

# Shire of Kent

## Statutory Review of Local Laws

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### 1. Statutory context

This review is carried out in accordance with the Local Government Act 1993 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.

### 2. Historical context

At the May 2011 Council Meeting it was resolved that new local laws be “adopted”, however, no record can be found of prior or subsequent advertising as required by the Act. Accordingly, they can only be considered to be drafts, never finalised, and have not had final adoption. No trace of publication in the Government Gazette has been found, so they are therefore not in force. Even if validly made at that time, a full statutory review was necessary in 2019 or 2020.

The current local laws (in date order) are –

1. Petrol Pumps By-laws – Adoption of Model By-Law No 10 (1966)
2. Parking Facilities By-laws – Adoption of Model By-Law No 19 (1993)
3. Cat Control (1998)
4. Nyabing Public Cemetery and Pingrup Public Cemetery (1998)
5. Dogs (1998)
6. Fencing (1998)
7. Nuisances (1998)
8. Parking Facilities Local Law (1998)
9. Removal of Refuse, Rubbish, Litter, Derelict Vehicles, Vehicle Bodies and other Materials or Things (1998)
10. Reserves (1998)

None of the local laws have been amended.

The Local Laws Register does list an Appointment of Employees By-Law of 1977 as being current, however, it is a repeal only local law, and does not need to be reviewed.

### 3. Current review

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 4 places. Notice was published in accordance with the Administration Regulations r.3A –

- dates of publication –
  - o Website (mandatory) – 11 October 2022
  - o Great Southern Herald – 13 October 2022
  - o Pingrup Post – 13 October 2022
  - o Office and town notice boards – 11 October 2022
  - o Facebook – 11 October 2022
- earliest date for close of public comment – 25 November 2022
- actual date of close of public comment – 29 November 2022

### 4. Documents referred to in this Report

Principal documents referred to in this Report –

- Minutes extracts of 10 May 2011
- Department of Local Government, Sporting and Cultural Industries, Local Laws Register
- Government Gazettes for published local laws

## **1 EXISTING LOCAL LAWS**

### **1.1 Petrol Pumps By-laws**

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Original Gazettal            30 September 1966 (model by-law)

#### Comment

Superseded by legislation controlling fuels and explosives, administered by Dept of Mines, Industry Regulation and Safety.

#### Issues

In addition, the local planning scheme controls permitted locations, zoning etc.

#### Recommendation

That the By-laws be repealed.

### **1.2 Parking Facilities By-laws**

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Original Gazettal            3 September 1993 (model by-law)

#### Comment

Repeal of this local law was likely intended, but was not specified, in the adoption of the Parking Facilities Local Law 1998.

#### Issues

The By-laws remain in force but are superseded and are likely inconsistent with the 1998 local law, and possibly provisions of the local planning scheme

#### Recommendation

That the By-laws be repealed.

### **1.3 Cat Control**

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Original Gazettal            23 March 1998

#### Comment

The Cat Act was introduced on 2011, together with one lot of Regulations in 2012, and additional Uniform Local Provisions in 2013.

The only useful matters in the local law given the Statewide legislation are –

- a) the specification of the number of cats kept without approval of the local government. The number is usually (as in this case) set at 3, and must be done in a local law but not necessarily a Cat Local Law. Many local governments have the provision in their Health Local Law,
- b) cat management facilities (eg: catteries etc)
- c) cats creating a nuisance

See Cat Act s.79 matters that may be in local laws.

#### Issues

As much of the existing local law is covered by the Cat Act and one or other of the Regulations, there is a large probability of inconsistency since the local law is 13 years older than the Act.

### Recommendation

That –

1. the existing Cat Control Local Law be repealed, and not replaced.
2. the relevant provisions relating to standard number of cats and nuisance, be incorporated into a new Animals, Environment and Nuisance Local Law to be developed.

## **1.4 Dogs**

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Original Gazettal            23 March 1998

### Comment

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

Some provisions are surprisingly brief (eg: keeping of dogs, number of dogs permitted, kennels etc), while Part II Impounding of Dogs is both largely irrelevant, being now covered by the Dog Act and Regulations, as well as deficient.

### 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 –

- assistance dogs are now required to refer to a Commonwealth Act
- 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.

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, nor infringements and modified penalties.

### Recommendation

That –

1. the local law be repealed, and
2. a new Dogs Local Law be developed.

## **1.5 Fencing**

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Original Gazettal            2 September 1998

### Comment

The local law is surprisingly brief, which may be a good thing for a small local government. However, there are quite a few issues with it.

The local law only refers to 2 zones –

- Residential Zone, and
- Industrial and Commercial Zone (as one zone).

The Local Planning Scheme lists –

- Residential Zone
- Commercial Zone
- Industrial Zone
- Rural Residential Zone
- Rural Zone, and
- Special Site Zone.

Council may wish to consider broadening a Fencing Local Law to cover all privately owned land within the Shire, reducing requirements to a bare minimum where appropriate.

The descriptions of a sufficient fence, both state “shall” permitting no flexibility of materials etc.

#### Issues

Much of the Shire is not covered by the local law, which Council may wish to be the case, as it does not apply to the rural or rural residential zones even by implication.

There is very limited discretion for Council to vary requirements in the local law, if considered appropriate. A general discretion to do so is suggested.

Other issues include –

- a prohibition on electric fences, but no consideration is given to whether the fence is for security or for stock
- no provisions for objection and appeal
- no provisions for infringements or modified penalty, so any non-compliance can only be prosecuted

#### Recommendation

That –

1. the current local law be repealed, and
2. a new Cemeteries Local Law be developed.

### **1.6 Nuisances**

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Original Gazettal            23 March 1998

#### Comment

Deals solely with parking of livestock trucks –

- in part of Richmond St, Nyabing and
- in both Nyabing and Pingrup for more than a limited period or set locations

#### Issues

The local law has very limited scope, and there is no provision for non-compliance, no modified penalties, and is quite ineffective.

#### Recommendation

That –

1. the local law be repealed, and
2. relevant provisions incorporated into a new Public Places and Local Government Property Local Law to be developed.

### **1.7 Nyabing Public Cemetery and Pingrup Public Cemetery**

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Original Gazettal            23 March 1998

#### Comment

A search of Landgate vesting records has confirmed that there are only two cemeteries for which the Shire has responsibility –

- Reserve 14218, Gazetted on 16 August 1912, in the south west corner of Nyabing townsite, and
- Reserve 18750, Gazetted on 10 October 1924, just west of Pingrup townsite.

It is suggested that the local law should be simplified in many aspects, such as doing away with funeral director and monumental mason licences, and –

- issue a single funeral permit to a funeral director or person approved by the CEO, and
- continue with memorial permits as and when applied for (cl.35)

#### Issues

The local law incorrectly refers to “Council” whereas the term used in the Cemeteries Act is “Board” since the Act applies to Boards that are not local government. Without a definition of “Board” to mean “Council” it is a serious flaw.

There is an issue with clause 10(b) where issue of a grant of right of burial automatically gives the right to carry out memorial works. It is suggested that Council as the Board, should retain control of appropriate materials, design, presentation etc.

There are no controls for, among other things –

- vehicle access,
- assistance animals under Commonwealth legislation, as amended by Governors Order some years ago,
- specifications for monuments, bases, headstones etc, or provisions to adopt by policy
- dimensions of a standard grave
- natural burials

#### Recommendation

That –

1. the current local law be repealed, and
2. a new Fencing Local Law be developed.

## **1.8 Parking**

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Original Gazettal            2 September 1998

#### Comment

The old Nuisances Local Law also deals with one specific parking issue.

The local law appears to have limited value as the towns do not have –

- median strips
- marked parking bays
- people constantly parking on road verges or in front of other people’s properties
- constant repair or maintenance of vehicles on verges

Many issues can be addressed under a Public Places and Local Government Property Local Law. However, a Property and Places Local Law will not deal with parking on private property. This will remain a matter between the property owner and the vehicle owner.

#### Issues

The local law does not repeal the 1993 bylaw, so there is an extremely outdated parking bylaw concurrent with this parking local law.

At minimum, the 1993 version needs to be repealed, and the value of the 1998 local law should be considered.

#### Recommendation

That –

1. the Parking Local Law 1998 be repealed, and

2. any relevant provisions incorporated into a Public Places and Local Government Property Local Law

## **1.9 Removal of Refuse, Rubbish, Litter, Derelict Vehicles, Vehicle Bodies and Other Materials or Things**

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Original Gazettal          2 March 1998

### Comment

Very limited in scope, and essentially only deals with the appearance of private land and the materials on the land.

The Provisions of the Local Government Act Schedule 3.1 could be used, but for any penalty to apply, would require prosecution.

### Issues

A number of issues identified –

- incorrect or poor use of terminology
- incorrect usage of delegated power
- convoluted wording, resulting in high likelihood of confusions regarding some provisions.

### Recommendation

That –

1. the local law be repealed, and
2. relevant provisions incorporated into a new Public Places and Local Government Property Local Law to be developed.

## **1.10 Reserves**

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Original Gazettal          23 March 1998

### Comment

While it is able to be used in its current state, the local law is very outdated and there are substantial gaps.

Quite a few of the matters could also apply to other local government property, not just reserves.

### Issues

There are quite a number of issues identified, including the following –

- a) the setting of fees and charges does not comply with the requirements of the Local Government Act section 6.16 etc.
- b) the general penalty is set at only \$1,000 – if a person is prosecuted and found guilty, the Court can only impose a penalty of this amount. Recommended that penalties be set at the maximum permitted by the Act, which is \$5,000 upon conviction and \$500 per day.
- c) modified penalties can then be set up to 10% of the maximum, \$500, depending on the severity or public impact of the offence,
- d) constant use of “Council” for administrative matters, when it would be far better, and compliant with legislation to use the term “local government” if it is advisable for a matter to require use of delegated power, or better yet, use the term “authorised person” –
  - note Dept of Local Government’s guidelines on use of delegations and terminology
  - delegations can only be to an employee, annual review, record of use of delegated power, appointment or variation of a delegation can only be made by Council etc

- authorised person – power to appoint can be delegated to CEO, appoint once for duration of employment or other end date, no annual review required, can be varied by the CEO at a moment's notice.
- e) other incorrect use of terms such as “officer”

Recommendation

That –

1. the local law be repealed, and
2. relevant provisions incorporated into a new Public Places and Local Government Property Local Law to be developed.

## **2 SUGGESTED LOCAL LAWS**

### **2.1 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 animals and birds, 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
- 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

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 Shire 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.

#### Recommendation

That an Animals, Environment and Nuisance Local Law be considered, once the proposed Regulations for the Public Health Act 2016 are known.

### **2.2 Bush Fire Brigades Local Law**

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If a local government has bush fire brigades, it is a statutory requirement of the Bush Fires Act 1954 section 43, that a local law is to outline the roles of brigade officers.

It is suggested that a minimum local law be considered, including only such other matters as are directly relevant –

- BF Act s.43 says "shall" not 'may' – captain and lieutenants only
- it may be useful to have a few other things included - eg: managerial role of CBFCO

Any other matters could be addressed as part of an operational manual adopted by Council if felt appropriate –

- Operational manual - training requirement, PPE requirement, chain of command etc
- Administrative manual - other brigade roles (secretary, treasurer, training officer, equipment officer, audit, membership, disputes etc
- both manuals to be adopted by Council, not a CEO discretion to approve (ie: essentially a policy under LG Act 2.7 - Council role to make policy)

Council ultimately has control of the BFBs, and can appoint various officers, over-riding any brigade election etc



### Recommendation

That a complying Bush Fire Brigades Local Law be developed, which excludes matters that can be dealt with by an Operations or Administrative Manual that Council may adopt at some future date.

## **2.3 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 (eg: the Shire hall) and a public place or thoroughfare (eg: the open porch area or footpath outside the hall).

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.

At the moment, there are very limited controls available to manage and protect Shire property and activities in streets, including –

- Shire buildings
- behaviour and activities on reserve, playgrounds etc
- what adjoining land owners can do on verges
- itinerant vendors selling from vehicles

Some of the current Reserves Local Law, Nuisances Local Law and Parking Local Law could be included if relevant.

Recommendation –

That –

- a single Public Places and Local Government Property Local Law be developed
- relevant provisions of other local laws, as noted, be included.

### **3 OTHER LOCAL LAWS**

#### **3.1 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, together with the ability to issue infringements rather than having to resort to prosecution in every instance.

Recent 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 next 12 or so months.

While a number of local governments have adopted new Health Local Laws since 2016, few have taken full advantage of the changes.

Quite a few local governments do not have Health Local Laws, relying instead on various other legislation to control matters. However, the larger a local government is, the more likely they are to need Health Local Laws to assist in managing a wide range of public health issues, building standards and so on.

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 won't 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 captured by 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
- environment matters – old fridges, untidy yards, vehicle wrecks etc.

#### Recommendation –

That –

1. a Health Local Law not be developed at this time
2. relevant matters as identified above be incorporated into an appropriate local law, once the new Health Regulations are in place.

### 3.2 Meeting Procedures

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Often seen as a waste of time, a Meeting Procedures Local Law applies to Council meetings, Committee meetings and electors meetings.

While meetings run well, they can be considered as intrusive and overly restrictive with the detail and preciseness that they usually have. However, they can be suspended by resolution of Council, and if things get difficult or awkward, they can be useful –

- to have the legal capacity to manage meetings appropriately, including a range of provisions for public question time,
- without the local law, management of meetings relies on the consent of those present and participating, with little ability for the presiding person to require compliance.
- authority to –
  - o remove from meeting,
  - o prosecute if necessary, penalty for disruptive observers etc
- some matters relating to elected members behaviour which is not included in the adopted Code of Conduct, but which constitutes a referable offence that can be made to the Standards Panel as a breach of the local law

The reforms to local government recently announced will 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 Shire's specific wishes.

#### Recommendation

That –

1. a Meeting Procedures Local Law not be developed at this time;
2. any instigation of a 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.

### 3.3 Waste Local Law

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Probably very little use to the Shire of Kent, 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.

### 3.4 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) Keeping of Bees
- b) Extractive Industries
- c) Pest Plants – tend is to repeal them
- d) particular matters or things – saleyards, airports, signs etc.

#### Recommendation

That these local laws not be developed.

#### 4 **SUMMARY OF RECOMMENDATIONS**

| <b>Current local law</b>                  | <b>Recommendation</b> | <b>Action</b>   | <b>Replacement local law</b>                        |
|---|-----------------------|---|---|
| Petrol Pumps                              | Repeal                | No replacement  | N/A   |
| Parking 1993                              | Repeal                | No replacement  | N/A   |
| Cat Control                               | Repeal                | Some provisions into an AEN Local Law   | Animals, Environment & Nuisance Local Law           |
| Removal of Refuse etc                     | Repeal                | Some provisions into an AEN Local Law   |   |
| Nuisances                                 | Repeal                | Some provisions into a P & P Local Law  | Public Places & Local Government Property Local Law |
| Parking 1998                              | Repeal                | Some provisions into a P & P Local Law  |   |
| Reserves                                  | Repeal                | Some provisions into a P & P Local Law  |   |
| Nyabing & Pingrup Public Cemeteries       | Repeal                | Replacement   | Cemeteries  |
| Dogs                                      | Repeal                | Replacement   | Dogs  |
| Fencing                                   | Repeal                | Replacement   | Fencing   |
| <b>Suggested local law</b>                |                       |   |   |
| Animals, Environment & Nuisance           | New                   | Once Public Health Regulations are known, incorporate – <ul style="list-style-type: none"> <li>- some aspects of repealed local laws above,</li> <li>- some matters generally in Health Local Laws</li> </ul>   |   |
| Bush Fire Brigades                        | New                   | Bush Fires Act requirement  |   |
| Public Places & Local Government Property | New                   | To incorporate – <ul style="list-style-type: none"> <li>- some aspects of repealed local laws above,</li> <li>- authority to set fees and charges</li> <li>- authority to manage buildings and properties,</li> <li>- activities on roads, including trading, and some parking</li> </ul> |   |
| <b>Other local law</b>                    |                       |   |   |
| Health                                    | Not recommended       |   |   |
| Meeting Procedures                        | Not recommended       |   |   |
| Waste                                     | Not recommended       |   |   |
| Other minor local laws                    | Not recommended       |   |   |

\_\_\_\_\_ End