



City of Busselton
Geographe Bay

LATE ITEMS

Council Agenda

9 March 2016

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

CITY OF BUSSELTON

LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 9 MARCH 2016

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13. COMMUNITY AND COMMERCIAL SERVICES REPORT

13.1 UNDERTAKINGS IN RELATION TO AND AMENDMENT OF THE CITY OF BUSSELTON CEMETERIES LOCAL LAW 2015

SUBJECT INDEX:	Local Laws
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Legal Services
REPORTING OFFICER:	Legal Services Coordinator - Cobus Botha
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Nil

This item is presented for consideration for acceptance as a late Item for the 9 March 2016 Council Meeting as the Joint Standing Committee require that the Council resolve to give these undertakings by 11 March 2016.

PRÉCIS

Following gazettal of the *City of Busselton Cemeteries Local Law 2015 (Cemeteries Local Law)* on 10 December 2015 the Joint Standing Committee on Delegated Legislation (JSC) notified the City by letter dated 25 February 2016 that a penalty imposed under clause 9.1 of the Cemeteries Local Law is inconsistent with the *Cemeteries Act 1986* and consequently requested Council to provide the JSC with certain undertakings in relation to interim enforcement of the relevant provision of Cemeteries Local Law pending amendment thereof.

The purpose of this report is for Council to consider the request from the JSC and to resolve to provide the requested undertakings and commence the process for amending the Cemeteries Local Law in accordance with these undertakings.

The JSC require that the Council resolve to give these undertakings by 11 March 2016, thus this matter is presented to the Council as a late item for its meeting on 9 March 2016.

BACKGROUND

Council resolved on 11 November 2015 to make the Cemeteries Local Law which was subsequently gazetted on 10 December 2015 and came into operation 14 days after its publication in the *Government Gazette*.

Clause 9.1 of the Cemeteries Local Law states that:

9.1 General

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$50.00 for every day or part of a day during which the offence has continued.

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament appointed the JSC to undertake an overseeing role on its

behalf, which includes the power to scrutinise and recommend the disallowance of local laws to Parliament.

The JSC advised the City that it considered the Cemeteries Local Law at their meeting on 24 February 2016 and noted that, although Section 55(1)(p) of the *Cemeteries Act 1986* (**Cemeteries Act**) limits the further fine for a continued contravention of a local law to \$20 for every day or part of a day which the offence has continued, clause 9.1 of the Cemeteries Local law specifies a maximum penalty of \$50 for such an offence, which resulted in this provision of the Cemeteries Local Law being inconsistent with the Cemeteries Act. As a consequence the JSC requested Council to give the following undertakings:

- To amend the Cemeteries Local Law by no later than 25 August 2016, so that the correct limit for such a penalty is substituted in clause 9.1 of the local law;
- Not to enforce the continuing fine under clause 9.1 in the meantime;
- To make any consequential amendments to the local law that may be necessary;
- To provide the JSC with a copy of the minutes of the meeting at which Council resolve to provide these undertakings; and
- Where the Cemeteries Local Law is made publicly available, whether in hard copy or electronic form, to ensure that the local law is accompanied by a copy of these undertakings.

STATUTORY ENVIRONMENT

The JSC has the power to recommend to Parliament that a local law, which is considered not to be authorised or contemplated by the empowering enactment, be disallowed. Therefore should Council resolve not to provide the undertakings as requested, it may result in the Cemeteries Local law being disallowed by Parliament.

Section 3.12(8) of the *Local Government Act 1995* stipulates that the procedure for amending the text of a local law is the same as for making a local law. The procedure for making local laws is set out in sections 3.12 to 3.17 of the Local Government Act and regulation 3 of the *Local Government (Functions and General) Regulations 1996*. The person presiding at a Council meeting is to give notice of the purpose and effect of a proposed local law by ensuring that:

- the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- the minutes of the Council meeting include the purpose and effect of the proposed local law.

The purpose and effect of the proposed amendment Cemeteries Local Law are as follows:

Purpose:

To amend clause 9.1 of the *City of Busselton Cemeteries Local Law 2015* to ensure consistency with the *Cemeteries Act 1986*.

Effect:

Replacement of the penalty \$50 for a continuing offence under clause 9.1 of the *City of Busselton Cemeteries Local Law 2015* with a penalty of \$20 to achieve consistency with the relevant provisions under the *Cemeteries Act 1986*.

Statewide and local public notice is to be given by advertising the proposed amendment in accordance with the requirements of sections 3.12(3) and (3a) of the Local Government Act. The submission period must run for a minimum period of six weeks after which Council, having considered any submissions received, may resolve to make an amendment local law.

RELEVANT PLANS AND POLICIES

None

FINANCIAL IMPLICATIONS

Costs associated with the advertising and gazettal of an amendment local law will come from the 2015/16 budget. These costs are unlikely to exceed \$2,000 and there are sufficient funds in the legal budget for this purpose.

STRATEGIC COMMUNITY OBJECTIVES

The proposal aligns with the *City of Busselton Strategic Community Plan 2013* as follows:

6.2 Governance systems that deliver responsible, ethical and accountable decision making.

RISK ASSESSMENT

The requested undertakings and proposed amendment of the Cemeteries Local Law does not involve any significant changes from current practices and is therefore considered low risk.

CONSULTATION

If Council resolve to commence the law making process as recommended, public submissions will be invited as part of the statutory consultation process required by Sections 3.12 (3) and (3a) of the Local Government Act.

OFFICER COMMENT

Section 55 of the *Cemeteries Act 1986* provides local governments with the heads of power to make local laws that are necessary or convenient for the purposes of this act. In terms of Section 55(1)(p) a local law may provide that contravention of a local law constitutes an offence and provide for penalties not exceeding a fine of \$500 and, if the offence is a continuing one, to a further fine not exceeding \$20 for every day or part of a day during which the offence has continued.

Clause 9.1 of the Cemeteries Local Law, which was made in accordance with the provisions of Section 55(1)(p) of the Cemeteries Act, specifies the further fine for a continuing offence as "*not exceeding \$50 for every day or part of a day during which the offence has continued*". The amount of \$50 (instead of \$20 as prescribed under the act) is a typographical error and clearly inconsistent with the maximum daily fine for a continuing offence specified in section 55(1)(p) of the *Cemeteries Act 1986*. In order to rectify this error the amount of \$50 in clause 9.1 of the Cemeteries Local Law will have to be replaced with \$20. No other amendments to the local law are required as a consequence of this change.

Therefore, for purposes of achieving consistency between the relevant provisions of the Cemeteries Local Law and the Cemeteries Act and avoid disallowance of the local law by Parliament, it is recommended that Council resolve to amend the Cemeteries Local Law in accordance with the JSC's requirements and to provide the JSC with the undertakings as outlined in this report.

CONCLUSION

The proposed amendment of clause 9.1 of the Cemeteries Local Law will achieve consistency between the local law and the relevant provisions under the *Cemeteries Act 1986*.

OPTIONS

Should Council resolve not to amend clause 9.1 of the Cemeteries Local Law or not to provide the undertakings as requested by the JSC, it will in all likelihood result in the Cemeteries Local Law being disallowed by Parliament. For this reason Council should not consider any option other than commencing the process for amendment of the Cemeteries Local Law and providing the JSC with the requested undertakings in accordance with the Officer Recommendation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Council is requested to provide the required undertakings to the JSC by 11 March 2016. In accordance with these undertakings the required amendment of the Cemeteries Local Law has to be completed by 25 August 2016.

OFFICER RECOMMENDATION

That the Council:

1. Provides, in relation to the *City of Busselton Cemeteries Local Law 2015*, the following undertaking to the Joint Standing Committee on Delegated Legislation:
 - a) To amend by no later than 25 August 2016 clause 9.1 of the local law by replacing the amount of \$50 with the amount of \$20;
 - b) Not to enforce the continuing fine under clause 9.1 of the local law until it has been amended in accordance with resolution 1(a) above; and
 - c) Where the local law is made publicly available, whether in hard copy or electronic form, ensure that the law is accompanied by a copy of these undertakings.
2. Commences the law-making process for amending the *City of Busselton Cemeteries Local Law 2015*, the purpose and effect of the amendment local law being as follows:

Purpose: To amend clause 9.1 of the *City of Busselton Cemeteries Local Law 2015* to ensure consistency with the *Cemeteries Act 1986*.

Effect: Replacement of the penalty \$50 for a continuing offence under clause 9.1 of the *City of Busselton Cemeteries Local Law 2015* with a penalty of \$20 to achieve consistency with the relevant provisions under the *Cemeteries Act 1986*.
3. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by –
 - (i) giving Statewide public notice and local public notice of the proposed amendment of the local law; and
 - (ii) giving a copy of the proposed amendment local law and public notice to the Minister for Local Government.
4. That the CEO, after the close of the public consultation period, submit a report to the Council on any submissions received on the proposed amendment of the local law to enable the Council to consider the submissions made and to determine whether to make an amendment local law in accordance with section 3.12(4) of the Act.