

DIS078: ADOPTION OF WASTE LOCAL LAW 2017

Proponent / Owner	: City of Albany
Attachments	: Proposed Waste Local Law 2017 (including letter of consent and public submissions)
Report Prepared By	: Manager Governance & Risk (S Jamieson)
Responsible Officers:	: Executive Director Infrastructure & Environment (M Thomson)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Theme: 1. Leadership & 3. Clean, Green & Sustainable**
 - **Objectives:**
 - **1.1** To establish and maintain sound business and governance structures.
 - **3.3** To identify and deliver improvements in sustainability within the City and wider community.
 - **Community Priorities:**
 - **1.1.2** Provide informed and transparent decision making that is consistent with our strategic direction, meets our legal obligations, reflect the level of associated risk and are adequately explained to community.
 - **3.3.2** Deliver a sustainable and progressive approach to waste management including collaboration with neighbouring local governments.

In Brief:

- Council is requested to resolve to adopt the *City of Albany Waste Local Law 2017* that is not significantly different from what was proposed.
- The proposed local law developed under the WARR Act 2007 provides a framework for the City to manage its waste collection and disposal services to benefit community health and the environment.
- Council is also requested to make a determination under the proposed local law to allow the kerbside scavenging.

RECOMMENDATION

DIS078: RESOLUTION 1
VOTING REQUIREMENT: ABSOLUTE MAJORITY

MOVED: COUNCILLOR DOUGHTY
SECONDED: COUNCILLOR STEPHENS

THAT:

(1) Council:

- (a) ENDORSES** the Department of Local Government, Sport and Cultural Industries suggested amendments;
- (b) RECEIVE** the public submission, staff recommendations and **ENDORSES** those recommendations; and
- (c) NOTE** the purpose and effect of the City of Albany Waste Local Law 2017, being:
 - **Purpose:** The purpose of the local law is to provide for the regulation, control and management of activities and issues relating to waste collection, recycling, reuse and disposal within the district of the City of Albany.
 - **Effect:** The effect of the local law is to control activities and manage influences on waste collection, recycling, reuse and disposal within the district of the City of Albany.

(2) Council in accordance with section 3.12 of the *Local Government Act 1995* **AGREES** to **ADOPT** the City of Albany Waste Local Law 2017 (as detailed in the attachments) that is not significantly different from what was proposed.

CARRIED 13-0
ABSOLUTE MAJORITY

DIS078: RESOLUTION 2
VOTING REQUIREMENT: ABSOLUTE MAJORITY

MOVED: COUNCILLOR SMITH
SECONDED: COUNCILLOR SHANHUN

THAT Council ADOPT the following determination in accordance the *City of Albany Waste Local Law 2017*:

DETERMINATION: VERGE COLLECTION FOR COMMERCIAL PURPOSE

Clause 2.10 (2) of the *City of Albany Waste Local Law 2017* is suspended to allow for the lawful collection of waste deposited on the verge for commercial purposes.

The removal of the waste must be conducted in accordance with clause 2.10(3), which states in part:

“a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.”.

This determination will come into effect 14 days after the day on which the *City of Albany Waste Local Law 2017* is published in the *Government Gazette*.

CARRIED 13-0
ABSOLUTE MAJORITY

DIS078: COMMITTEE RECOMMENDATION 1

MOVED: COUNCILLOR TERRY
SECONDED: COUNCILLOR SUTTON

THAT the Responsible Officer Recommendation 1 be ADOPTED

CARRIED 13-0

DIS078: COMMITTEE RECOMMENDATION 2

MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR STEPHENS

THAT the Responsible Officer Recommendation 2 be ADOPTED.

CARRIED 13-0

DIS078: RESPONSIBLE OFFICER RECOMMENDATION 1

THAT:

(1) Council:

- (a) ENDORSES the Department of Local Government, Sport and Cultural Industries suggested amendments;
- (b) RECEIVE the public submission, staff recommendations and ENDORSES those recommendations; and
- (c) NOTE the purpose and effect of the City of Albany Waste Local Law 2017, being:
 - Purpose: The purpose of the local law is to provide for the regulation, control and management of activities and issues relating to waste collection, recycling, reuse and disposal within the district of the City of Albany.
 - Effect: The effect of the local law is to control activities and manage influences on waste collection, recycling, reuse and disposal within the district of the City of Albany.

(2) Council in accordance with section 3.12 of the *Local Government Act 1995* AGREES to ADOPT the City of Albany Waste Local Law 2017 (as detailed in the attachments) that is not significantly different from what was proposed.

DIS078: RESPONSIBLE OFFICER RECOMMENDATION 2

THAT Council ADOPT the following determination in accordance the *City of Albany Waste Local Law 2017*:

DETERMINATION: VERGE COLLECTION FOR COMMERCIAL PURPOSE

Clause 2.10 (2) of the *City of Albany Waste Local Law 2017* is suspended to allow for the lawful collection of waste deposited on the verge for commercial purposes.

The removal of the waste must be conducted in accordance with clause 2.10(3), which states in part:

“a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.”.

This determination will come into effect 14 days after the day on which the *City of Albany Waste Local Law 2017* is published in the *Government Gazette*.

BACKGROUND

2. At the Ordinary Council meeting held on 15 March 2017, Council resolved to make the City of Albany Waste Local Law 2017. Extract of resolution:

1. *NOTE that the Local Law procedures must be restarted to ensure legal validity and compliance with the prescribed process.*
2. *APPROVES the recommended amendments to the proposed Local Law for the purpose of advertising.*
3. *AGREES to restart the procedure for making the Local Law.*
4. *In accordance with section 3.12 of the Local Government Act 1995, agrees to GIVE PUBLIC NOTICE of its intention to MAKE the City of Albany Waste Local Law 2017.*

5. Consent had to be given by the Department of Water and Environmental Regulation prior to presentation for Council to consider adopting the local law.

DISCUSSION

6. The preparation of this local law was based on comparable local laws that have passed the scrutiny of the Joint Standing Committee on Delegated Legislation (JSCDL).
7. Administrative changes and feedback from the community have been consolidated for Council's consideration, as is detailed in the Schedule of Submission (attached).
8. All submissions referenced the following clause:

“ Clause 2.10: Verge collections

- (1) *Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—*
 - (a) *must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and*
 - (b) *must otherwise comply with those terms and conditions.*
 - (2) *Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.*
 - (3) *Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.*
 - (4) *Clause 2.10 (2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.*
9. It is not the intent of this clause to apply to residents who are seeking to re-use, recycle or upcycle items placed for collection on the roadside.
 10. This section of the proposed local law would be applied to commercial operators who would seek to profit by collecting for example, scrap metal, from the roadside during the period before collection by the City's authorised service provider, noting funds received for scrap metal are used to offset removal costs.

11. In accordance with the Council's Regulatory Compliance Policy:
- a. Enforcement:
 - (i) Enforcement options may only be exercised by officers with relevant delegated authority or authorisation relating to enforcement action or otherwise by Council resolution.
 - (ii) The City of Albany may, where appropriate, favour education over other enforcement options but only where this is in the public interest and appears likely to achieve compliance.
 - b. Public Interest:
 - (i) The public interest dictates that prosecutions are initiated, or continued, only in circumstances where it is apparent that the offence, or the circumstances of its commission, are of such a nature that a prosecution is in the public interest.
 - (ii) The factors to be taken into account when deciding whether or not the public interest requires prosecution will vary from case to case.

GOVERNMENT & PUBLIC CONSULTATION

12. Council and Public: See Public submissions attached. .
13. State Government. See Recommendations attached.

Note: On 22 November 2017, the Department of Water and Environmental Regulation confirmed consent to the *City of Albany Waste Local Law 2017*.

STATUTORY IMPLICATIONS

Making Local Law Process:

14. In making a local law, a local government is to follow the procedure described in section 3.12 of the *Local Government Act 1995*.
15. After the last day for submissions the local government is to consider any submissions made and make the local as proposed or make a local law that is not significantly different from what was proposed.
16. Resolution of Council to make the local law must be carried by **Absolute Majority**.
17. After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister for Local Government and a copy to the Minister for the Department of Water and Environmental Regulation.
18. After the local law has been published in the Gazette the local government is to give local public notice.
19. Section 3.12 of the Act requires the person presiding at a Council meeting to give notice to the meeting of the purpose and effect of the proposed local law.

Determination Process:

20. The determination process is defined in the subject local law:

“Clause 1.6. Local public notice of determinations: Where, under this local law, the local government has a power to determine a matter –

- (a) *local public notice, under section 1.7 of the LG Act, must be given of the matter determined;*
- (b) *the determination becomes effective only after local public notice has been given;*
- (c) *the determination remains in force for the period of one year after the date that local public notice has been given under paragraph (a);*

- (d) *after the period referred to in paragraph (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and*
- (e) *the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.”*

POLICY IMPLICATIONS

- 21. There are no policy implications related to this item.

RISK IDENTIFICATION & MITIGATION

- 22. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Reputation. If the need for the proposed local law is not articulated and justified, negative community feedback may result.</i>	<i>Possible</i>	<i>Major</i>	<i>Medium</i>	<i>Communicate and justify rationale.</i>

FINANCIAL IMPLICATIONS

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

LEGAL IMPLICATIONS

- 24. Section 3.12 of the Act prescribes the procedures for making Local Laws.
- 25. Whilst the Act does expressly prescribe a time frame in which the procedural requirements for making Local Laws are to be completed, the procedures should be undertaken with “all convenient speed’ in line with the *Interpretations Act 1984*.

ENVIRONMENTAL CONSIDERATIONS

- 26. Provisions have been transferred from the *Health Act 1911*, concerning health and environmental issues related to the waste management services provided by Local Government, to the WARR Act 2007.
- 27. The proposed local law developed under the WARR Act 2007 provides a framework for the City to manage its waste collection and disposal services to benefit community health and the environment.

OPTIONS

- 28. Amendments can only be made to the local law that is not significantly different from what was proposed (minor administrative amendments).
- 29. If the Council choose to:
 - a. Make significant amendments, the local law process must be restarted.
 - b. Minor amendments (changes to a clause or sub-clause) the local law will have to be referred to the Chief Executive Officer of the Department of Water and Environmental Regulation (DWER) for consent and re-presented to Council for adoption.
 - c. Minor amendments (no change to clause or sub-clause), can be adopted by Council.

CONCLUSION

30. It is recommended that Council ADOPT the *City of Albany Waste Local Law 2017* without modification.

<p>Consulted References</p>	<p>:</p>	<ul style="list-style-type: none"> • <i>Local Government Act 1995</i> • <i>Local Government (Functions & General) Regulations 1996</i> • <i>Waste Avoidance and Resource Recovery Act 2007</i> • <i>City of Albany Health Local Laws 2001</i> • <i>Local Government Operational Guidelines – Number 16 November 2011</i> • http://www.wastenet.net.au/Assets/Template_Waste_LL_-_December_2014.docx • http://www.wastenet.net.au/Assets/Template_Waste_Local_Law_Guidance_Note.pdf • Report 77 – Joint Standing Committee on Delegated Legislation – Inquiry into a Proposed Template Waste Local Law – November 2014 • Council Policy: Regulatory Compliance
<p>File Number (Name of Ward)</p>	<p>:</p>	<p>All Wards</p>
<p>Previous Reference</p>	<p>:</p>	<ul style="list-style-type: none"> • <i>OCM 28/07/2015 Resolution WS080</i> • <i>OCM 28/03/2017 Resolution DIS014</i>