

Shire of Carnamah

Review of Shire of Carnamah Local Laws

Introduction

The *Local Government Act 1995* (the Act) S3.16 requires that a Council must within a period of eight years after adoption of any local law conduct a review to ensure it still retains currency.

The Shire of Carnamah (the Shire) has determined to review in accordance with the Act the following Local Laws:

- **Local Laws Relating to Pest Plants**
These Local Laws were adopted by the Shire on 16 May 1979 and published in the Government Gazette on the 21 December 1979;
- **Local Laws Relating to Standing Orders**
These Local Laws were adopted by the Shire on 20 August 1997 by reference to the *Shire of Denmark Local Laws Relating to Standing Orders* and published in the Government Gazette on the 1 October 1997;
- **Local Laws Relating to the Winchester Public Cemetery**
These Local Laws were adopted by the Shire on 20 August 1997 by reference to the *Shire of Denmark Local Laws Relating to Denmark Cemetery (Reserve 11655)* and published in the Government Gazette on the 1 October 1997;
- **Local Laws Relating to Fencing**
These Local Laws were adopted by the Shire on 18 March 1998 by reference to the *Shire of Williams Local Laws Relating to Fencing* and published in the Government Gazette on the 28 April 1998; and
- **Health Local Law 1998**
These Local Laws were adopted by the Shire on 21 October 1998 by reference to the *Shire of Plantagenet Health Local Laws 1997* and published in the Government Gazette on the 29 January 1999.

Approach to Review

The approach taken during this review is that prior to advertising, seeking community input, an assessment of the Local Law, the subject of review, has been undertaken to identify possible changes or amendments that may be required to meet the current practice and legislative arrangements.

The purpose of establishing these changes in this review paper is to enable the community, when assessing any response to appreciate that some changes, already identified by the Shire, may occur to the Local Law.

Following community consultation, the Council will review all submissions, including the following comments, and determine whether it wishes to make amendments to the Local Law.

Proposed Changes

The following proposals in respect to each local law are to be considered by the Shire of Carnamah at the conclusion of the public submission period:

Local Laws Relating to Pest Plants

These Local Laws (formerly By-Laws) were adopted by the Shire on 16 May 1979 and published in the Government Gazette on the 21 December 1979.

The current WA Local Government Association (WALGA) Model Local Law Relating to Pest Plants was originally adopted by the Shire of Dandaragan in 1979. To this time there has been no substantive amendment to the model local law.

As a consequence it is not seen that there is any need to make amendments to the local law unless it is appropriate to declare any additional pest plants as at present only "Caltrop" is a declared plant.

It should be noted, however, that the current local law was adopted in 1979 and there have been subsequent changes to the description of legislation covering this local law and some changes to reflect modern terminology.

The Shire proposes to amend the current local law as follows:

1. In the heading to the Local Laws, delete ', 1960' and substitute '1995', delete 'The Municipality of the', and delete 'By-laws' and substitute 'Local Laws'.
2. delete "by-laws" wherever it occurs (including in the Second Schedule) and substitute "local laws";
3. in clause 2, delete the definition of "council" and substitute, in the appropriate alphabetical position – "local government" means the Shire of Carnamah;
4. in clause 2, in the definition of "pest plants" delete "by-law" and substitute "clause";
5. in subclause 5(1) delete "Council" and substitute "local government";
6. in subclause 5(2) delete "sub-by-law" and substitute "subclause";
7. in clause 6 delete "by-law" and substitute "clause", and delete "council" and substitute "local government"; and
8. in the Second Schedule delete "council" and substitute "local government" and delete "person authorised by the council of the municipality of the Shire of Carnamah" and substitute "authorised person".

Local Laws Relating to Standing Orders

The Local Laws Relating to Standing Orders was adopted under S3.8(1)(b) of the Act which permitted the Shire to adopt by reference to the *Shire of Denmark Local Laws Relating to Standing Orders*, with such alterations as necessary to ensure that they reflected the wishes of the Shire of Carnamah.

The Shire of Denmark adopted their Local Laws Relating to Standing Orders on the 25 March 1997 and they were published in the Government Gazette of the 25 June 1997.

On the 21 March 2000 the Shire of Denmark published in the Government Gazette some amendments to the Local Laws Relating to Standing Orders and then subsequently repealed the Local Laws on the 29 May 2001. The Local Laws were replaced with the *Model Local Law (Standing Orders) 1998*, originally published in the Government Gazette on 3 April 1998. The *Model Local Law (Standing Orders) 1998* follows the WA Local Government Association (WALGA) Model of the same name.

The fact that subsequent amendments to the *Shire of Denmark Local Laws Relating to Standing Orders* that have not been made to the *Shire of Carnamah Local Laws Relating to Standing Orders* highlights some of the difficulties that may arise in adopting local laws by reference to another Local Government's local law. It is also probable that a number of amendments have also been made to the WALGA Model in the intervening nine years.

A comparison between the current *Shire of Carnamah Local Laws Relating to Standing Orders* and the WALGA Model/ Model Local Law (Standing Orders) 1998 is not practical to undertake as it is substantially different in both formatting and wording.

Recognising the above comments, it is proposed to repeal the current *Shire of Carnamah Local Laws Relating to Standing Orders* and replace it with the WALGA Model as a base and develop the necessary changes that reflect the Shire's meeting processes. In addition to providing for a more current local law, the redrafting process will also enable the Shire to take account of the new Local Government (Rules of Conduct) Regulations (Regulations) which

will come into effect in October 2007. The current draft of the Regulations includes a definition which reads:

“local law as to conduct” means a local law relating to conduct of people at council and committee meetings that is substantially equivalent to a provision of the *Model Local Law (Standing Orders) 1998* (published in the *Gazette* on 3 April 1998).

A decision as to whether to repeal and replace the Local Laws Relating to Standing Orders will be taken after the community has had an opportunity to comment on the proposal.

Cemeteries

In undertaking the review of the *Local Laws Relating to the Winchester Public Cemetery* the Shire acknowledges that the *Cemeteries Act 1986* is currently being reviewed and a Position Paper was released by the Minister for Local Government in January 2007. Advice from the Department of Local Government and Regional Development (DLGRD) on any ramifications that the review of the *Cemeteries Act 1986* might have on this Local Law indicated that it was not intended to alter the by-law making powers contained in Section 55 of the *Cemeteries Act 1986*. It was likely, however, that the penalty provisions within the Act will be upgraded and may therefore have an impact on the Local Law.

The *Local Laws Relating to the Winchester Public Cemetery* were adopted under S3.8(1)(b) of the Act which permitted the Shire to adopt by reference to the *Shire of Denmark Local Laws Relating to Denmark Cemetery (Reserve 11655)*, with such alterations as was necessary to ensure that they reflected the wishes of the Shire of Carnamah.

The Shire of Denmark adopted their Local Laws Relating to Denmark Cemetery (Reserve 11655) on the 25 March 1997 and they were published in the Government Gazette of the 25 June 1997.

On the 29 May 2001 the Shire of Denmark gazetted a repeal of the *Shire of Denmark Local Laws Relating to Denmark Cemetery (Reserve 11655)*. The Local Laws were replaced with the *Model Local Law (Cemeteries) 1998*, originally published in the Government Gazette on 12 May 1998. The *Model Local Law (Cemeteries) 1998* follows the WA Local Government Association (WALGA) Model of the same name. The model local law was substantially modified to remove reference to cremation, mausoleum and disposal of ashes.

A comparison between the current *Shire of Carnamah Local Laws Relating to Winchester Public Cemetery* and the WALGA Model/ Model Local Law (Cemeteries) 1998 is not practical to undertake as it is substantially different in both formatting and wording.

Recognising the above comments it is proposed to repeal the current *Shire of Carnamah Local Laws Relating to the Winchester Public Cemetery* and replace it with the WALGA Model relating to Cemeteries as a base and developing the necessary changes that reflect the Shire's requirements.

A decision as to whether to repeal and replace the Local Laws Relating to the Winchester Public Cemetery will be taken after the community has had an opportunity to comment on the proposal.

Local Laws Relating to Fencing

The Local Laws Relating to the Fencing was adopted by the Shire under S3.8(1)(b) of the Act which permitted the Shire to adopt by reference to the *Shire of Williams Local Laws Relating to the Fencing*, with such alterations as was necessary to ensure that they reflected the wishes of the Shire of Carnamah. The Local Laws Relating to the Fencing was then published in the Government Gazette on 28 April 1998.

The Shire of Williams originally published the *Shire of Williams Local Laws Relating to the Fencing* in the Government Gazette of the 24 October 1997.

Generally the Local Laws Relating to the Fencing appears adequate even though they do not follow the format outlined by the WALGA Model Local Laws Relating to Fencing. It is also considered that the details outlined in the First Schedule and Second Schedule could be amplified. Such changes are, however be dependent on whether the Shire is experiencing any issues with management of this local law.

It is proposed, however, that the Shire make the following amendments:

1. Delete reference under the definition of "Town Planning Scheme" in clause 1 to "Town Planning and Development Act 1982 (as amended) and substitute "Planning and Development Act 2005";
2. Clause 14 is deleted and substitute:
 - (1) Where a breach of any provision of these Local Laws has occurred in relation to a fence on a lot, the Council may give a notice in writing to the owner or occupier of that lot ('notice of breach').
 - (2) A notice of breach shall:
 - (a) specify the provision of these Local Laws which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
 - (3) Should an owner or occupier fail to comply with a notice of breach, the Council may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
3. Clause 16 is deleted and substitute:
 - (1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.
 - (2) A person who fails to comply with or who contravenes any provision of these Local Laws commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.
 - (3) An offence against any provision of these Local Laws is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.
 - (4) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of these Local Laws is \$125
 - (5) For the purposes of these Local Laws:
 - (a) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in or substantially in the form of Form 2 of Schedule 1 of the Local Government (Functions and General) Regulations 1996;
 - (b) the form of the notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the form of Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.

Health Local Laws 1998

The Health Local Laws 1998 were adopted by the Shire on 21 October 1998 by reference to the *Shire of Plantagenet Health Local Laws 1997* with such alterations as was necessary to ensure that they reflected the wishes of the Shire of Carnamah. The Health Local Laws 1998 was then published in the Government Gazette on the 29 January 1999.

The Shire of Plantagenet originally published the *Shire of Plantagenet Health Local Laws 1997* in the Government Gazette of the 30 March 1998.

The Shire of Broome has recently adopted the *Shire of Broome Health Local Laws 2006*, which were published in the Government Gazette on the 20 March 2007.

A review of the current *Shire of Carnamah Health Local Laws 1998* and the *Shire of Broome Health Local Laws 2006* identifies that there are significant differences between the two local laws.

These differences include:

- Changes to a number of definitions particularly relating to Australian Standards and Building Code. The details relating to the description of Standards require amendment throughout the Local Law;
- Changes to the description of legislation;
- Requirements for the holding of outdoor festivals are now governed by a Health Department Guideline;
- The Local Law has included a repeat of a number of parts of various regulations and codes, a practice which is now considered not necessary as it avoids confusion when legislative arrangements change and those changes are not reflected in a local law;
- Fees can be fixed by the Council from time to time rather than being included in a Schedule to the Local Law which necessitates an amendment to the Local Law each time the fee is altered. The Shire has not adjusted the fees for nine years. This is not considered good practice, as it is believed they should be reviewed annually;
- There are a number of new clauses that have been developed over the past nine years that could be added to enhance the Local Law. These include a requirement for a keeper of a lodging house to develop evacuation plans, requiring that refuse bins are removed from the street frontage on the day of refuse removal;
- Throughout the Local Law there are a number of clauses that read: "The Council shall not be liable to pay compensation or damages of any kind to the person referred to in Section (1) in relation to any action taken by the Council".

It has been suggested that this type of clause is not now acceptable by community standards as people rights are in effect being removed by the Local Law and should be replaced. The more suitable clause would read "The local government shall not be liable to pay compensation or damages of any kind to the person referred to in Section (1) in relation to any action taken by the local government, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty";

On the basis of the differences identified above, it is considered that the amendments required would be extensive. As a consequence, it is preferable to repeal the current *Shire of Carnamah Health Local Laws 1998* and replace it with a local law, such as the *Shire of Broome Health Local Laws 2006*, which has been recently adopted and published in the Government Gazette.

A decision as to whether to repeal and replace the *Shire of Carnamah Health Local Laws 1998* will be taken after the community has had an opportunity to comment on the proposal.