

# Shire of Jerramungup

## Statutory Review of Local Laws – 7 August 2024

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### **1 PRELIMINARY**

#### **1.1 Statutory context**

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This review is carried out in accordance with the Local Government Act 1995 s.3.16, and is required to be undertaken at least once every 8 years. The requirement for a review does not obligate Council to implement any changes.

#### **1.2 Historical context**

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On 1 July 1982, the Shire of Jerramungup was officially created, separating from the Shire of Gnowangerup.

In accordance with the Local Government (Constitution) Regulations 1998 r.7(2) the local laws of the Shire of Gnowangerup that had effect in the district of the new Shire of Jerramungup as at that time, continued to apply. Amendments to common local laws made after that date by the Shire of Gnowangerup did not change the continuing local laws for the Shire of Jerramungup.

In 1997 and 2010, repeal of 40 old by-laws and local laws was made. This would appear to be all of the by-laws and local laws that applied at the time of separation from the Shire of Gnowangerup.

Accordingly, the only local laws requiring review are the 6 listed in the Local Laws Register on DLGSC website, and one extra relating to bush fire brigades. Until recent years, DLGSC did not list all local laws in the Register; only those made under the Local Government Act.

There were amendments to some by-laws/local laws over the years, notably 4 to the Health By-law. However the principal local laws have now been repealed, and the Interpretation Act s.33 stipulates that repeal of the principal written local law includes repeal of all amendments to that written law.

The current local laws (in date order), none of which have been amended, are –

1. By-Laws Relating to Reserves and Foreshores (1986)
2. By-laws Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades (1990)
3. Beach Access Local Law 1997
4. Dogs Local Law (2002)
5. Parking and Parking Facilities Local Law (2005)
6. Local Government Property Local Law (2005)
7. Dust and Sand Local 2011

#### **1.3 Current review**

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Local public notice of a full review of local laws requires that the community be given the opportunity to comment for a minimum of 6 weeks. Local public notice of the review is required to be published in at least four places. Notice was published in accordance with the Administration Regulations r.3A –

- dates of publication –
  - o Website (mandatory) – 20 May 2024
  - o Facebook – 20 May 2024
  - o Office and all library notice boards – 20 May 2024
  - o Council Buzz – May 2024
  - o Bremer Bay Bulletin – 28 May 2024
  - o Jerry Journal – 19 June 2024
- date of close of public comment – 10 July 2024

At the end of the public comment period, one submission covering 3 of the local laws had been received.

#### 1.4 Adoption by reference

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Although this process has been used in the past, generally it not recommended unless there is to be a very close adherence to the principal local law across local governments. These would include local laws for waste, bush fire brigades, meeting procedures (to become regulation), requiring minimal changes for local circumstances.

Adoption by reference results in the likelihood of consolidation discrepancies, an incorrect assumption that changes made to the principal local law apply automatically to the local law adopted by reference, and the possibility that some matters in the principal local law are irrelevant, or that issues of local importance are overlooked.

Other than in very limited circumstance, adoption by reference is not recommended.

#### 1.5 Local Law consolidations

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The Local Government Act 1995 s.5.96A(1)(b) requires up to date consolidations of all current local laws to be on the local government's website for ease of reference. However, the consolidations do not have formal legal status, and experience with other local governments indicates that many have errors or discrepancies that have crept in. Many are very minor, but potentially have impact on any legal interpretation. This is particularly prevalent where a local law has been adopted by reference.

Errors may include spelling, punctuation, numbering inconsistent or altered without instruction in a Gazette, omission of words or clause, even formatting that may have an impact on interpretation etc.

**Accordingly, while the consolidation may be referred to, the primary source for this review of each local law is the Gazetted adoption, and the Gazetted version of any principal local law adopted by reference, and not the consolidated version.**

#### 1.6 Documents referred to in this Report

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Principal documents referred to in this Report –

- Department of Local Government, Sporting and Cultural Industries, Local Laws Register;
- Government Gazettes for published local laws; and
- Government Gazettes for the principal local laws of those adopted by reference – Cottesloe (Parking), Exmouth LG Property) and Moora (Dogs).

#### 1.7 Definitions

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For the purposes of this review –

**appointment or approval** means the carrying out of a role or function when designated to do so, generally by the CEO,

**authorised person** means a person appointed under the relevant legislation or by delegated power made to the CEO, to implement actions authorised by legislation or local law

**CEO, EHO** etc, means that specific person or person acting in that role;

**Council** means the elected members in session;

**delegation** means the power to make a discretionary decision as though the person were the Council,

**district** means the geographic area of the Shire of Jerramungup,

**DLGSC** means the Department of Local Government, Sport and Cultural Industries;

**JSCDL** means the Parliamentary Joint Standing Committee on Delegated Legislation;

**LG Act** means the Local Government Act 1995;

**local government** means the organisation; and

**WALGA** means the WA Local Government Association.

See also Underlying Interpretations – particularly in relation to use of “local government”, delegation of power (not authority), and authorised persons.

## 2 EXISTING LOCAL LAWS

### 2.1 By-Laws Relating to Reserves and Foreshores (1986)

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Original Gazettal            1 December 1989

#### Comment

Made under the old Local Government Act 1960, many provisions have changed with the current LG Act.

There is a likelihood of inconsistency with the Beach Access Local Law, as clause 10(c) specifies access, launch of boats etc are prohibited except where “set aside”, whereas the Beach Access Local Law implies permitted anywhere, but specifies launching from three beaches is prohibited, and does not require further signage.

#### Issues

Issues include –

- cl.1 – application of the local law is to the lands specified in Schedule 2 and 3. Schedule 2 is a description that is cumbersome and highly unlikely to be easily understood. Sch.3 is marginally better, but still inadequate
- cl.7 – prohibits a range of activities on a reserve or foreshore without the consent of Council. Use of the term “Council” means that the CEO or authorised person cannot approve, it must be the Council by resolution;
- cl.9 – attempts to control cats by not excluding them as an animal, inconsistent with the *Cat Act 2011*;
- cl.12 – prohibits model aeroplanes and therefore does not apply to drones. Model aircraft of any type (helicopters, rockets etc.) and drones are included in the definition of “*unmanned aerial vehicle*” used by the Civil Aviation and Safety Authority, which controls operations of UAVs above a certain height, but not take off, landing or under that height, or the locations from which flown.
- cl.16 – the general penalty is \$500, despite the LG Act permitting a maximum of \$5,000. The general penalty is the maximum amount that a Court can impose on conviction;
- cl.17 – modified penalty amount is a flat \$50 for all offences, not necessarily wrong, but highly likely to be inadequate depending on the severity of the offence. The maximum modified penalty is 10% of whatever general penalty stated in clause 16;
- Sch.1 Forms 1-3 – infringement notice etc. – are no longer fully compliant with the standards in that reference is not made to the Fines Enforcement Register (not required), nor the effects of non-payment (required if reference to FER is made).
- Sch.2 & 3 – almost indecipherable to the general community;
- the only discretions permitted under the local law are by resolution of Council. There are no discretions that may be exercised by CEO or an authorised person under the local law are available to permit access in appropriate circumstances
- although not essential, there is no statement of enforcement or issue of notices etc. by an authorised person; and
- application of the local law to recreation area and public places generally is quite inadequate;
- no exemption from compliance for emergency services.

#### Public comment

##### ***By-laws relating to reserves and foreshores***

*There is evidence on many of our coastal reserves that the huge increase in visitor numbers to the town, including people with 4WDs and other motorised vehicles and people with caravans wanting to free-camp is having a substantial negative impact on the bush so greater protection and management for them all is important. Many tracks are created informally through frequent use but this does set an unfortunate precedent that will lead to greater and greater fragmentation and degradation and get harder to change the longer it continues.*

*Of particular note are Back Beach and Banky Beach*

*Could vehicle access to **Back Beach** be limited to two tracks only: the track near the Ab farm at the termination of White Trail Rd and the track that comes off White Trail Rd at the point where the road turns sharply right to follow behind the dune system. This later track has only been in common use in very recent years. It used to stop short of the beach and you had to walk the last little bit. Now there is an access point to the beach which has rapidly become a very substantial track (it cuts deep into the dune system).*

*To protect the bush could vehicles be prohibited from the relevant coastal reserves around Back Beach. In recent years barriers put in place by the shire have been removed from access points to tracks off Cuneo Drive and multiple informal tracks have been pushed through the bush, degrading the bush itself, damaging the foredunes to the beach and creating erosion points and incursion of weeds and potentially dieback. There is evidence to suggest that people seeking camping sites have pushed through and create turn arounds along some of the tracks – also damaging bush and widening the tracks. Degradation of the bush from illegal camping activities will also occur if this is allowed to continue.*

***Banky Beach** now also has multiple access points down the cliff face and erosion down these tracks is extremely bad. I imagine there is potentially a safety issue there, particularly in the future if the erosion is allowed to continue unchecked. The cliff face is steep and sandy and the covering vegetation that has kept it in place for so long is now being destroyed and is under great pressure due to the sheer number of people using it. I really think it needs to be assessed and a plan developed to allow safe pedestrian access whilst also protecting the very fragile cliff face and associated vegetation. Whilst vehicles can't access the beach (yet), several tracks have been forged closer to it, fragmenting the bush here as in other places.*

***Point Gordon.** In recent times the increase in housing development in this area combined with the creation of fire breaks has opened up otherwise inaccessible areas. Point Gordon is a case in point where informal tracks are being forged through the area, opening it up to weed incursion and dieback risk.*

There are a number of issues identified in this submission –

- unauthorised access
- damage to the environment
- illegal camping
- potential safety issues

This local law is quite inadequate for dealing with these matters, and taken with the limitations of the Beach Access Local Law, highlights the need for powers to control thoroughfares and public places such as beaches that are neither local government property nor a throughfare.

Regardless of where damage to native vegetation is occurring, there is legislation covering illegal or unauthorised activities, and significant penalties apply, through –

- Environmental Management Act and Regulations
- particularly, Environmental Protection (Clearing of Native Vegetation) Regulations.

Subject to jurisdiction, the matters identified should be included in a new Public Places and Local Government Property Local Law.

### Summary

The local law is old in style, concepts and application, and needs substantial amendment at minimum.

The local law is also deficient and out of date. Incorporation of relevant provisions into a wider application local law to streamline definitions, permissions, enforcement, penalties etc is suggested.

Staff comment was received noting that there are remote reserves that the local government does not control and has no capacity to manage.

Incorporation into a broader based local law would clarify that the requirements apply only to public places (land, reserves, thoroughfares etc) that are under the control and management of the local government. This would exclude all land, reserves, roads and tracks that are controlled and managed by Government departments, private roads etc, or are unallocated.

This application is consistent with legislation that the local government cannot extend the application of a local law over areas not under local government's legal control, without the Governor's approval.

Although a local law may place a requirement or a prohibition on an individual or a location does not obligate the local government to enforce that requirement or prohibition, allowing for the exercise of discretion.

However, application to all public places under the local government's control and management provides the capacity to intervene if considered appropriate.

#### Recommendation

That a Public Places and Local Government Property Local Law be developed, incorporating –

- any relevant provisions of the Reserves and Foreshores Local Law,
- matters raised in the public submission.

## 2.2 By-laws Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades (1989)

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Original Gazettal            13 July 1990 (correction of 6 July 1990)

### Comment

The current local law was adopted in 1989, Gazetted in 1990, and is very out of date –

- cl.4– stipulates appointment by Council but the equipment officer is subject to the captain, blurring lines of responsibility;
- cl.6(1) – allows only 2 classes of membership, one of which is highly likely to be invalid
- cl.6(2) & (4) – provides for a “subscriber member” and for fees to be a member of a brigade, potentially in conflict with the LG Act s.6.16-6.19 requiring fees and charges be set by Council.
- First Schedule – the form of enrolment as a fire fighting member, does not provide for other classes of member, and is deficient in the information required.

### Issues

The Bush Fires Act s.43 requires that duties of a brigade captain, lieutenants etc be specified in a local law.

The WALGA model is considered to be deficient, put is strongly supported by DFES.

Despite having previously allowed much briefer versions of a Bush Fire Brigade Local Law, in recent times the JSCDL has insisted on a close adherence to the WALGA model. Ultimately, it does not matter what disagreement there may be with the model, the JSCDL is the body with the power to allow or recommend to Parliament that a local law be disallowed.

### Summary

The WALGA model as is stands, is not recommended.

JSCDL are not prepared to accept significant changes to the model, and are supported in this by DFES. The JSCDL have entrenched their views in a report published by them in November 2023. Accordingly, to comply with the BF Act requirement for a local law in relation to the roles and duties of captain and lieutenants, also means substantial compliance with the requirements of DFES and the JSCDL.

See –

[https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/DAD42FFB5493685548258A690002256F/\\$file/Delegated%20Legislation%20Report%204.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/DAD42FFB5493685548258A690002256F/$file/Delegated%20Legislation%20Report%204.pdf)

Of the local laws in recent years, the Bush Fire Brigades Local Law adopted by the Shire of Pingelly in 2023 is considered the most appropriate, although there remain a small number of legal, practical and technical issues that could be addressed.

Given the inflexibility of DFES and JSCDL this is one of the few local laws where adoption by reference may be appropriate.

Extensive comment from the Community Emergency Services Manager was received in the form of a draft Bush Fire Brigades Local Law based on the WALGA model.

### Recommendation

That a new Bush Fire Brigades Local Law be developed, repealing the current by- law.

## 2.3 Beach Access Local Law 1997

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Original Gazettal 15 August 1997

### Comment

At first appearance, a simple and straightforward local law prohibiting general access to three beaches.

### Issues

However, there are a number of matters which mean that the operation of the local law is potentially fatally flawed –

- cl.5 – the local law binds the Crown – it is highly unusual for lower legislation to bind a higher authority. There is alternative wording that is acceptable to achieve the same result.
- cl.9 – stipulates the modified penalty to be \$100 for all offences;
- cl.10 – maximum penalty permitted under the LG Act s.9.14(a) is \$5,000, not \$1,000 listed in the local law. It is the maximum that may be applied by a Court on conviction, and is not at the local government's discretion

Other matters –

- cl.9(2)(b) – modified penalty amount is a flat \$100 for all offence, not necessarily wrong, but highly likely to be inadequate depending on the severity of the offence
- Sch.2 Forms 1-3 – infringement notices etc. – are no longer fully compliant with the standards in that not reference is made to the Fines Enforcement Register (not required), nor the effects of non-payment (required if reference to FER is made).
- no discretion is under the local law are available to permit access in appropriate circumstances
- although not essential, there is no statement of enforcement or issue of notices etc. by an authorised person; and
- the limited application of the local law may need to be extended to other areas.

There is a high likelihood of inconsistency with the Reserves and Foreshore By-law, as previously noted since that by-law clause 10(c) prohibits vehicles on beaches for access, launch of boats etc, except where “set aside”, whereas the Beach Access Local Law prohibits just 3 beaches at this stage.

Staff comment was received to the effect that the modified penalties were low. However, these are limited by the general penalty in clause 10, refer comment above.

### Public comment

*By laws relating to motor vehicles – Schedule 1 Prohibited Areas*

*Could the Wellstead Estuary be included as a prohibited area for vehicles (excluding access track to and from Gairdner Rd)*

*Little Boat Harbour: Beach access limited to vehicles with permits.*

It is presumed that it is the Beach Access Local Law that is intended.

The public submission in section 2.1, notes that tracks are being made to access various beaches. However, without a definition of “beach access” this local law does not appear to cover the access track from a road to the beach, seemingly applying only once the track is enters the beach, as implied in Schedule 1. Without a definition of what beach access is, the prohibited areas are those, for example “... known as John Cove being more particularly the beach are adjacent to ...”.

As “beach “ is also not defined, some ambiguity exists with this as well – does it include adjacent dunes or scrubland.

Any decision on these will be subject to the local government having jurisdiction.

### Summary

The local law is deficient and out of date. Incorporation of relevant provisions into a wider application local law to streamline definitions, permissions, enforcement, penalties etc is suggested.

### Recommendation

That a Public Places and Local Government Property Local Law be developed, incorporating –

- any relevant provisions of the Beach Access Local Law;
- matters raised in the public submission.



## 2.4 Dogs Local Law (2002)

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Original Gazettal            7 February 2002  
Adoption                      by reference – Shire of Moora as Gazetted on 29 November 1999

### Comment

There are few technical aspects of this local law that no longer meet with current convention, but are not necessarily inconsistent with legislation, or lack validity.

### Issues

There have been some changes to Dogs Local Laws through Governor's Orders that are not reflected in the local law that are now inconsistent with legislation –

- dog exercise and prohibited areas are now dealt with by the Dog Act, or are required to be adopted by absolute majority of Council, and be given local public notice.
- provisions for and reference to exemptions for assistance dogs.

Other issues identified include –

- reference throughout to “the local government” requiring the exercise of delegated power –
  - o reference to “authorised person” would allow greater flexibility
  - o delegation can't be made to a non-employee, but a contractor can be appointed an authorised person
- cl.1.3 and elsewhere – amend references to “town planning scheme” to “local planning scheme”;
- cl.2.4 – breaking into a pound now dealt with under the Dog Regs
- cl.4.3(1) – specifies notice of a proposed kennel in a newspaper, however it is suggested that this requirement be deleted and replaced with community notice as determined by an authorised person, which could include –
  - o specific written notice to neighbours;
  - o local newsletters etc.
  - o the local government placing notice on the website, Facebook, notice boards etc.;
- cl.5.1 and 5.2 prohibited places and exercise areas are now to be set by absolute majority resolution and not by local law;
- infringement notices no longer compliance with legislation –
  - o usual practice is to reference the notices in the Local Government Act Regulations to avoid the inconsistencies
- provision for general penalty scattered throughout the local law, and of varying amounts, where they could be consolidated into a single clause –
  - o individual referencing increases possibility of inconsistency between penalties;
  - o usual practice is that general penalties are set at the maximum, so that a court has greater discretion in applying the amount of the penalty
- modified penalties are low but not unreasonable

No provision has been made for objections and appeals, false statements, dealing with dangerous dogs in some limited circumstances that are not covered by the Act or Regulations.

Staff comment noted the need to amend references to “town planning scheme” and that penalties were low.

### Public comment

***Dog Act By laws – Part 5 – Dogs in public places. Particularly section (1) (e) the following reserves.... Could the Wellstead Estuary be included in this list (all parts) for the protection of birdlife (including beach-nesting birds, migratory shorebirds and resident species). Could the dog exclusion area include the foredunes on Main beach that are on the far side of the estuary mouth, near the entrance to the Gairdner Rd track. Rock Parrots feed in those dunes and Pied Oyster Catchers have been recorded nesting there.***

Under the Dog Act s.31(2B) and (3A), the prohibition of dogs in certain areas is to be by an absolute majority decision of Council. Similarly, dog exercise areas are also determined by an absolute majority decision of Council. The statutory process is set in subclause (3C) and following subclauses.

Accordingly, the Dog Local Law cl.5.1 and 5.2 are superseded by legislation and have no effect.

Subject to the local government having jurisdiction over the places mentioned, the request appears to have merit.

#### Summary

Generally fit for purpose, but a re-write is considered advantageous.

#### Recommendation

1. That a new Dogs Local Law be developed, repealing the current local law.
2. If not already resolved, that dog exercise areas and prohibited areas be determined by absolute majority, in accordance with the Dog Act s.31

## 2.5 Parking and Parking Facilities Local Law (2005)

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Original Gazettal            5 August 2005  
Adoption                      by reference – Town of Cottesloe as Gazetted on 10 December 2001

### Comment

Please note – this local law has multiple references to “the local government may by resolution” or similar wording, indicating that the decision must be made by Council is not able to be delegated.

This local law is considered fit for purpose although it is extensive for a small rural local government. However, this just results in a range of provisions being available, even if never used.

Minimal change is suggested –

- reference to “the local government” in various places throughout requiring the exercise of delegated power –
  - o reference to “authorised person” would allow greater flexibility
  - o delegation can’t be made to a non-employee, but a contractor can be appointed an authorised person
- cl.1.3 – some definitions should be amended, e.g. –
  - o ACROD sticker – is now referred to in Regulations as a disability parking permit
  - o bicycle – the note referring to the Code is now inconsistent with the text of the Code
- replace Schedule 2
  - o with an abbreviated schedule that lists only those modified penalties that differ from Item 82 All other offences not specified
  - o increase penalties to more appropriate amounts
- delete the Forms of Schedules 2 and 3 and insert a replacement clause 10.3 adopting the form of notices in the *Local Government (Functions and General) Regulations 1996*
  - o eliminates the potential of inconsistency between the local law and Regulations
  - o removes the need to amend the local law if there are changes to the forms needed;
- delete Schedule 4

### Issues

The consolidation of this local law notes that clause 1.2 is not applicable, whereas the adoption stipulates repealed. The difference is immaterial.

No mention of electric rideable devices such as scooters, e-bikes etc, although these may not be an issue.

Staff comment was received that modified penalties were considered to be low.

No other issues identified.

### Summary

Considered generally fit for purpose, although some amendment would be advantageous.

### Recommendation

That the current local law be amended.

## 2.6 Local Government Property Local Law (2005)

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Original Gazettal                      5 December 2005  
Adoption                                      by reference – Shire of Exmouth as Gazetted on 10 July 2000

### Comment

The Order in Council made by the Governor and Gazetted on 4 June 1982, separating the Shire of Jerramungup from the Shire of Gnowangerup specifically included adjacent islands. These islands are unlikely to be reserves of the local government, and quite possibly not reserves of a Government department. There is no indication of them being reserves within Landgate mapping. The Local Planning Scheme indicates that are reserved for recreation and open space, but this planning reservation indicates purpose, not a Gazettal of responsibility. In the absence of a formal vesting, it is likely that the Dept of Biodiversity, Conservation and Attractions is the responsible authority.

As such the islands are not local government property, but are considered as public places.

The local law clause 1.4(1) has specific reference to the local law applying 200 metres seawards from the low water mark, as was included in the Exmouth local law. Staff have searched minutes of the time and development records, and have not been able to find any confirmation that this provision can apply to the Shire of Jerramungup. That it was approved for Exmouth and incorporated into their local law, does not mean that it can automatically apply to Jerramungup, since the LG Act s.3.6 requires that the Governor's approval is required before the local law made. Since it appears that this has not been done, it is considered that this clause of the local law is invalid, and has no effect.

It would be a matter for solicitors to advise whether or not approval may be able to be made retrospectively, but due to the wording in the LG Act, it is presumed that any request would fail.

The Exmouth local law is based on the WALGA model for local government properties as it existed in 1999 and 2000. However, legislation and community expectations have moved significantly.

### Issues

The definition of "local government property" specifically excludes thoroughfares, and so is unable to be applied to public places such as –

- thoroughfares that are under the management and control of the local government in accordance with the *Land Administration Act 1997* s.55(2) and (3)(b);
- the adjacent islands;
- beaches generally.

Without the Governor's approval under LG Act s.3.6, there is no capability to control any boat or other vessel (jet-skis) etc once in the water, when it may be advisable to be able to specify distances from swimmers, sea approach to launching ramps, speed of vessels close to shore for environmental protection etc.

Accordingly, the local law has limited application, and does not address a sizeable gap in the capacity to control areas that are the local government's responsibility.

Other issues identified include –

- reference throughout to "the local government" requiring the exercise of delegated power –
  - o reference to "authorised person" would allow greater flexibility
  - o delegation can't be made to a non-employee, but a contractor can be appointed an authorised person
- cl.1.2 – definitions –
  - o "Manager" could be deleted in favour of "authorised person"

- “date of publication” stipulates that local public notice commences when published in a newspaper –
  - this is perhaps nowhere near as effective as it used to be, particularly since Regulations now require publication on the local government’s website and an additional 3 places, usually official notice boards, social media and newspapers/newsletters;
  - suggest that publication on the website be considered the commencement of local public notice, with the other avenues being as soon as possible thereafter;
  - local public notice cannot be given by a private individual, since they have not authority over local government website, notice boards social media etc. See comments for cl.3.2(4) below;
  - insert a definition of “local public notice” referring to the Regulations to avoid doubt
  - insert a definition of “public or community notice” being as determined by an authorised person, and using appropriate methods
- “vehicle” may be advisable to include e-bikes, e-scooters etc.
- Title of Part 2 is misleading, with only cl.2.1 to 2.6 dealing with making of determinations and the remainder of the part with general provisions of the local law
- cl.2.7(1)(a) acts to prohibit cats in contravention of the *Cat Act 2011* and JSCDL requirements;
  - cl.5.11 is also likely to be problematic
- cl.2.7(1)(c) – refers to “motorized model aircraft” whereas the definition of “UAV” (unmanned aerial vehicle) as defined by Civil Aviation Safety Authority has a broader application, and also controls flying over private property, maximum heights etc.;
- cl.3.2(4) – it has been held that an applicant cannot be required to give local public notice, since under the Regulations, local public notice includes the local government’s website which is not under the applicant’s control, and possibly other methods also not under the applicant’s control
  - see comments in relation to cl.1.2 date of publication
- Schedule 1 – penalties are considered to be generally low
- Schedule 2 – While retaining the capability to make determinations, it is suggested that the matter should be included in the local law if possible –
  - the issue becomes confusing when a matter is categorised as a determination, then included as a schedule to the local law,
  - when main text clauses 2.1 to 2.6 imply that they are made separately to the local law.
  - Sch.2. 2.1 states golf is prohibited, but clause 2.7(1)(h) already addresses the issue
  - Sch.2 2.2 is irrelevant since it is covered by –
    - Tobacco Products Control Act 2006 – within 10 m
    - *Tobacco Products Control Regulations 2006* r.13A prohibitions (1) 5m of entrance, (2) 10 m of air intake
    - both Act and Regs refer to “enclosed public place”
    - if wishing to control, to reflect the legislation, should have a separate prohibition clause, not a prohibition by determination
    - most local laws do not have this as a determination, relying on clause 2.8(1)(a) for areas not caught by legislation

Other matters include –

- native flora – not covered for local government property, although noting environmental requirements
- cats – with the *Cat Act 2011*, there are a number of limitations that are placed on the ability to control cats, in particular prohibitions. The JSCDL will not consider any blanket prohibition or limitation, since the *Cat Act* requires that the area be specifically identified
- assistance animals – provisions should be included in accordance with section 9(2) of the *Disability Discrimination Act 1992 (Commonwealth)* noting that assistance animals not limited to guide dogs.

Staff queried the operation of cl.5.7 specified gender. The current text is usually expanded in recent local laws to provide for families, being an adult having responsibility for a child having access to a specified room. Local laws having the current wording have not been rejected by JSCDL.

Accordingly, it is suggested that wording as currently approved by the JSCDL be retained.

#### Summary

Despite many of the matters identified being relatively minor, given the accumulation of the issues, it is considered that a re-write of the local law at minimum is advisable.

In addition, given that there are significant gaps in the local government's capability to manage public places that are not local government property, but are the local government's responsibility, a local law to covers these aspects is also advised.

Given the potential for confusion of where local government property stops and a public place begins, it is also considered that public places, including activities on thoroughfares should be addressed. Sites where the boundary between property and public place may be unclear and ambiguous include –

- activities on the verandah of a public building that borders a footpath,
- a jetty owned by the local government and the beach adjacent.

#### Options

That –

1. the Local Government Property Local Law be amended, and
2. a new Activities in Public Places Local law be developed

OR

A new Public Places and Local Government Property Local Law be developed, incorporating relevant provisions of the current local law.

#### Recommendation

That a Public Places and Local Government Property Local Law be developed, incorporating any relevant provisions of the Local Government Property Local Law.

## **2.7 Dust and Sand Local 2011**

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Original Gazettal          22 November 2011

### Comment

A relatively new local law made under the LG Act.

### Issues

There is little that requires change or improvement, especially if rarely used.

Matters that Council may wish to consider include –

- the appropriateness of the local law being applied to farms etc., since the local law applies to the whole district without exemption;
- the lack of discretions available to Council or an authorised person, being limited to approve with or without conditions, or refuse;
  - o there may be circumstances in which further approvals or information may be required
- expanding clause 2.3 to state “including but not limited to” the matters in Sch.1,
  - o listing the matters and deleting Sch.1 then means that the information submitted can be stipulate in cl.2.3 as “being in the form as determined by the local government from time to time” so that the form can vary, information added or deleted, without having to amend the local law to change the form;

### Summary

There is no pressing need to amend the local law that has been identified.

If an Animals, Environment and Nuisance Local Law was to be developed, consideration of inclusion of relevant provisions into it to streamline definitions, permissions, enforcement, penalties etc is suggested

Staff considered that this local law was operating adequately, noting only that modified penalties could be increased.

There is the option to include relevant provisions of this local law within a new Animals, Environment and Nuisance Local Law, however, staff have advised a preference that this local law remain separate.

### Recommendation

That the current Dust and Sand Local Law be amended.

### **3 SUGGESTED LOCAL LAWS**

#### **3.1 Animals, Environment and Nuisance Local Law**

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Without a current Health Local Law and the coming raft of legislation replacing most local laws that have been adopted around the State, Council may wish to consider an AEN Local Law in order to control various matters including –

- a) cats –
  - standard number that may be kept
  - this cannot be enforced without the number being specified in a local law
- b) animals –
  - keeping of birds (especially roosters and others that make intrusive noise) and farm animals generally covered in Health Local Laws but unlikely in the future
  - provision for keeping native fauna, if the person and place has been approved by the relevant department
  - farm animals in townsites
- c) environment –
  - untidy properties
  - disposal of old refrigerators etc
- d) nuisances –
  - caused by farm animals or birds kept as pets, especially in towns, and including cat nuisance
  - spillage of light from one property to another
  - vehicle nuisance – smell, truck noise

Some matters can be dealt with under the Local Government Act Sch.3.1, and enforced using sections 3.26 and 3.26. However, the Act relies on prosecution to enforce the action required by the notice, either by payment of a penalty or by the local government doing the work and recovering the costs.

A local law can provide an immediate response through an infringement and modified penalty, and authority for recovery of costs under the local law. If the person refuses to pay, prosecution would still be required.

Refer also section 4.1.

#### Option

That an Animals, Environment and Nuisance Local Law be considered.

#### **3.2 Cemeteries Local Law**

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The Cemeteries Act is currently under review, and there is no indication yet of timeframe for amendments, a new Act or replacement Regulations.

It is highly likely that there will be matters specific to the local area that should be addressed in a local law.

With two cemeteries, it is recommended that a Cemeteries Local Law be considered in order to, among other things –

- power to charge fees;
- manage vehicle access;
- provide for assistance animals under Commonwealth legislation;
- specifications for monuments, bases, headstones etc, or provisions to adopt by policy;
- standards for memorials etc, and powers to prohibit offensive or inappropriate wording or images;
- dimensions of a standard grave;
- natural burials;
- penalties for vandalism, inappropriate or prohibited behaviour.



Council may consider it advisable to develop a local law immediately, although it would be likely to be impacted to some extent by the review of the Cemeteries Act.

#### Recommendation

That a Cemeteries Local Law be developed at the appropriate time.

### **3.3 Fencing**

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The purpose of a Fencing Local Law is to prescribe a sufficient fence and the standard for construction of fences.

The local law would –

- establish the minimum requirements for fencing,
- provide for permitted and prohibited fencing and materials,
- give wide discretions to vary the requirements should individual circumstances permit.

The local law provides that one neighbour cannot impose on an adjoining owner an unreasonable cost, since there is only the requirement to pay for 50% of the cost of a sufficient fence. There is no prohibition on approval for a higher standard fence, but the owner desiring this pays the additional cost.

Should a dispute arise about a fence, and it is unable to be resolved and ends up in court, the court is required to consider any local law concerning fencing in making any judgement.

However, many local governments do not have a Fencing Local Law. Unless it is of advantage to do so, a Fencing Local Law is not required.

#### Option

That Fencing Local Law be considered.

### **3.4 Public Places and Local Government Property Local Law**

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A merging of two model local laws –

- Activities in Thoroughfares & Public Places Activities and Trading, and
- Local Government Property.

These two have many of the same functions, processes and criteria, but create an artificial division between property (e.g.: the Shire hall) and a public place or thoroughfare (e.g.: the open porch area or footpath outside the hall). For instance, an event at a Shire Hall involves the building (property) and the footpath (public place) outside, so it is suggested that the provisions be seamless.

Public places are defined in the local law as all property or land for which the local government has responsibility –

- Local government property –
  - o reserves, recreation grounds, public parks, gravel pits,
  - o offices, halls, depots, structures on a beach etc;
  - o leased buildings or land;
- may include beaches, foreshores, seawards 200 metres etc;
- Thoroughfares definition includes –
  - o streets, road and tracks – other than in parks under control of other agencies, or private roads;
  - o footpaths and verges.

At the moment, there are very limited controls available to manage and protect any local government structures and activities in thoroughfares or other public areas, such as –

- beach lookouts
- permitted verge treatments – what adjoining land owners can do on verges
- itinerant vendors selling, displaying etc from vehicles

- temporary signs – businesses, events, elections etc.
- camping on beaches etc
- driving on closed thoroughfares
- crossovers from properties onto a thoroughfare
- power to erect signs and give directions on a thoroughfare.

Some of the current Reserves and Foreshores Local Law, Beach Access Local Law and Local Government Property Local Law and Parking Local Law could be included if relevant

Application to the Governor for the application of any new local law under the LG Act s.3.7 to be made at the time of Council resolution to commence local public notice of the new local law.

As noted in section 2.6 –

- the Order in Council made by the Governor and Gazetted on 4 June 1982, separating the Shire of Jerramungup from the Shire of Gnowangerup specifically included adjacent islands. These islands are likely to be considered as public places;
- without the Governor’s approval under LG Act s.3.6, there is no capability to control any boat or other vessel (jet-skis) etc once in the water, when it may be advisable to be able to specify distances from swimmers, sea approach to launching ramps, speed of vessels close to shore for environmental protection etc.

Recommendation –

1. That a Public Places and Local Government Property Local Law be developed, to include –
  - expanding application to buildings and structure owned by the local government;
  - extending seawards to 200 metres off-shore (Governor’s approval required);
  - controls for activities, trading etc in or on public places and thoroughfares.
  
2. Relevant provisions of other local laws, as noted, be included –
  - Reserves and Foreshores Local Law;
  - Beach Access Local Law;
  - Local Government Property Local Law.
  
3. When authorising any draft Public Places and Local Government Property Local Law, application be made to the Governor under LG Act s.3.6 to extend the local government’s powers 200 metres seawards.

## **4 OTHER LOCAL LAWS**

### **4.1 Health Local Law**

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With the new Public Health Act 2016, there is an opportunity for significant changes in processes, and administrative matters within the local law, together with the ability to issue infringements rather than having to resort to prosecution in every instance.

Information indicates that Stage 5 of implementation of the Public Health Act 2016 is being advanced. This involves replacing approx. 25 existing health regulations with 5 new contemporary regulations and repealing all current Health Local Laws across the State over the near future.

Accordingly, Council may not view a Health Local Law as being a priority, despite there being no current relevant and effective local law to manage public health matters.

These Regulations proposed are unlikely to capture everything, however, a new model health local law is currently being drafted by the environmental health profession to pick up on important public health issues that will not be contained in the Regulations.

However, not all matters may be addressed, and some will probably remain at the discretion of the local government, such as –

- farm animals in town property back yards
- birds in backyards
- some nuisance matters such as –
  - o noise from roosters etc
  - o light from adjoining premises
  - o smoke from back yard fires etc
- environment matters – old fridges, untidy yards, vehicle wrecks etc.

These matters often within a Health Local Law, can be addressed in an Animals, Environment and Nuisance Local Law, see section 3.1.

#### Option

If considered appropriate, relevant matters identified above be incorporated into an Animals, Environment and Nuisances Local Law.

#### Recommendation

That a Health Local Law not be developed at this time

### **4.2 Control of vehicles (Off-Road Areas) Local Law**

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The Shire of Gingin is the only local government known to have adopted this local law, due to the particular issues they have with widespread and heavy use of beach and sand dune areas.

Application of the Shire of Gingin's local law is only to the areas controlled by the local government, and covers entry, activities, behaviour, signs on the areas as well as permits to use the area. An important aspect of controlling access is so that the number and general location of users is known in case of emergencies.

Unless there is a need for these controls, it is suggested it is not considered. However, the comments of the public submission as noted in section 2.1 should be considered.

#### Recommendation

That a Control of Vehicles (Off-Road Areas) Local Law not be developed.

### 4.3 Meeting Procedures Local Law

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The reforms to local government announced over the past 12 months or so include Meeting Procedures Regulations which will include provisions for public questions time, to standardise processes across the state. There may be some scope for additional matters to suit the local government's specific wishes.

#### Option

Any local law to follow the release of proposed Meeting Procedures Regulations, to be developed as part of the local government reforms from the State Government.

#### Recommendation

That a Meeting Procedures Local Law not be developed at this time.

### 4.4 Waste Local Law

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Probably very little use to the Shire of Jerramungup, and generally deals with –

- control of local government waste as defined in the Waste Avoidance & Resource Recovery Act
  - o please note the while Council may mandate collection of local government (domestic waste), commercial properties only participate with their consent;
- provisions, placement, cleanliness of bins, and duties of the user
- landfill or other waste facilities.

Some matters are not an issue, others such as the landfill sites or transfer stations, can be dealt with adequately using the Local Government Property Local Law.

#### Recommendation

That a Waste Local Law not be developed.

### 4.5 Extractive Industries

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Where mining, quarrying etc is a common activity, but generally managed under mining legislation and the local planning scheme.

However, a local law could have benefit in ensuring –

- contributions to road maintenance where traffic is more than what would otherwise be expected
- funding of rehabilitation after mining has ceased in whole or in part
- notification of permanent and temporary shutdown, contact details as well as safety and security requirements

#### Recommendation

That a Control of Vehicles (Off-Road Areas) Local Law not be developed.

### 4.6 Other minor local laws

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Limited value, especially for small rural local governments, but sometimes found in larger or metropolitan ones, or those with particular issues –

- a) Bees –generally managed by licensing under biosecurity legislation
- b) Cats – if more than minor controls are needed
- c) Pest Plants – tend is to repeal them, as most plants are either covered by biosecurity legislation, or are so endemic that control is essentially impossible
- d) particular matters or things – saleyards, airports, signs etc.

#### Recommendation

That these local laws not be developed.

## 5 SUMMARY

Current local laws	Recommendation	Replacement local law
Reserves and Foreshores (1986)	Repeal x 3 Merge relevant provisions into Places & Property Local Law	Public Places & Local Government Property
Beach Access		
Local Government Property		
Establishment, Maintenance & Equipment of Bush Fire Brigades	Replacement to meet DFES and JSCDL requirements	Bush Fire Brigades
Dogs	Replacement	Dogs
Parking and Parking Facilities	Amend	n/a
Dust and Sand	Amend	n/a
<b>Suggested local laws</b>		
Animals, Environment & Nuisance	Incorporate – <ul style="list-style-type: none"> <li>- basic controls for cats</li> <li>- farm animals in towns</li> <li>- environment matters</li> <li>- nuisance matters etc</li> </ul>	To be considered
Cemeteries	Controls for <ul style="list-style-type: none"> <li>- interments – graves and ashes</li> <li>- memorials</li> <li>- vandalism and liability</li> </ul>	Recommended <i>After Cemeteries Act review is complete</i>
Fencing	Incorporates – <ul style="list-style-type: none"> <li>- describes sufficient fencing for relevant areas / zonings</li> <li>- prohibited materials</li> <li>- protection for adjoining owners in dispute</li> <li>- control of restricted fencing</li> </ul>	To be considered
Public Places & Local Government Property	Incorporate – <ul style="list-style-type: none"> <li>- Local Govt Property Local Law</li> <li>- Reserves &amp; Foreshores Local Law</li> <li>- Beach Access Local Law</li> <li>- expand to include beaches, off-shore etc</li> <li>- activities on roads, including trading, verges, events etc</li> </ul>	Recommended
<b>Other local laws</b>		
	Not recommended	
	Not recommended	
	Not recommended	
	Not recommended	
	Not recommended	
	Not recommended	

\_\_\_\_\_ End