



# Notice of Legislative (Local Laws) Committee Meeting

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TO:

Crs Bailey, Mitchell, Tan and Van Der Heide

To be held on

Tuesday 6 September 2016

Commencing at 4.00pm

At the Shire Offices

Cnr Bentley and Collins Streets, Donnybrook, WA 6239

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**B G Rose**  
Chief Executive Officer

**Date: 31 August 2016**

## **DISCLAIMER**

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations, which have not yet been adopted by Council.

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# LEGISLATIVE (LOCAL LAWS) COMMITTEE MEETING AGENDA

6 September 2016

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# SHIRE OF DONNYBROOK-BALINGUP

## LEGISLATIVE (LOCAL LAWS) COMMITTEE MEETING AGENDA

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To be held at the Shire Office (Staff Room) on Tuesday 6 September, 2016

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### MEMBERS PRESENT

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#### COUNCILLORS

Cr Bailey  
Cr Mitchell  
Cr Tan  
Cr Van Der Heide

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#### STAFF

Ben Rose – CEO  
Lucy Bourne – Governance Officer  
Jeff Somes – Environmental Health Officer

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### PUBLIC GALLERY

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### APOLOGIES

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### 1 PUBLIC QUESTION TIME

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### 2 DECLARATION OF FINANCIAL/IMPARTIALITY INTEREST

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Division 6: Sub-Division 1 of the *Local Government Act 1995*. Care should be taken by all Committee members to ensure that a financial/impartiality interest is declared and that they refrain from voting on any matter, which is considered to come within the ambit of the Act.

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### 3 PETITIONS/DEPUTATIONS/PRESENTATIONS

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### 4 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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Moved: Cr

Seconded: Cr

That the Minutes of the Legislative (Local Laws) Committee Meeting held on 31 May 2016 be confirmed as a true and accurate record.

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## 5 REPORTS OF OFFICERS

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### 5.1 Chief Executive Officer

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|              |                     |  |
|--------------|---------------------|--|
| <b>5.1.1</b> | <b>SUBJECT:</b>     | <b>LOCAL LAW REVIEW</b>  |
|              | <b>Location:</b>    | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                            |
|              | <b>Applicants:</b>  | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                            |
|              | <b>Zone:</b>        | <b>N/A</b>   |
|              | <b>File Ref:</b>    | <b>CNL25</b>   |
|              | <b>Author:</b>      | <b>Ben Rose, CEO (<i>Lucy Bourne – Governance Officer</i>)</b> |
|              | <b>Report Date:</b> | <b>25 July 2016</b>  |
|              | <b>Attachments:</b> | <b>5.1.1 - Draft Amendment Dog Local Law</b>                   |

#### Background

Section 3.16 (1) of the Local Government Act 1995, requires that within a period of 8 years from the day when a Local Law commenced (or was last reviewed), the local government is to review of the local law to determine whether or not it considers that it should be repealed or amended.

At the Ordinary Council Meeting of 27 April 2016, it was resolved to review the following local laws, all of which are due for review this year.

- Disposal of Refuse, Rubbish & Disused Material Local Law
- Cemeteries Local Law
- Dog local Law
- Parking & Parking Facilities
- Standing Orders

#### Comment

In accordance with the Act, Council's intention to review these local laws was advertised both state-wide and locally on 17 May 2016 and submissions invited up until 4pm on 22 July 2016.

#### ***Disposal of Refuse, Rubbish & Disused Material Local Law***

No submissions received. It is recommended that this local law be repealed and its provisions included into the proposed *Animals, Environment and Nuisance Local Law* (see item 5.1.3).

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

One submission was received regarding natural burials. The applicant asked if our cemetery by-law could be amended to accommodate natural burials (body buried in a shroud or easily biodegradable coffin. There is no memorial, the grave is marked by GPS coordinates and trees or other vegetation are allowed to grow over the grave.

**Comment**

The introduction of natural burials would require setting aside a new area within the cemetery for this purpose, along with the associated community consultation and engagement, as well as the development of new policies and processes.

The local law would need to be amended – in particular the requirements for a coffin to be structurally sound and to bear the surname of the deceased person on a plate on the coffin’s lid. Otherwise there is nothing in the local law that would prohibit a natural burial.

Shire staff contacted a Bunbury funeral director and the Bunbury Cemeteries Board to gauge demand for natural burials. The funeral director had received no requests for a natural burial and the BCB had received one in the past 5-6 years.

It is recommended that the option of natural burials is considered by the Cemeteries Committee. As the process of gauging demand, developing a natural burials area and all the associated processes would take time, it is recommended that the local law is not changed until this has been done.

No changes recommended.

**Dog Local Law**

One submission was received relating to the Dog Local Law, calling for it to be strengthened, not weakened, in light of the number of dogs off leads in areas signposted as places where dogs must be on a lead, and increasing amounts of dog excreta around the town.

Matters such as dogs not being on a lead, dogs not wearing a collar, being in a place without consent and dog attacks are dealt with in the *Dog Act 1976*, not this local law. The issue of dog excreta in public places is covered in this local law and there is an opportunity to increase the penalty for this offence. The current modified penalty has not been adjusted since 2000.

Offences and penalties under the local law are currently:

|   | <b>Offence</b>   | <b>Maximum Penalty \$</b>              | <b>Modified Penalty \$</b> |
|---|--|--|----------------------------|
| 1 | Attempting to or causing the unauthorised release of a dog from a pound ;<br>Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs | 2,000 (dangerous dog)<br>1,000 (other) | 400<br>200                 |
| 3 | Failing to provide means for effectively confining a dog   | 2,000 (dangerous dog)<br>1,000 (other) | 200<br>50                  |
| 4 | Failure to comply with conditions of a licence   | 2000 (dangerous dog)<br>1,000 (other)  | 200<br>100                 |
| 5 | Dog excreting in a prohibited place  | 200                                    | 40                         |

Section 45A (3) of the Dog Act 1976 stipulates that the modified penalty for an offence must not exceed 10% of the maximum penalty for that offence. Penalties 1 and 5 are inconsistent with this clause and are therefore not currently enforceable.

It is recommended that the maximum penalties for (1) are increased to \$4,000 for a dangerous dog and \$2,000 for another dog, and the modified penalties left unchanged. The

modified penalties will then represent 10% of the maximum penalty and comply with the Dog Act.

It is recommended that the maximum penalty for (5) be increased to \$1000, and the modified penalty increased to \$100. As well as meeting the requirements of the Dog Act, the penalties will be brought into line with those recommended in the WALGA model.

The amended penalties would be as follows:

|   | <b>Offence</b>   | <b>Maximum Penalty \$</b>              | <b>Modified Penalty \$</b> |
|---|--|--|----------------------------|
| 1 | Attempting to or causing the unauthorised release of a dog from a pound ;<br>Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs | 4,000 (dangerous dog)<br>2,000 (other) | 400<br>200                 |
| 5 | Dog excreting in a prohibited place  | 1,000                                  | 100                        |

No other changes to the Dog Local Law are recommended. An Amendment Dog Local Law has been drafted and is attached (Attachment 5.1.1A).

***Parking & Parking Facilities Local Law***

No submissions received. No changes recommended.

***Standing Orders Local Law***

This local law continues to be under review. It will be the subject of discussion at the Councillor Concept Forum on 20 September, 2016.

When a Council resolves to amend any Local Law, then the process to do so must be undertaken in the same manner as the adoption of a new Local Law as required under s. 3.12 of the Act. This section requires the presiding person to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner – that is, the purpose and effect of each local law must be included in the agenda and minutes of the Council Meeting.

**Consultation**

Under s. 3.12 of the Act Council is to give State-wide public notice for not less than 6 weeks, stating its intention to amend the local laws and inviting public submissions to be made during this time.

**Policy/Statutory/Voting Implications**

Policy

N/A

Statutory

*Local Government Act 1995, Section 3.12 (2) & (3)*

*Local Government Functions and General Regulations – Regulation 3*

*Dog Act 1976*

Voting

Simple majority

**Financial Implications**

An appropriate budget line exists for the cost of giving public notice and advertising.

**Strategic Implications**

Shire of Donnybrook-Balingup Strategic Community Plan, Outcome 4.3. An open and accountable local government that is respected, professional and trusted.

**Officer's Recommended Resolution**

**Moved: Cr**

**Seconded: Cr**

- (1) That, following a review of local laws, no changes are made to the *Cemeteries Local Law* and the *Parking & Parking Facilities Local Law*.**
- (2) That, pursuant to Section 3.12 of the *Local Government Act 1995*, Council give state-wide public notice for a period of not less than 6 weeks that it proposes to make the *Dog Amendment Local Law 2016*, as per Attachment 5.1.1.**

**The purpose of this local law is to amend the penalties within the Shire of Donnybrook-Balingup Dog Local Law 2000. The effect is to ensure the penalties comply with the Dog Act 1976 and are consistent with the offence.**

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|              |                     |  |
|--------------|---------------------|--|
| <b>5.1.2</b> | <b>SUBJECT:</b>     | <b>WASTE LOCAL LAW</b>   |
|              | <b>Location:</b>    | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                                    |
|              | <b>Applicants:</b>  | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                                    |
|              | <b>Zone:</b>        | <b>N/A</b>   |
|              | <b>File Ref:</b>    | <b>CNL25</b>   |
|              | <b>Author:</b>      | <b>Ben Rose CEO (<i>Lucy Bourne – Governance Officer</i>)</b>          |
|              | <b>Report Date:</b> | <b>25 July 2016</b>  |
|              | <b>Attachments:</b> | <b>5.1.2 - Draft Shire of Donnybrook-Balingup Waste Local Law 2016</b> |

## Background

Since the introduction of the *Waste Avoidance and Resource Recovery (WARR) Act in 2007*, the management of household refuse has come under this Act, rather than the *Health Act 1911*. Transition arrangements have been in place allowing local governments to continue to use the refuse provisions in their Health Local Laws – however this will no longer be the case when the new Public Health Act is enforced (it received Royal Assent on 25/7/2016).

It is therefore recommended that a new Waste Local Law is introduced under the appropriate head of power – that is, the WARR Act.

## Comment

Following the disallowance of a number of waste local laws by the Joint Standing Committee on Delegated Legislation, WALGA has developed a template Waste Local Law that addresses the committee’s concerns and ensures consistency with the WARR Act.

The attached draft *Shire of Donnybrook-Balingup Waste Local Law 2016* is based on this template.

Section 4.2 of the Shire’s *Health Local Laws 1999* (Disposal of Refuse) will be revoked as part of the process of adopting this new local law.

The purpose of this local law is to provide for the regulation, control and management of waste and recycling collection services within the Shire. The effect of this local law is the efficient and orderly separation and removal of general, recycling and organic waste from households in the Shire to minimise the impact on landfill.

## Consultation

Under s. 3.12 of the Act Council is to give State-wide public notice for not less than 6 weeks, stating its intention to introduce a new local law and invite public submissions to be made during this time.

A copy of the draft Waste Local Law will also be sent to the Minister for Local Government and Communities and the Minister for the Environment for comment.



## Policy/Statutory/Voting Implications

### Policy

N/A

### Statutory

- *Local Government Act 1995*, Section 3.12
- *Waste Avoidance and Resource Recovery Act 2007*, Section 64(2)
- *Local Government Functions and General Regulations – Regulation 3*
- *Health Local Laws 1999* Section 4.2 (Disposal of Refuse) will be revoked from the Shire's *Health Local Laws 1999* as part of the process of adopting the new *Shire of Donnybrook-Balingup Waste Local Law 2016*.

### Voting

Simple majority

## Financial Implications

An appropriate budget line exists for the cost of giving public notice and advertising.

## Strategic Implications

Shire of Donnybrook-Balingup Strategic Community Plan, Outcome 4.3. An open and accountable local government that is respected, professional and trusted.

## Officer's Recommended Resolution

**Moved: Cr**

**Seconded: Cr**

**That Council give state-wide public notice for a period of not less than 6 weeks that it proposes to make the *Shire of Donnybrook-Balingup Waste Local Law 2016* (Attachment 5.1.2).**

**The purpose of this proposed local law is to provide for the regulation, control and management of waste and recycling collection services within the Shire. The effect of this local law is the efficient and orderly separation and removal of general, recycling and organic waste from households in the Shire to minimise the impact on landfill.**

|              |                     |  |
|--------------|---------------------|--|
| <b>5.1.3</b> | <b>SUBJECT:</b>     | <b>ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW</b>   |
|              | <b>Location:</b>    | <b>SHIRE OF DONNYBROOK-BALINGUP</b>  |
|              | <b>Applicants:</b>  | <b>SHIRE OF DONNYBROOK-BALINGUP</b>  |
|              | <b>Zone:</b>        | <b>N/A</b>   |
|              | <b>File Ref:</b>    | <b>CNL25</b>   |
|              | <b>Author:</b>      | <b>Ben Rose CEO (<i>Lucy Bourne – Governance Officer</i>)</b>                                      |
|              | <b>Report Date:</b> | <b>25 July 2016</b>  |
|              | <b>Attachments:</b> | <b>5.1.3 – Draft Shire of Donnybrook-Balingup Animals, Environment and Nuisance Local Law 2016</b> |

### Background

The purpose of this Draft Local laws is to shift a number of the provisions of the Shire's Health Local Laws from the *Health Act 1911* to the *Local Government Act 1995*. The *Public Health Act 2016*, which is now law, will repeal much of the outdated *Health Act 1911*. As part of the transition to the new Act, the *Health (Miscellaneous Provisions) Act 1911*, which enables local government to have Health Local Laws, will be repealed.

Included in this draft are a number of other provisions currently dealt with under the Local Government Act. By putting these into a local law they may be enforced with by way of modified penalties rather than via court action.

The provisions of two existing local laws – *Disposal of Refuse, Rubbish and Disused Materials Local Law*, and *the Miscellaneous Provisions Local Law* – are also contained in this proposed new local law and would be repealed if this is adopted.

### Comment

This local law brings together all of the 'environment and nuisance' provisions under the one local law.

All of the provisions in this local law are based on pro-forma or 'model' local laws which have been vetted by the Joint Standing Committee on Delegated Legislation, so are likely to meet the Committee's approval.

### Consultation

Under s. 3.12 of the Act Council is to give State-wide public notice for not less than 6 weeks, stating its intention to introduce a new local law and invite public submissions to be made during this time.

A copy of the draft Animals, Environment and Nuisance Local Law will also be sent to the Minister for Local Government and Communities, the Minister for Agriculture and the Minister for the Environment for comment.

## Policy/Statutory/Voting Implications

### Policy

N/A

### Statutory

- *Health Act 1911*
- *Health (Miscellaneous Provisions) Act 1911*
- *Public Health Act 2016*
- *Local Government Act 1995, Section 3.12*
- *Disposal of Refuse, Rubbish and Disused Materials Local Law*
- *Miscellaneous Provisions Local Law*

### Voting

Simple majority

## Financial Implications

An appropriate budget line exists for the cost of giving public notice and advertising.

## Strategic Implications

Shire of Donnybrook-Balingup Strategic Community Plan, Outcome 4.3. An open and accountable local government that is respected, professional and trusted.

## Officer's Recommended Resolution

**Moved:**

**Seconded:**

**That Council give state-wide public notice for a period of not less than 6 weeks that it proposes to make the *Shire of Donnybrook-Balingup Animals, Environment and Nuisance Local Law 2016* (Attachment 5.1.3).**

**The purpose of this Local Law is to provide for the regulation, control and management of animals and the prevention of environmental damage and nuisances within the District.**

**The effect of this local law is to establish the requirements with which any person keeping animals or undertaking activities that have the potential to have an impact on the environment or create a nuisance must comply.**

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|              |                     |   |
|--------------|---------------------|---|
| <b>5.1.4</b> | <b>SUBJECT:</b>     | <b>CAT LOCAL LAW 2016</b>                                     |
|              | <b>Location:</b>    | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                           |
|              | <b>Applicants:</b>  | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                           |
|              | <b>Zone:</b>        | <b>N/A</b>  |
|              | <b>File Ref:</b>    | <b>CNL25</b>  |
|              | <b>Author:</b>      | <b>Ben Rose CEO (<i>Lucy Bourne – Governance Officer</i>)</b> |
|              | <b>Report Date:</b> | <b>23 August 2016</b>   |
|              | <b>Attachments:</b> | <b>5.1.4 Draft Cat Amendment Local Law</b>                    |

## Background

On 24 August 2016, Council resolved to repeal clause 3.2 of the Cat Local Law within six months of that date. This decision followed advice from the Joint Standing Committee on Delegated Legislation that the clause:-

- offends the Committee’s term of reference 10.6(a) in that it is not ‘within power’ of the Cat Act 2011 (Cat Act) or the Local Government Act 1995 in that the clause is inconsistent with or repugnant to the Cat Act; and
- offends the Committee’s term of reference 10.6(d) in that it contains matter that is not appropriate for subsidiary legislation.

## Comment

The clause can be repealed through an amendment local law, a draft of which has been attached. Council’s intention to amend the Cat Local Law will then need to be advertised statewide and submissions invited for a period of not less than six weeks.

## Consultation

Council’s intention to repeal the offending clause will be advertised for a period of not less than 6 weeks, in accordance with Section 3.12 of the Act.

## Policy/Statutory/Voting Implications

### Policy

### Statutory

- *Shire of Donnybrook-Balingup Cat Local Law 2016*
- *Local Government Act 1995*

### Voting

Simple Majority

## Financial Implications

The cost of advertising will be minimal as the proposed amendment (repeal) local law will be included with other advertising for amendment and/or new local laws resulting from this year’s review of local laws.



## Comment

The amendment local law replaces 'town planning scheme' with 'planning scheme' in clause 1.2.

The amendment local law will need to be made in accordance with the requirements of Section 3.12 of the Act.

## Consultation

The proposed amendment will be advertised for a period of six weeks and any submissions reported to Council, in accordance with Section 3.12 of the Act.

## Policy/Statutory/Voting Implications

### Policy

### Statutory

- *Shire of Donnybrook-Balingup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000*
- *Shire of Donnybrook-Balingup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2016*
- *Local Government Act 1995*

### Voting

Simple majority

## Financial Implications

The cost of advertising will be minimal as the proposed amendment local law will be included in other advertising to be done within the next two months as part of this year's review of local laws.

## Strategic Implications

Nil

## Officer's Recommended Resolution

**Moved: Cr**

**Seconded: Cr**

**That Council give state-wide public notice for a period of not less than 6 weeks that it proposes to make the *Shire of Donnybrook-Balingup Activities on Thoroughfares and Trading in Thoroughfares & Public Places Amendment Local Law 2017*.**

**The purpose of this local law is to replace the term 'town planning scheme' with 'planning scheme' in clause 1.2 of the principal local law. The effect is to rectify a discrepancy between terms in the principal local law and the 2016 amendment local law.**

|              |                     |   |
|--------------|---------------------|---|
| <b>5.1.6</b> | <b>SUBJECT:</b>     | <b>BUSH FIRE BRIGADES LOCAL LAW</b>                           |
|              | <b>Location:</b>    | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                           |
|              | <b>Applicants:</b>  | <b>SHIRE OF DONNYBROOK-BALINGUP</b>                           |
|              | <b>Zone:</b>        | <b>N/A</b>  |
|              | <b>File Ref:</b>    | <b>CNL25</b>  |
|              | <b>Author:</b>      | <b>Ben Rose CEO (<i>Lucy Bourne – Governance Officer</i>)</b> |
|              | <b>Report Date:</b> | <b>23 August 2016</b>   |
|              | <b>Attachments:</b> | <b>5.1.6 Draft Bush Fire Brigades Amendment Local Law.</b>    |

**Background:**

Following a review of eight local laws during 2015, Council resolved in November 2015 to amend the Bush Fire Brigades Local Law. Before the process of introducing this amendment local law had been completed, it was noted that the draft amendment local law had not been sent to the Minister for Emergency Services, who administers the Bush Fires Act 1954.

This means going back in the process to the step at which the Minister for Emergency Services should have been notified, and re-advertising the proposed amendment local law state-wide for a period of not less than six weeks.

**Comment**

Although this omission came to light early in 2016, it was decided to wait and re-advertise the amendment local law at the same time as other proposed amendments to minimise the cost of advertising.

The amendments to this local law comprise changes to the names of the Department of Fire and Emergency Services and the inclusion of email as an acceptable method of conveying notices of meetings.

**Consultation**

Under s. 3.12 of the Act Council is to give State-wide public notice of its intention to introduce a Bushfire Brigades Amendment Local Law and to invite public submissions for a period of not less than 6 weeks.

**Policy/Statutory/Voting Implications**

Policy

N/A

Statutory

*Local Government Act 1995, Section 3.12 (2) & (3)*  
*Bush Fires Act 1954*

Voting

Simple majority

**Financial Implications**

N/A

**Strategic Implications**

Nil

**Officer's Recommended Resolution**

**Moved: Cr Seconded: Cr**

**That under the Local Government Act 1995, Section 3.12, Council give state-wide public notice for a period of not less than 6 weeks that Council proposes to make the *Bush Fire Brigades Amendment Local Law 2016*.**

**The purpose of this amendment local law is to update the terms and provisions of the principal local law; its effect is to align the local law with changes in the law and operational practice.**

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**6 CLOSURE OF MEETING**

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The Chairman advises that the date of the next Legislative (Local Laws) Committee Meeting will be held on \_\_\_\_\_, commencing at \_\_\_\_\_ at a location to be advised.

Chairman to declare the meeting closed at \_\_\_\_\_.