that would be significantly different from what it first proposed, the local government is to recommence the procedure.</i></p>	<p>A comparison of the proposed and adopted local laws reveals the following changes before the local law was adopted:</p> <p>The following definition was deleted.</p> <p>3.1 Interpretation</p> <p>cat prohibited area means a public place or class of public place that is under the care, control or management of the City as determined under section 1.9 of the Act.</p> <p>Clause 3.13 was amended from:</p> <p>3.13 Cat prohibited areas <i>(1) unless in accordance with written authorisation from the City, a cat must not be in a cat prohibited area at any time. (2) if a cat is in a cat prohibited area contrary to subclause (1), the owner of the cat commits an offence. (3) an authorised person may seize and remove or direct the seizure and removal of a cat from a cat prohibited area, pursuant to the Cat Act.</i></p> <p>to:</p> <p>3.13 Cat prohibited areas <i>(1) a cat prohibited area is an area listed in Schedule 4 to this local law. (2) A cat must not be in a cat prohibited area at any time. (3) if a cat is in a cat prohibited area contrary to subclause (1), the owner of the cat commits an offence.</i></p>

Schedule 4 was also added:

SCHEDULE 4 Cat Prohibited Areas		
Common Name	Physical Lot Boundaries	Description
Britannia Road Reserve	Britannia Road, Mitchell Freeway, Brentham Street and Bourke Street	All bushland and parkland along physical boundaries and rear of residential properties of these roads.
Smiths Lake Reserve	Bourke Street, Kayle Street, Emmerson Street, Elven Street, Toorak Rise and Laroche Lane	All bushland, parkland, wetlands and vegetation along physical boundaries and rear of residential and industrial properties of these roads.
Robertson Park	Fitzgerald Street, Stuart Street, Palmerston Street and Randell Street	All bushland and parkland along the physical boundaries and rear of residential and industrial properties of these roads.
Banks Reserve	Joel Terrace and The Swan River	All bushland, parkland, wetlands and vegetation along physical boundaries and rear of residential properties of this road and estuary.
Hyde Park	Vincent Street, William Street, Glendower Street and Throssell Street	All bushland, parkland, wetlands and vegetation along physical boundaries and rear of residential properties of these roads.

The Committee is of the view these changes made the adopted local law significantly different from the proposed local law that was publically advertised, in breach of section 3.12(4). This is because the prohibition of cats from public and other places is a material aspect of the local law and has received significant media and other public commentary. City residents were not consulted on the removal amendment and addition of these clauses prior to the adoption of the local law, which should have been re-advertised.

Accordingly, the local law infringes Committee term of reference 10.6(a).

Administration Comment

Administration has sought legal advice. It is noted that in advertising the Animal Local Law 2022 the City consulted on potential 'Cat Prohibited Areas' which included those specified in Schedule 4. Administration will query with the JSCDL if this is sufficient to mitigate the need to repeal the entire local law, thereby requiring only amendments to address the other two matters.

Administration will clarify the matters raised by JSCDL in relation to how clause 3.2(2)(a) would operate in practice, including consideration of the *Animal Welfare Act 2022* and notes that consultation of the proposed cat prohibited areas was part of the consultation process during the advertisement of the proposed local law.

The process for repealing the Animal Local Law 2022 is as follows:

1. Council would be presented with a draft Animal Local Law 2023 (including the repeal of the 2022 local law) to approve the commencement of advertising;
2. Local public notice will be provided and submission on the proposed 'repeal and replacement' 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 'repeal and replacement' local law;
4. The adopted 'repeal and replacement' local law would then be published in the Government Gazette and copies provided to DLGSC and JSCDL;
5. Local public notice would be provided to specify the date the 'repeal and replacement' Animal Local Law would come into operation; and
6. The JSCDL would respond to the Mayor with approval or any concerns they may have regarding the replacement local law.

For the purpose of this Item, Council's agreement is sought to the JSCDL required undertakings. A further report will be presented to Council for commencing adoption of the 'repeal and replacement' Animal Local Law 2023 seeking approval to advertise.

CONSULTATION/ADVERTISING:

Following later Council approval of commencement of the Animal Local Law 2023, the City will be required to provide local public notice of the local law 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 Animal Local Law 2022.

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.
Our community is aware of what we are doing and how we are meeting our goals.*

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

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

Reduced exposure to environmental health risks

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.