



THIRTY-EIGHTH PARLIAMENT

REPORT 34
JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION
CITY OF JOONDALUP CATS LOCAL LAW 2008

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chairman)

September 2009

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing orders:

3. Joint Standing Committee on Delegated Legislation

- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness;
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause -
- “**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “**instrument**” means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
 - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “**subsidiary legislation**” has the meaning given to it by section 5 of the *Interpretation Act 1984*.

Members as at the time of this inquiry:

Mr Joe Francis MLA (Chairman)
Hon Robin Chapple MLC (Deputy Chairman)
Hon Alyssa Hayden MLC
Ms Janine Freeman MLA

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO THE

CITY OF JOONDALUP CATS LOCAL LAW 2008

1 INTRODUCTION

- 1.1 The *City of Joondalup Cats Local Law 2008* (**the Local Law**) was gazetted on 2 April 2009. It is reproduced at **Appendix 1**.
- 1.2 The Joint Standing Committee on Delegated Legislation (**the Committee**) raised a number of concerns with the City of Joondalup (**the City**) and sought undertakings in relation to those concerns. Whilst the City was prepared to provide undertakings on some of the issues, several matters remained outstanding. The City did not provide undertakings in relation to the Committee's concerns about clauses 7, 18 and 21(b) of the Local Law.
- 1.3 The Committee is of the view that clause 7 of the Local Law (**clause 7**) is not authorised or contemplated by the *Local Government Act 1995* (**the Act**) and, further, that it is a provision which would be more appropriately contained in an Act. As such clause 7 offends the Committee's *Terms of Reference* 3.6(a) and 3.6(f) which state:

In its consideration of an instrument, the Committee is to inquire whether the instrument...

(a) is authorised or contemplated by the empowering enactment; and

(f) contains provisions that, for any reason, would be more appropriately contained in an Act.

- 1.4 In relation to clauses 18 of the Local Law the Committee is of the view that this clause is not contemplated by the Act and as such offends *Term of Reference* 3.6(a).
- 1.5 In relation to clause 21(b) the Committee is of the view that this clause offends *Term of Reference* 3.6(a) and also 3.6(b) which requires the Committee to inquire whether:

(b) the instrument has an adverse effect on existing right, interests or legitimate expectations beyond giving effect to a purpose authorised or contemplated by the Act.

2 COMMITTEE SCRUTINY

- 2.1 The Committee first scrutinised the Local Law on 18 May 2009. The Committee sought further information from the City and resolved to move a notice of motion of disallowance of the Local Law for the purposes of preserving its position while giving the Local Law further consideration. The City was advised of that resolution by letter dated 26 May 2009 which is reproduced at **Appendix 2**.
- 2.2 A series of correspondence ensued, culminating with the Committee's letter dated 17 August 2009 in which the Committee sought a series of undertakings from the City. The correspondence is reproduced at **Appendices 2-9**.
- 2.3 The City advised that the Local Law was the first of its kind gazetted, however, on 9 June 2009 the City of Albany also gazetted the *Keeping and Welfare of Cats Local Law 2008*. This local law requires, in the absence of a permit, sterilisation as a prerequisite to compulsory registration.
- 2.4 The Committee wrote to the City of Albany on 10 August 2009 expressing its concerns regarding the imposition of compulsory sterilisation of cats and seeking undertakings in relation to other clauses in the *City of Albany Keeping and Welfare of Cats Law 2008*. The Committee's letter is reproduced at **Appendix 10**.
- 2.5 The City of Albany responded to the Committee's letter attaching a letter of advice provided to them by Minter Ellison Lawyers. The letter of advice is reproduced at **Appendix 11**.

3 CLAUSE 7

- 3.1 Clause 7 states:

All registered cats within the City shall be sterilised except cats owned by residents in possession of written approval from the City to keep up to 6 adult breeding cats in accordance with clause 45(2) of the City's Animals Local Law 1999.

- 3.2 Clause 6 requires registration of cats as follows:

- (1) *All cats within the City shall be registered by 31 October each year except:*
- (i) *cats under the age of 3 months;*
 - (ii) *cats kept during the period when the owner is applying for registration;*
 - (iii) *cats in the custody of an animal welfare group;*

(iv) *cats held by a registered veterinary surgeon in the course of his or her professional practice;*

(v) *cats kept in any cattery.*

(2) *Subject to clause 6(1), if a cat is not registered under this Local Law, the owner of the cat commits an offence.*

Penalty: \$500

3.3 In considering the Local Law the Committee noted it was the first time a local government had attempted to impose compulsory sterilisation over an entire local government area under the delegated power found in section 3.5 of the Act.¹

4 STATUTORY PROVISIONS

4.1 The City advised the Committee that it relied on the general powers provision in section 3.1 of the Act to authorise clause 7 of the Local Law.²

4.2 The legislative functions of local governments are found in Part 3, Division 2 of the Act. Section 3.5(1) of the Act states:

3.5. Legislative power of local governments

(1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

4.3 Section 3.1 provides for the general function of the Act and states:

3.1. General function

(1) The general function of a local government is to provide for the good government of persons in its district.

(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

¹ The Committee notes that the City of Armadale prohibited cats that were not sterilised from a certain area in a 2006 amendment to its *Environment, Animals and Nuisance Local Law 2002*.

² Letter from Chief Executive Officer, City of Joondalup, 28 May 2009, Appendix 3, p1.

4.4 As can be seen above, the scope of the general function found in section 3.1(1) of the Act is a broad one and section 3.1.(3) requires that its scope be interpreted liberally. However, it is limited under the Act by section 3.1(2).

4.5 There are several express references to animals in the Act that provide for the impoundment, disposal and destruction of animals.³

4.6 Regulation 29 of the *Local Government (Functions and General) Regulations 1996*, on the subject of impoundment, states:

A contravention of a regulation or local law made under the Act can lead to the impounding of goods that are animals (if they are involved in the contravention) whether or not the contravention takes place in a private or a public place.

(2) In subregulation (1) or (1a) —

***public place** includes a place that is on private property that the public are allowed to use.*

4.7 The Committee observed that the general function in section 3.1 of the Act would not authorise the making of local laws that conflicted with existing provisions in the Act.

4.8 There is no reference to the compulsory sterilisation of animals in either the Act or the regulations.

4.9 There is provision in the Act for regulations to be made limiting a local governments capacity to make laws.⁴ There are no regulations prohibiting the making of laws in relation to sterilisation of animals.

5 RELEVANT CASE LAW

5.1 The legislative power found in section 3.5 of the Act contains the power to prescribe local laws that are necessary and convenient for a local government to perform its functions under the Act. The accepted principle in relation to these powers as stated by the High Court in *Shanahan v Scott* is:

...such a power does not enable the authority by regulations to extend the scope or general operation of the enactment, but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to

³ Sections 3.37(1), 3.39(1), 3.47(2)(b) and 3.47A Local Government Act 1995.

⁴ Section 3.5(4) *Local Government Act 1995*.

*add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends.*⁵

- 5.2 The Committee notes, therefore, that section 3.5 of the Act is not an unlimited power.
- 5.3 The scope of a general function power, such as that found in section 3.1 of the Act, has been the subject of judicial consideration and the Australian authority is found in the 1961 decision of the High Court in *Lynch v Brisbane City Council*⁶ where Dixon CJ, with whom the other members of the Court agreed, said:

*a power to make by-laws for the good rule and government of a municipality is capable of a diversity of applications and is an effective power of control by ordinance.*⁷

- 5.4 Dixon CJ further stated in relation to a power to make ordinances for “good government of the city and the well being of its inhabitants”, that:

*They give a power to lay down matters in respect of municipal concern, matters that have been reasonably understood to be within the province of municipal government because they affect the welfare and good government of the city and its inhabitants. The words are not to be applied without caution nor read as if they were designed to confide to the city [of Brisbane] more than matters of local government. They express no exact limit of power but, directed as they are to the welfare and good government of a city and its inhabitants, they are not to be read as going beyond the accepted notions of local government.*⁸

- 5.5 The Committee was cognisant of the fact that the scope of the general function gives wide powers to local governments and *Lynch* indicates that the general function is “capable of a diversity of applications”.⁹
- 5.6 The Committee also considered that the power found in section 3.1 of the Act, though wide, is nevertheless a delegated one and not to be read as confiding “more than

⁵ *Shanahan v Scott* (1957) 96 CLR 245 at 250 per Dixon CJ, Williams, Webb and Fullagar JJ; followed by *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 116 ALR 54 at 66 per Gummow J.

⁶ (1961) 104 CLR 353.

⁷ *Ibid*, p363.

⁸ *Bone v Mothershaw* (2002) 121 LGERA 75.

⁹ *Lynch v Brisbane City Council* (1961) 104 CLR 353 at 363

*matters of local government” or “as going beyond the accepted notions of local government”.*¹⁰

- 5.7 The Committee noted that cases in this area, although diverse, dealt with matters such as the use of streets, charging fees, explosives use in a district¹¹ and vegetation orders¹². The Committee is not aware of any judicial consideration of a matter similar to that found in clause 7.

6 ISSUES CONSIDERED BY THE COMMITTEE

- 6.1 The Committee took the view that clause 7 raised a question about the extent of the legislative power delegated to local governments. In particular, the Committee considered whether the clause sought to widen the scope of clause 3.1 of the Act by legislating for a matter that went beyond the accepted notions of local government to make local laws for the good government of persons in their district.

- 6.2 Information was provided to the Committee by both the City of Joondalup and the City of Albany in relation to issues surrounding cats in their district and the reasons why the laws requiring compulsory sterilisation of cats were directed to the good government of persons in their districts. See **Appendices 5 and 7** and **Appendix 11** at paragraph 4.2.

- 6.3 The policy issue of whether compulsory sterilisation of cats is desirable is not a matter for the Committee’s consideration. The Committee’s role is not to consider whether the local law in question addresses an identified problem, but rather to examine whether it is authorised or contemplated by the Act or is a matter more appropriately dealt with by the State Parliament.

- 6.4 The matters the Committee examined in its consideration of the question of whether clause 7 went beyond accepted notions of local government are set out below.

- 6.5 The City advised that:

*Requiring the compulsory sterilisation of cats enables the City to effectively manage and control its land in the best interests of the public by ensuring that the native fauna is protected and incidences of feral cat nuisance are reduced.*¹³

- 6.6 On the face of it, this characterisation of clause 7 is an accepted exercise of the general function of a local government in relation to local government property.

¹⁰ *Lynch v Brisbane City Council (1961)* 104 CLR 353 at 364.

¹¹ *Lynch v Brisbane City Council (1961)* 104 CLR 353 at 363.

¹² *Bone v Mothershaw(2002)* 121 LGERA 75.

¹³ Letter from Chief Executive Officer City of Joondalup, 28 May 2009, Appendix 3, p2.

- 6.7 On closer examination, however, the Committee noted that clause 7:
- imposes requirements on residents to fund and have carried out a surgical procedure which alters the condition of their private property;
 - takes effect in relation to cats that may never leave their owner's residence or pose a risk to wildlife;
 - produces an outcome, sterilisation, that is not linked only to the district, but continues to impact on a cat owner for the rest of the cat's life wherever they choose to live should they leave the local government area; and
 - deals with policy matters of statewide concern and interest which require the consideration of the State Parliament.

Sterilisation of Dogs

- 6.8 Aside from the local laws previously mentioned in this report, the only other legislation that the Committee is aware of that deals with compulsory sterilisation of domestic pets is the *Dog Act 1979* (the **Dog Act**). That Act permits regulations to be made regarding compulsory sterilisation of certain dangerous breeds.
- 6.9 The Committee considered it significant that the limited sterilisation power in relation to dogs in Western Australia is found in an Act. In the Committee's view this is appropriate.
- 6.10 The Cities of Joondalup and Albany did not consider the Dog Act to be relevant to the Committee's consideration of the scope of section 3.1 of the Act. See **Annexures 5 and 7** and also paragraph 3 of **Appendix 11**.
- 6.11 The Committee considers that the Dog Act is relevant to its conclusions as it indicates that Parliament has considered the issue of sterilisation of dogs a matter which required authorisation at a State level.

Consistency of Application

- 6.12 In the Committee's view, the imposition of sterilisation of dogs under the Dog Act ensures that the law is applied consistently throughout the State. Use of a delegated power, intended to make a local law for a district, to impose compulsory sterilisation potentially gives rise to an inconsistent effect throughout the State. A cat owner, as a result of residing in Joondalup, will be required to surgically alter their cat in a permanent manner, an outcome which continues to take effect even if the owner then chooses to reside outside the Joondalup district in another part of the State. Cat owners in other parts of the State may not be subject to the same requirements resulting in an inconsistent outcome.

Cat Bill 2003

- 6.13 The Committee notes that legislation for sterilisation of cats has previously been introduced into the Legislative Council in the form of the Cat Bill 2003 on 11 December 2003. The Bill, which lapsed, contained provision for the compulsory sterilisation of cats, with the exception of those belonging to breeders.

Existing Cat Control

- 6.14 The Committee first scrutinised a local law in relation to cats in 2000.¹⁴ Historically, cat laws have been made by local governments under either the Health Act 1911 or the Act. Local governments have been expanding the breadth of laws relating to cats since 2000. The Capel Shire noted in its Explanatory Memorandum for its Keeping and Welfare Cats Local Laws 2004 that:

The concept of the local law is controversial in that it is requiring the licensing, registration and limiting the number of cats allowed on a property.

- 6.15 The Committee initially operated under the assumption that, with the exception of the City's of Joondalup and Albany, sterilisation of cats was not an area that had previously been the subject of local laws. This factor was considered by the Committee in the context of the Local Law seeking to further extend existing local laws in relation to cats.¹⁵ The Committee has since become aware that the City of Armadale prohibited cats that were not sterilised from a certain area within the City in 2006.¹⁶ From a practical perspective this does not alter the views formed by the Committee as set out in this report.
- 6.16 The argument was made to the Committee that it is not supportable to draw a line between methods of cat control and further, that local laws already exist to control breeding of cats.¹⁷ The argument was made in relation to clause 45(2) of the *City of Joondalup Animals Local Law 1999* (Animal Local Law) see paragraph 4.2 of **Appendix 12**.
- 6.17 The Animals Local Law deals with restrictions on numbers of a variety of animals and the conditions they should be kept in. Clause 45(2) of that local law is about limiting the number of cats that can be kept on premises. Whilst accepting that an argument could be made that this clause is about controlling the number of cats that can be

¹⁴ *City of Stirling - Keeping & Control of Cats Local Law 1999.*

¹⁵ See comments in letter from Minter Ellison to City of Albany, 13 August 2009, p3

¹⁶ *City of Armadale Environment, Animals and Nuisance Local Law 2002*

¹⁷ Letter from Minter Ellison to City of Albany, 13 August 2009, p 3.

bred,¹⁸ the Committee considers that the primary purpose of the Animals Local Law is to regulate the manner in which animals are kept. The Committee considers that clause 45(2) exempts cat breeders from the three cats per keeper restriction in clause 45(1) permitting them to keep six cats in the prescribed manner. The Committee notes that clause 7 now links the Local Law to the Animal Local Law exempting cat breeders from sterilisation requirements.

6.18 The Committee does not accept the argument that because the power to control cats generally may fall within the scope of section 3.1 of the Act, the scope of that power should not be limited.¹⁹

6.19 As previously noted, the general function power found in section 3.1 of the Act is not the sole source of legislative authority for local laws in relation to cats. The Act expressly provides for the impoundment disposal and destruction of animals by local governments.²⁰

7 THE COMMITTEE'S CONCLUSIONS

Term of Reference 3.6(a)

7.1 The Committee concluded that clause 7 was an attempt to widen the scope of the general function found in section 3.1 of the Act. The Committee was of the view that clause 7 goes beyond the accepted notions of local government in that it imposes a law on a highly controversial and emotive subject which has significant implications beyond its district. Clause 7 results in a permanent effect whether the owner of the cat in question continues to reside in Joondalup or in another area. Potentially, this would lead to inconsistency of application throughout the State. Further, the Committee did not consider that the scope of the general function extends to local governments legislating for matters that, by virtue of their potential unique and controversial nature, and their impact at a State level should be debated by the State Parliament.

7.2 The Committee has also formed the view that in providing the wide powers found in section 3.1 of the Act, Parliament did not contemplate that they would be used to impose compulsory sterilisation of animals. In forming this view the Committee noted that the Parliament had specifically turned its attention to granting powers to local governments to deal with animals which may be private property, by way of impoundment, disposal and destruction. The Committee also considered that Parliament would not have contemplated that section 3.1 of the Act would authorise the making of local laws about matters of statewide concern that are more appropriately addressed by the State.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Section 3.7.

Term of Reference 3.6(f)

7.3 The Committee notes that cat local laws have historically been controversial and emotive and sterilisation of cats increases the level of controversy.

7.4 The Committee considers that the subject matter of clause 7 is one of significant new policy and as such would be more appropriately dealt with in an Act.

8 CLAUSE 18

8.1 Clause 8 of the Local Law (**clause 8**) requires cat owners to ensure that their registered cats can be identified by one of three methods;

- a collar;
- a tag attached to a collar; or
- an implanted microchip.

8.2 Clause 18 of the Local Law (**clause 18**), however, requires a registration tag to be worn by registered cats:

18 (1) A registration tag must be worn by the registered cat when in a place that is outside of the premises where the cat is ordinarily kept, as declared on the certificate of registration, and shall—

(a) be of a durable material;

(b) be of a colour specified by Schedule in this Local Law in accordance with the relevant registration cycle; and

(c) contain the registration number of the cat.

8.3 The Committee noted that clause 8 provides owners of cats with the option of using a microchip as a means of identification. Cat owners may make this decision on the basis that a collar or tag may cause harm to a cat. Public submissions were made to the City on this point.

8.4 The City has provided cat owners with the option of microchip identification in clause 8 but has then, in clause 18, created a requirement for the wearing of a collar in order to attach a registration tag to it.

8.5 The requirement for all cats to wear a registration tag effectively removes the cat owner's option to use a microchip as a sole means of identification resulting in inconsistency within the Local Law. The Committee notes that registration details could also be obtained from a microchip or collar.

- 8.6 The Committee raised this issue with the City at page 3 in its letter dated 16 July 2009. See **Appendix 4**.
- 8.7 The City's response did not address the issue of inconsistency in the law, arguing that from an administrative perspective the registration tags enable the City's officers to identify on sight cats that are registered or not registered. Without tags it is the city's contention that all cats would need to be trapped in order to determine whether they are registered. See page 2 of **Appendix 5**.

Term of Reference 3.6(a)

- 8.8 The Committee concludes that clause 18 offends its *Term of Reference 3.6(a)* on the basis that the Act does not authorise or contemplate the making of a local law containing provisions which are internally inconsistent.

9 CLAUSE 20(1)(B)

- 9.1 Clause 20 of the Local Law states:

(1) A cat shall not be—

(a) in any designated area specified in a Schedule to this Local Law; or

(b) on private premises where a complaint by the owner or occupier of the premises has been made to the City in relation to the cat's unwanted presence on the property.

(2) If a cat is at any time in a place in contravention of—

(a) Clause 20(1)(a), the owner of the cat commits an offence against that Clause unless he establishes a defence under Clause 21.

Penalty: \$1000

(b) Clause 20(1)(b), the owner of the cat commits an offence against that Clause unless he establishes a defence under Clause 21.

Penalty: \$500

- 9.2 Clause 21 of the Local Law establishes a defence to an offence under clause 20 stating:

It is a defence to a charge of contravening Clause 20(2) if the person charged satisfies the Court—

(a) in the case of the owner of the cat, that he took all reasonable precautions and exercised all due diligence to avoid the contravention; or

(b) that at the material time the cat was in the possession or control of some other person without his consent, express or implied.

9.3 Clause 22 of the Local Law provides for the seizure and impounding of cats following contravention of Clause 20(1) as follows:

If it appears to an authorised person that a cat is in a place in apparent contravention of Clause 20(1), the authorised person may seize and impound the cat.

9.4 Clause 23 of the Local Law states that a seized cat may be returned to its owner or impounded.

9.5 The offence created by clause 20(1)(b) of the Local Law (**clause 20(1)(b)**) has two elements:

- i) a complaint about a cat presence must have been made by the property owner or occupier; and
- ii) the cat is on the complainant's property following the initial complaint.

9.6 The Committee was concerned that clause 20(1)(b):

- created an offence based on the transient behaviour of cats;
- did not set out a requirement for an initial complaint to be in writing; and
- did not provide for notice of the initial complaint to be provided to the owner.

9.7 The Committee raised its concerns with the City by letter dated 16 July 2009 and sought undertakings to address its concerns. The undertakings sought are at page five of that letter. See **Appendix 4**.

9.8 The City responded by letter dated 4 August 2009. See **Appendix 5**. The City did not provide the undertakings and in summary responded as follows:

- a definition of nuisance behaviour would give rise to evidentiary problems for the City;
- clause 20(1)(b) as it stood was administratively convenient;

-
- the City had elected to draft the clause in a “fuzzy drafting style” (a reference was provided for this term) which “*built in flexibility and permitted the City to adapt its implementation approach*”;
 - Information provided on the website would “*support offences contained in the law*” and residents were more likely to seek information from the web than the actual law.
- 9.9 The City also raised with the Committee the fact that the *City of Swan’s Consolidated Local Laws 2005* contains a not dissimilar clause.
- 9.10 The existence of the *City of Swan’s Consolidated Local Laws 2005* does not alter the Committee’s views in relation to clause 20(1)(b). The fact that the Committee did not consider the City of Swan’s provision, in all the circumstances to be of sufficient seriousness to comment previously, does not in any way restrict the Committee from raising its concerns regarding such clauses now or in the future.
- 9.11 The Committee was not satisfied with the City’s response and again wrote to the City seeking undertakings as set out in its letter dated 10 August. See page two of **Appendix 6**.
- 9.12 The City responded by letter dated 13 August. See page 4 of **Appendix 7**. The City did not provide the undertakings and in summary responded as follows:
- the City had committed to using a cautionary method for initial complaints;
 - the Local Law prescribed seizure and identification of a cat on the second occurrence of an unwanted cat presence which meant the owner would be notified in this instance;²¹ and
 - if an offence were ever prosecuted the City would need to ensure that “*fair and practical notification methods and sufficient evidence were undertaken and provided. The City’s proposed implementation plan acknowledges this...*”
- 9.13 The Committee acknowledged that positive identification would occur when the cat was trapped following an initial complaint and noted that the owner would be notified at that point. At that point, however, the offence has occurred. This advice did not alleviate the Committee’s concerns regarding:
- the unsubstantiated manner in which an initial complaint could be made; and

²¹ Clauses 22,23 *City of Joondalup Cats Local Law 2008*.

- the lack of requirement in the Local Law to give notice to a cat owner of the initial complaint in order that the owner could take steps to prevent the cats presence on the property a second time.
- 9.14 The Committee also noted that the City did not acknowledge that evidence of notice is not required in clause 20(1)(b) in its current form. Therefore, having created an offence which did not require the giving of notice to the cat owner, once the elements of the offence were satisfied the offence would be made out. There would be no requirement to prove notice was given in order to issue an infringement notice or obtain a conviction.
- 9.15 The Committee advised the City by letter dated 17 August 2009, see **Appendix 8**, that;
- City policies regarding cautions and notifications are open to change by the City at any time and did not adequately protect the rights of individuals who may be subject to penalty or prosecution as a result of a breach of clause 20(1)(b) in its current form.*
- 9.16 In its letter the Committee sought undertakings in relation to amendments to clause 20(1)(b) requiring that:
- problematic cat behaviours which may give rise to a complaint are identified in the Local Law. The behaviours identified will not include the unwanted presence of a cat on private premises;
 - any initial complaint regarding cat behaviour is substantiated by written evidence or identification of the cat on the property by an authorised officer; and
 - written notice of any complaint will be given to the owner of the cat.
- 9.17 To date these undertakings have not been provided. An offer to create a draft definition for cat nuisances and to amend clause 20(1)(b) was made as part of a “compromise position” by the City in its letter dated 19 August 2009. See **Appendix 9**.
- 9.18 The Committee did not consider it appropriate to negotiate compromises for matters that it considered to clearly offend its *Terms of Reference* and advised the City accordingly.

Term of Reference 3.6(a)

9.19 The Committee has concluded that the aspects of the offence established under clause 20(1)(b) offend its *Term of Reference 3.6(a)* in that they give rise to unreasonable outcomes that are not contemplated by the Act as set out below:

- There is no requirement to substantiate the initial complaint regarding the cat's unwanted presence. This potentially places the owner in breach of the first element of the offence on the basis of an unsubstantiated telephone complaint.
- There is no requirement to provide notice to an owner of the initial complaint. The outcome of the clause is that an individual can be penalised or prosecuted for a breach without notification of the initial complaint.
- The offence created is based on a cat's mere presence on premises without the requirement for any additional problematic behaviour.
- In order to avoid breaching the Local Law, all cats effectively must be restrained at all times from leaving their owner's property.

Term of Reference 3.6(b)

9.20 The Committee also concluded that the failure to require a substantiated complaint and to give notice of an initial complaint in clause 20(1)(b) offended its *Term of Reference 3.6(b)*. The clause potentially had an adverse effect on the legitimate expectations of an individual beyond that contemplated by the Act. An individual would have a legitimate expectation that they would not be penalised on the basis of unsubstantiated evidence and that they would be given notice of the complaint in these circumstances.

10 RECOMMENDATIONS

10.1 The Committee makes the following recommendations:

Recommendation 1: The Committee recommends that the *City of Joondalup Cats Local Law 2008* be disallowed.

Recommendation 2: The Committee recommends that the Minister for Local Government give consideration to introducing a Cat Bill into the Parliament dealing with such issues as the sterilisation of cats in certain circumstances.

10.2 The Committee seeks a response from the Minister for Local Government in relation to Recommendation 2.



Mr Joe Francis MLA

Chairman

Date: 10 September 2009

APPENDIX 1
CITY OF JOONDALUP CATS LOCAL LAW 2008

APPENDIX 1
CITY OF JOONDALUP CATS LOCAL LAW 2008



**WESTERN
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LOCAL GOVERNMENT ACT 1995

CITY OF JOONDALUP

CATS LOCAL LAW 2008

LOCAL GOVERNMENT ACT 1995

CITY OF JOONDALUP

CATS LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Joondalup resolved on 17 February 2009 to make the "*City of Joondalup Cats Local Law 2008*".

ARRANGEMENT

PART 1—PRELIMINARY	Clauses 1—5
PART 2—CATS	Clauses 6—32
PART 3—PENALTIES	Clauses 33—36

PART 1—PRELIMINARY

Title

1 This Local Law may be referred to as the *City of Joondalup Cats Local Law 2008*.

Commencement

2 This Local Law comes into operation on 1 October 2009.

Purpose

3 (1) The purpose of this Local Law is to provide for the registration, compulsory sterilisation, control and identification of cats within the City of Joondalup.

(2) The effect of this Local Law is that a system for the compulsory sterilisation, registration and control of cats will be operational within the City of Joondalup.

Application of Local Law

4 This Local Law applies throughout the district.

Definitions

5 In this Local Law unless the context otherwise requires—

“Act” means the *Local Government Act 1995*;

“animal welfare group” means any not-for-profit group that is incorporated under the *Associations Incorporation Act 1987* and whose aims predominantly relate to animal welfare;

“application” means the completed form lodged by an applicant as required by this Local Law;

“applicant” means a person who has lodged an application for a certificate of registration required by this Local Law;

“approved fees” means the fees and charges determined by the City of Joondalup from time to time in accordance with s 6.16-s 6.19 of the Act;

“authorised person” means a person authorised by the City of Joondalup under section 9.10 of the Act, to enforce the provisions of this Local Law;

“cattery” means any premises where 4 or more cats are boarded;

“City” means the local government of the City of Joondalup;

“district” means the district of the City;

“private premises” means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;

PART 2—CATS

Registration of cats

6 (1) All cats within the City shall be registered by 31 October each year except—

(a) cats under the age of 3 months;

(b) cats kept during the period when the owner is applying for registration;

- (c) cats in the custody of an animal welfare group;
- (d) cats held by a registered veterinary surgeon in the course of his or her professional practice;
- (e) cats kept in any cattery.

(2) Subject to clause 6(1), if a cat is not registered under this Local Law, the owner of the cat commits an offence.

Penalty: \$500

Sterilisation of cats

7 All registered cats within the City shall be sterilised except cats owned by residents in possession of written approval from the City to keep up to 6 adult breeding cats in accordance with clause 45(2) of the City's *Animals Local Law 1999*.

Identification of registered cats outside of premises where ordinarily kept

8 Owners of cats shall ensure that their cats may be identified by one of the following means when outside of the premises where the cat is ordinarily kept—

- (a) The cat has a collar around its neck and the collar, or a tag securely attached to the collar, is marked with the current address or telephone number of the owner of the cat; or
- (b) The cat has a microchip implanted in its body containing information that may be used to obtain the name of the owner of the cat and a current address or telephone number of the owner.

Register to be maintained

9 The City shall maintain a register showing—

- (a) the details of the name, breed, approximate age, colour, distinguishing marks and sex of each cat which is the subject of an application for registration;
- (b) the particulars of the owner or, if the application is not made by the owner, the agent of the owner, and the premises stated as the place at which the cat is intended to be ordinarily kept;
- (c) any notification of an alleged change of ownership; and
- (d) the period of any registration effected and the registration number relevant to each cat.

10 The register shall be kept by the City and shall, as far as is practicable, be so maintained as to include any alteration or addition since the preparation of the register for the preceding year.

11 A person who applies to the City is, on payment of the prescribed fee, entitled to inspect and take copies of any entry in the register or, as the case may be, to receive a copy of an entry in the register certified by a registration officer.

Registration periods and fees

12 (1) Subject to the provisions of this clause, the registration fee payable in relation to a cat shall be such amount as is prescribed by Schedule in this Local Law.

(2) The registration of a cat under this Local Law shall—

- (a) remain in force from the date specified in the certificate until 31 October either—
 - (i) next ensuing; or
 - (ii) where this Local Law permits an extended registration period and the owner has elected to register the cat for that extended period, ensuing in the last registration year of that period; and
- (b) may be renewed to take effect as from 1 November in any year, within the preceding period of 21 days.

13 Schedules to this Local Law may provide that concessional rates of registration be payable—

- (a) by pensioners as defined in the *Rates and Charges (Rebates and Deferments) Act 1992*, or other persons of a specified class or in specified circumstances;
- (b) by persons who elect to effect registration for such extended period as is prescribed by Schedule in this Local Law; and
- (c) in respect of registration for a period of less than one year.

Registration procedure

14 The form of application prescribed by Schedule in this Local Law for registration shall require the applicant to state in the application the premises at which the cat will ordinarily be kept.

15 Where a cat is ordinarily kept by a person under the age of 18 years, application for registration of that cat shall be made by his parent or guardian or some other person who is over the age of 18 years and any registration shall be in the name of the applicant.

Change of ownership

16 Where the ownership of a cat is transferred to another person, the registered owner shall within 28 days thereafter cause the City of Joondalup to be notified in the manner and form prescribed by Schedule in this Local Law of the transfer.

Penalty: \$200

17 (1) No change shall be made in the record of the ownership of a cat unless—

- (a) the registered owner has notified the change to the City of Joondalup; or
- (b) an application for registration is made by a person who alleges that he is the new owner.

(2) A person aggrieved by a decision of the City relating to the ownership of a cat as recorded in a register may apply to the City for a review of the decision.

Registration tags

18 (1) A registration tag must be worn by the registered cat when in a place that is outside of the premises where the cat is ordinarily kept, as declared on the certificate of registration, and shall—

- (a) be of a durable material;
- (b) be of a colour specified by Schedule in this Local Law in accordance with the relevant registration cycle; and
- (c) contain the registration number of the cat.

Offences relating to registration, etc.

19 A person who—

- (a) wilfully inserts or omits, or permits to be inserted or omitted, in any application for the grant or renewal of a registration any matter or thing whatsoever contrary to, or for the purpose of concealing, the truth;
- (b) whether on his own behalf or that of another person, for the purpose of obtaining any benefit or avoiding any penalty or obligation under this Local Law, wilfully makes or causes to be made any representation or statement which is false or misleading in any material particular or which he knows or ought reasonably to know is likely to deceive any person;
- (c) keeps any cat wearing a registration tag—
 - (i) issued in respect of another cat; or
 - (ii) in respect of a registration which is no longer current; or
- (d) wrongfully removes or defaces any registration tag issued under this Local Law, or makes, uses, purchases or has in his possession any counterfeit or false certificate of registration or registration tag or any thing apparently intended to resemble or pass for the same, commits an offence.

Control of cats

20 (1) A cat shall not be—

- (a) in any designated area specified in a Schedule to this Local Law; or
- (b) on private premises where a complaint by the owner or occupier of the premises has been made to the City in relation to the cat's unwanted presence on the property.

(2) If a cat is at any time in a place in contravention of—

- (a) Clause 20(1)(a), the owner of the cat commits an offence against that Clause unless he establishes a defence under Clause 21.

Penalty: \$1000

- (b) Clause 20(1)(b), the owner of the cat commits an offence against that Clause unless he establishes a defence under Clause 21.

Penalty: \$500

Defences applicable to Clause 20

21 It is a defence to a charge of contravening Clause 20(2) if the person charged satisfies the Court—

- (a) in the case of the owner of the cat, that he took all reasonable precautions and exercised all due diligence to avoid the contravention; or
- (b) that at the material time the cat was in the possession or control of some other person without his consent, express or implied.

Seizure and impounding of cats

22 If it appears to an authorised person that a cat is in a place in apparent contravention of Clause 20(1), the authorised person may seize and impound the cat.

23 Where a cat is seized pursuant to Clause 22 the authorised person may—

- (a) cause it to be returned to the owner; or
- (b) impound it, and the owner shall be liable to pay to the City, before the cat is returned to the owner, the reasonable cost of returning the cat or of maintaining it during the period of impoundment, or both where that is appropriate, together with any charges levied in relation to the seizure and impounding of the cat.

24 Where a cat is seized under this Local Law and is not forthwith returned to the owner it shall be detained in a pound maintained by the City or at premises maintained by another body, or in any suitable premises.

25 If a cat impounded under Clause 22 is wearing a registration tag or the owner is otherwise readily identifiable, the authorised person causing it to be detained shall also cause notice to be given to the owner in the prescribed manner and form as soon as is practicable.

26 Where an unidentified cat is impounded and is not reclaimed within 7 days of its impoundment, the City may—

- (a) Offer the cat for sale; or
- (b) Cause the cat to be destroyed; or
- (c) Cause the cat to be rehoused.

27 Where a registered and identified cat is impounded and it is not reclaimed within the period specified in a notice of impoundment, the City may—

- (a) Offer the cat for sale; or
- (b) Cause the cat to be destroyed; or
- (c) Cause the cat to be rehoused.

28 If an impounded cat is sold under Clause 26(a) or 27(a), the proceeds of sale become the property of the City and may be disposed of in such manner as the City thinks fit.

Register of impounded cats

29 The City of Joondalup shall maintain an Impounding Register showing—

- (a) the details of the breed, approximate age, colour, distinguishing marks and sex of the cat subject to the impoundment;
- (b) if known, the name and address of the owner of the cat;
- (c) the date and time of impoundment;
- (d) the name of the person who seized and impounded the cat;
- (e) the reason for the impounding;
- (f) a note of any order made by the authorised person relating to the cat;
- (g) the method of disposal of the cat, whether sold, released, rehoused or destroyed; and
- (h) the date of sale, release, rehousing or destruction of the cat.

30 The Impounding Register is to be available for inspection by the public.

Destruction of cats

31 An authorised person under this Local Law may cause a cat to be destroyed at the request of the owner of that cat, whether or not the cat has been seized or impounded.

32 Where a cat is destroyed under Clause 31, the owner is liable for the cost of both the destruction and the disposal of the cat.

PART 3—PENALTIES

Offences

33 (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) An offence against a clause specified in the Fourth Schedule of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.

Offence Description and Modified Penalty

34 The amount appearing in the final column of the Fourth Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

Prosecution for Offences

35 A penalty for an offence against this local law (not being a modified penalty) may be recovered by the City by taking proceedings against the alleged offender in a Court of Petty Sessions.

Records to be Kept

36 The City shall cause adequate records to be kept of all infringements notices served and modified penalties received.

First Schedule

City of Joondalup

CATS LOCAL LAW 2008

FEES FOR REGISTRATION

1	Inspection of register	\$0.50
2	Certified copy of an entry in the register	\$1.00
3	Annual registration, unless a concessional rate applies	\$10.00
4	Concessional registration rates —	
	a. Cats owned by pensioners referred to in Clause 13(a)	50% of fee otherwise payable
	b. Registration after 31 May in any year, for that registration year	50% of fee otherwise payable
	c. Three year registration period	\$25.00

Second Schedule
 City of Joondalup
 CATS LOCAL LAW 2008
DESIGNATED PROHIBITED CAT AREAS

1. Any area listed under Schedule 5 of the City's District Planning Scheme No. 2.
2. **Location** **Reserve Number(s)**
 - Neil Hawkins Park 28544
 - Whitford Node, Hillarys 39497
 - Mawson Park, Hillarys 33401
 - McDonald Park, Padbury 33072
 - Heathridge Park, Heathridge 34330
 - Blue Lake Park, Joondalup 41893
 - Percy Doyle Reserve, Duncraig 33894
 - Hepburn Conservation Area, Padbury 42987
 - Central Park, Joondalup 48354 and 46710
 - Tom Simpson Park, Mullaloo 32074
 - Coastal Foreshore Reserve 47831

Third Schedule
 Form 1
 City of Joondalup
 CATS LOCAL LAW 2008
Cat Registration Form
APPLICATION FOR A CERTIFICATE OF REGISTRATION

FOR THE OWNER OF THE CAT

I, (1) of (2)
 the owner of the cat, to which its particulars are listed in this application, declare that—

- (a) I am not under 18 years of age; and
- (b) The particulars shown in this application are true to the best of my knowledge and belief.

FOR APPLICANTS WHO ARE NOT THE OWNER OF THE CAT

I, (3) of (4)
 as the duly authorised agent of (1)
 of (2) the owner of the cat, to which its particulars
 are listed in this application, declare that—

- (a) I am not under 18 years of age; and
- (b) The particulars shown in this application are true to the best of my knowledge and belief.

Premises where cat will ordinarily be kept	Name of Cat	Sex	Colour and distinguishing marks(5)	Breed or kind of cat	Approx. age of cat	Sterilisation certificate sighted, or other means(6)	Concession claimed(7)

(Signature)
 Dated this day of 20.....

- (1) Insert name of owner.
- (2) Insert address of owner.
- (3) Insert name of applicant, if not the owner.
- (4) Insert address of applicant, if not the owner.
- (5) Describe any markings, including any tattooed mark.
- (6) State yes or no, if no, describe means by which sterilisation was confirmed or that written approval to breed cats has been sighted.
- (7) Insert reason for claiming concession e.g. owned by pensioner, etc.

For office use only
 Registration Number
 This registration is valid until
 Date of issue Signature of registration officer

Third Schedule

Form 2

City of Joondalup

CATS LOCAL LAW 2008

TRANSFER OF CAT OWNERSHIP FORM

PARTICULARS OF THE PERSON TRANSFERRING OWNERSHIP

Name:.....

Address:.....

Cat's Registration Tag Number:.....

Signature of the person transferring ownership:.....

Date:.....

PARTICULARS OF THE NEW OWNER (if known)

Name:.....

Address:.....

Telephone Number:.....

Signature of new owner:.....

Third Schedule

Form 3

City of Joondalup

CATS LOCAL LAW 2008

CAT SEIZURE AND IMPOUNDMENT FORM

Date:.....

Time:.....

I, (1).....
as an authorised officer under this Local Law, seized and impounded the following cat—

Registration No. (if registered)	Name of Cat (if known)	Sex	Colour and distinguishing marks	Breed or kind of cat	Approx. age of cat

Owner Details (if known)

Name:.....

Address:.....

Phone:.....

The cat was seized and impounded under Clause.....of the Cats Local Law 2008
for.....

I order that

Details of Disposal

The abovementioned cat was (please circle): released to owner/sold/rehoused/destroyed on
(2).....at (3).....

.....
(signature of authorised person)

(1) Name of authorised officer

(2) Date of cat's disposal

(3) Time of cat's disposal

Third Schedule

Form 4

City of Joondalup

CATS LOCAL LAW 2008

NOTICE OF THE SEIZURE AND IMPOUNDMENT OF A CAT

Place found:.....

Date and time:.....

To (1).....

PLEASE TAKE NOTICE that a cat, of which you are the owner, has been seized and impounded pursuant to the powers conferred by the *Local Government Act 1995*, and is now at.....

If not claimed within 7 days from the date of the service of this notice, the cat will be disposed of pursuant to the *Cats Local Law 2008*. All fees and charges relating to offences committed and associated detainment costs will require full payment before the release of the cat is approved.

The registered number of the cat is

.....
(signature of authorised person)

(1) Insert name and address of owner.

Third Schedule

Form 5

City of Joondalup

CATS LOCAL LAW 2008

INFRINGEMENT NOTICE

No.

Date/...../.....

To (1)

It is alleged that at (2)

on the day of 20.....

you committed an offence in that you (3)

.....
(to be signed by an authorised person).

You may dispose of this matter—

(a) by payment of a modified penalty of (4) \$..... within 28 days of the date of this Notice to (5)

(b) by having it dealt with by a court.

If this modified penalty is not paid within the time specified, court proceedings may be taken against you.

(1) Insert name and address of alleged offender.

(2) Insert place of alleged offence.

(3) Insert short particulars of the offence alleged.

(4) Insert amount of modified penalty prescribed.

(5) Insert address of the office where payment may be made.

Third Schedule

Form 6

City of Joondalup

CATS LOCAL LAW 2008

WITHDRAWAL OF INFRINGEMENT NOTICE

No.

Date/...../.....

To (1).....

Infringement Notice No. dated/...../.....

for the alleged offence of (2)

..... is hereby withdrawn.

The modified penalty of \$.....

- has been paid and a refund is enclosed
- has not been paid and should not be paid

† No further action will be taken.

† It is proposed to institute court proceedings for the alleged offence.

.....
(to be signed by an authorised person).

(1) Insert name and address of alleged offender.

(2) Insert short particulars of offence alleged.

(3) Insert amount of modified penalty prescribed.

• Delete whichever does not apply

† Delete whichever does not apply

Fourth Schedule
City of Joondalup
CATS LOCAL LAW 2008
OFFENCES AND MODIFIED PENALTIES

Part 2—Cats

Item No	Clause No	Nature of Offence	Modified Penalty \$
1	6(2)	Failure to register cat	50
2	16	Failure to give notice of new owner	20
3	19(c)	Allowing cat to wear incorrect registration tag	50
4	19(d)	Wrongfully removing or defacing cat registration tag or producing counterfeit cat registration tag	50
5	20(1)(a)	Cat in a prohibited area under Second Schedule	100
6	20(1)(b)	Cat on private premises following complaint	50

Fifth Schedule
City of Joondalup
CATS LOCAL LAW 2008
REGISTRATION TAGS

1. Commencing in the year 2008, the following registration tag colours are to be utilised on a three-yearly rotational basis.

One Year Registrations

Year Number	Tag Colour
1*	Red
2	Blue
3	Yellow

Three Year Registrations

Year Number	Tag Colour
1*-3	Purple
4-6	Green
7-9	Orange

*Year 1 commences in the Year 2008.

APPENDIX 2
COMMITTEE'S LETTER TO THE CITY OF JOONDALUP
DATED 26 MAY 2009

APPENDIX 2

COMMITTEE'S LETTER TO THE CITY OF JOONDALUP DATED 26 MAY 2009



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your ref: 29182
Our ref: 3809/03
Mr Troy Pickard
Mayor
City of Joondalup
PO Box 21
Joondalup
WA 6919

Attn: Ms Sheree Edmonson

By Facsimile: 93001383

26 May 2009

Dear Mr Pickard

City of Joondalup Cats Local Law 2008

The Joint Standing Committee on Delegated Legislation considered the *City of Joondalup Cats Local Law 2008* (Local Law) at its meeting on 18 May 2009. The Committee resolved to write to you seeking further information as set out below.

Clause 7

Under its Term of Reference 3.6(a) the Committee is required to consider whether the Local Law is authorised or contemplated under the Act.

The Committee requires advice as to which section of the *Local Government Act 1995* (the Act) or other statute the City is relying on to authorise clause 7.

If section 3.5 is relied on, please identify the function to which clause 7 relates and advise why clause 7 is considered necessary and convenient for the performance of that function.

Clause 20(1)

In relation to clause 20(1)(a) please:

- confirm that all designated areas referred to in clause 20(1)(a) and listed in the Second Schedule are City of Joondalup local government property (as defined in section 1.4 of the Act); and
- advise how cat owners will be made aware that an area is a designated area.

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PARLIAMENT HOUSE PERTH WESTERN AUSTRALIA 6000
TELEPHONE: +61 8 9222 7222 FACSIMILE: HOUSE +61 8 9222 7809 COMMITTEES +61 8 9222 7805
EMAIL (GENERAL OFFICE): council@parliament.wa.gov.au

In relation to clause 20(1)(b), is the cat owner notified of the complaint made to the City? If yes, how is that notification made?

Clause 27

Clause 27 does not set out a minimum period within which a cat must be reclaimed leaving that time period to be inserted into the notice. Presumably a period less than 7 days could be stipulated in the notice. Please advise why a minimum period has not been provided in this case?

General Drafting

The Committee draws to your attention that Clause 35 provides for proceedings against offenders to be commenced in the Court of Petty Sessions. The former Courts of Petty Sessions were amalgamated into the Magistrates Court of Western Australia in 2005. The reference in clause 35 should be amended to read the Magistrates Court of Western Australia.

The Committee further notes that references to schedules are not consistent throughout the Local Law. In some instances the schedules are identified by number, which is preferable, in other instances there is no indication as to which schedule or form is being referred to. Forms 3, 5 and 6 do not appear to be linked to any of the clauses in the Local Law.

In view of the questions set out above, the Committee resolved to give notice of motion in the Legislative Council to disallow the *City of Stirling Cats Local Law 2008*. Notice will be given on 4 June 2009. The reason for giving notice of motion is to protect the Parliament's right to disallow the instrument should the Committee recommend disallowance and to provide the Committee with additional time to examine the further information sought in this letter.

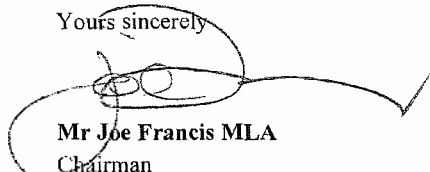
The giving of the notice should **not** be taken as indicating that the Committee has resolved to recommend disallowance at this stage.

Notwithstanding the privileged status of this letter, the Committee has no objection to the Shire discussing its contents with the Department of Local Government and Regional Development, WALGA, and/or its legal advisers.

Your written response is required by **5pm Thursday, 10 June 2009**.

Queries can be directed to Ms Christine Kain (Advisory Officer Legal) on ph 92227872.

Yours sincerely



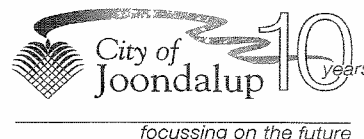
Mr Joe Francis MLA
Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

APPENDIX 3
LETTER FROM THE CITY OF JOONDALUP TO THE
COMMITTEE DATED 28 MAY 2009

APPENDIX 3

LETTER FROM THE CITY OF JOONDALUP TO THE COMMITTEE DATED 28 MAY 2009



Date: 28 May 2009
Your Ref: 3809/03
Enquiries: Sheree Edmondson
Our Ref: 29182
9400 4219
Our Ref: 924197

Mr J Francis MLA
Chairman
Delegated Legislation Committee
Parliament House
4 Harvest Terrace
WEST PERTH, WA, 6005

Dear Mr Francis

CITY OF JOONDALUP CATS LOCAL LAW 2008

Thank you for your letter dated 26 May 2009 regarding the Delegated Legislation Committee's consideration of the City's *Cats Local Law 2008*.

The following is provided in response to your request for further information:

1. *Which function within the Local Government Act 1995 does clause 7 relate to and why is the clause considered necessary and convenient to perform that function?*

Clause 7 (requirement for the compulsory sterilisation of cats), relies on the general powers provision in section 3.1 of the *Local Government Act 1995*.

As a local government entity, the City is responsible for the control and management of public property, including a large number of reserves that are either owned, vested in, or under a management order issued to the City by the State. In any such case, the City has the capacity to manage its land in the best interests of the public within its district.

Empirical evidence indicates that unsterilised cats that wander are often responsible for unwanted litters of kittens which are frequently destroyed or dumped.¹ Unsterilised kittens that are abandoned in City reserves mature into adult feral cats and pose significant risks to the environment from both a predation and nuisance perspective.²

¹ Centonze, L.A., Levy, J.K., 2002. *Characteristics of Free-Roaming Cats and Their Caretakers*. Journal of the American Veterinary Medicine Association, University of Florida, 220 (11).

² Dickson, C.R. 1996, *Overview of the Impacts of Feral Cats on Australian Native Fauna*, Australian Nature Conservation Agency, Canberra.

Requiring the compulsory sterilisation of cats enables the City to more effectively manage and control its land in the best interests of the public by ensuring that native fauna is protected and incidences of feral cat nuisance are reduced.

2. *Are all of the designated areas referred to and listed in the Second Schedule City of Joondalup local government property (as defined in section 1.4 in the Local Government Act 1995)?*

All of the designated areas referred to and listed in the Second Schedule are City of Joondalup local property, except for Pinnaroo Valley Memorial Park which is listed in Schedule 5 of the City's District Planning Scheme No.2.

As such, the City proposes that clause 1 in the Second Schedule be amended to read as follows:

"1. Any area listed under Schedule 5 of the City's District Planning Scheme No.2, excluding Pinnaroo Valley Memorial Park, Reserve 25746."

3. *Please advise how cat owners will be made aware that an area is a designated area?*

The City will place information on its website and provide documents to cat owners upon registering their cat. Signage will also be erected at affected locations, indicating that cats are prohibited in the area.

4. *In relation to clause 20(1)(b), is the cat owner notified of the complaint made to the City? If yes, how is that notification made?*

Owners will be notified if and when their cat is trapped and identified on the complainant's premises. The method of notification will depend on the preferred contact details provided by the owner on the registration record and may include home/work/mobile phone numbers and email addresses. A combination of notification methods will be utilised if the owner is not contactable by their preferred method.

5. *Why does clause 27 not set out a minimum period within which a cat must be reclaimed?*

The City agrees that a minimum period of 7 days should be included in this clause and should therefore be amended accordingly.

6. *Clause 35 should be amended to read the "Magistrates Court of Western Australia".*

The City agrees to make the necessary amendment.

7. *Why are Forms 3, 5 and 6 in the Third Schedule not linked to any of the clauses in the Local Law?*

- 3 -

The City agrees that links should be provided and suggests that this be achieved by placing a reference to the relevant clause in brackets at the top right-hand side of each form. (This is a similar approach utilised in the *Dog Act 1979*).

The relevant clauses that should be indicated are as follows:

Form 3: Clause 29 – “Register of impounded cats”
Form 5: Clause 36 – “Records to be kept”
Form 6: Clause 36 – “Records to be kept”

The City would like to highlight that in paragraph 5 on page 2 of your correspondence, a reference is made to “giv[ing] notice of motion in the Legislative Council to disallow the *City of Stirling Cats Local Law 2008*.” It is assumed that this reference has been made in error and should read as the “*City of Joondalup Cats Local Law 2008*.”

In addition, it is the City’s position that the suggested amendments are not “significantly different from what [was] first proposed” (section 3.13) and should therefore not be subject to the recommencement requirements under the *Local Government Act 1995*. The City believes the amendments are not altering the intent or function of the Local Law and, from the public’s point of view, are of such a minor nature they are likely go unnoticed. It would also be incredibly onerous on the City to have to recommence the process for making a Local Law based on the minor nature of the suggested amendments.

Should the Committee agree with the City’s position, advice is requested as to the process required to incorporate the amendments into the Local Law without recommencing the procedure under section 3.12 of the *Local Government Act 1995*.

The City requests that correspondence from the Committee in the future be addressed to the City’s CEO, rather than its Mayor, as matters involving the Committee are considered to be of an administrative nature.

Again, I thank you for your consideration of this matter. Should you need to provide the City with any additional requests or directions, please contact Senior Policy Research Officer, Ms Sheree Edmondson, on 9400 4219 or by email at sheree.edmondson@joondalup.wa.gov.au.

Yours sincerely



GARRY HUNT
Chief Executive Officer

APPENDIX 4
COMMITTEE'S LETTER TO THE CITY OF JOONDALUP
DATED 16 JULY 2009

APPENDIX 4

COMMITTEE'S LETTER TO THE CITY OF JOONDALUP DATED 16 JULY 2009



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your ref:29182
Our ref:3809/3

Mr Troy Pickard
Mayor
City of Joondalup
PO Box 21
Joondalup
WA 6919

Attn: Ms Sheree Edmonson

By Facsimile: 93001383

16 July 2009

Dear Mr Pickard

City of Joondalup Cats Local Law 2008

The Committee considered the City of Joondalup's letter dated 26 May 2009 at its meeting on 22 June 2009 and resolved to write to you regarding the issues set out below.

Clause 7

The City of Joondalup (the City) has advised the Committee that it relies on the general powers provision in section 3.1 of the Local Government Act 1995 (the Act) to authorise clause 7 of the *City of Joondalup Cats Local Law 2008* (Local Law). The City pointed to its obligations to manage its land in the best interests of the public and advised that:

Requiring the compulsory sterilisation of cats enables the City to more effectively manage and control its land in the best interests of the public by ensuring that native fauna is protected and incidences of feral cat nuisance are reduced.

Section 3.1 of the Act is as follows

3.1. General function

(1) The general function of a local government is to provide for the good government of persons in its district.

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(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

Under its Term of Reference 3.6(a) the Committee is required to inquire as to whether the Local Law is authorised or contemplated by the Act. In regard to clause 7 the question for the Committee is whether a local law requiring compulsory sterilisation of cats falls within the scope of the general function found in section 3.1. The policy issue of whether compulsory sterilisation of cats is desirable is not a matter for the Committee's consideration.

The leading Australian authority on the scope of the general function found in section 3.1 is the decision of the High Court in *Lynch v Brisbane City Council*¹ (1960) where Dixon J, with whom the other members of the court agreed, said

*a power to make by-laws for the good rule and government of a municipality is capable of a diversity of applications and is an effective power of control by ordinance*²

and further in relation to a power to make ordinances for ... 'good government of the city and the well being of its inhabitants said of those words that:

*They give a power to lay down matters in respect of municipal concern, matters that have been reasonably understood to be within the province of municipal government because they affect the welfare and good government of the city and its inhabitants. The words are not to be applied without caution nor read as if they were designed to confide to the city [of Brisbane] more than matters of local government. They express no exact limit of power but, directed as they are to the welfare and good government of a city and its inhabitants, they are not to be read as going beyond the accepted notions of local government.*³

Applying the High Court's decision in *Lynch* the Committee has examined clause 7 in the context of accepted notion of local government. The Committee noted that:

- A search of the state law publisher reveals only one piece of legislation dealing with the issue of compulsory sterilisation of a domestic pet being the *Dog Act 1979* which permits regulations to be made regarding compulsory sterilisation of certain dangerous dogs.

¹ (1960) 104 CLR 353

² Ibid, paragraph 5.

³ Ibid, paragraph 6.

- Control of dogs has been viewed by the community and Parliament as a matter that should be the subject of an Act
- At the time of gazettal of the Local Law no other local government had imposed laws requiring sterilising cats.
- Making local laws in relation to local government property is an accepted notion of local government, however compulsory sterilisation of cats in the City is arguably incorrectly categorised by the City as a local law relating to local government land. The requirement to sterilise a cat as a prerequisite to registration takes effect beyond management and control of local government property.

For the reasons set out above the Committee concluded that while preservation of native fauna on local government property may fall within accepted notions of local government, laws requiring sterilisation of pets, the nature of which previously only been introduced in a limited fashion within an Act, would not be considered as falling within the existing notions of local government. The Committee has concluded, in relation to its Term of Reference 3.6(a), that clause 7 is not authorised by the Act

The subject matter of clause 7 involves a weighing of the significant competing interests including wildlife conservation and the rights of cat owners to be free of sanctions relating to the sterilisation of their pet. Given the nature of the issue and the need to weigh competing public interests the Committee has further concluded in relation to its Term of Reference 3.6(f) that the subject matter of clause 7 would be more appropriately dealt with in an Act.

1. The Committee seeks an undertaking that clause 7 will be deleted.

Clause 9

The Committee notes that clause 9 does not provide for individuals to apply to the City to have their details omitted from the register for their own protection or that of their family. This omission may have an adverse effect on an individual's safety.

2. The Committee seeks an undertaking that clause 9 will be amended to include provision for a cat owner to apply to have their details omitted from the register for their own protection or that of their family.

Clause 18

Clause 8 requires cat owners to ensure their registered cats can be identified by one of three methods, a collar, a tag attached to a collar or an implanted microchip.

Clause 18, however, requires a registration tag to be worn by registered cats.

It is noted that owners of cats may opt for a microchip as a means of identification on the basis that a collar or tag may cause harm to a cat. The Committee notes public submissions were made to the Council on this point. The City has provided cat owners with the option of microchip identification in

clause 8 but has then, in clause 18, created a requirement for the wearing of a collar in order to attach a registration tag to it.

The requirement to wear a registration tag effectively removes the cat owner's option to use a microchip as a means of identification resulting in inconsistency within the Local Law. The Committee notes that registration details could also be obtained from a microchip or collar.

- 3. The Committee seeks an undertaking that clause 18 be amended to remove the requirement for a registration tag to be worn where a cat has a microchip implant or wears a collar containing the registration details.**

Clause 20

The Committee has a number of concerns regarding this clause which creates offences with potential of \$500.00 and \$1000.00.

In relation to clause 20(1)(a) the Committee notes clause 1 of the Second Schedule refers to Schedule 5 of the City's District Planning Scheme No 2 (Schedule 5). The City has proposed an amendment to clause 1 in relation to Pinnaroo Valley Memorial Park.

The Committee considers that the use of the reference to Schedule 5 is problematic. The basis for its concern is that amendments to Schedule 5 will effectively amend the *City of Joondalup Cats Local Law 2008* (Local Law) but the amendment will not comply with the requirements of section 3.12 of the Local Government Act.

- 4. The Committee seeks an undertaking that**

- i) Clause 1 in Schedule 2 will be amended to delete:**

'Any area listed under Schedule 5 of the City's District Planning Scheme No 2'

- ii) All Designated Prohibited Cat Areas will be listed in the *City of Joondalup Cats Local Law 2008***

- iii) Pinnaroo Valley Memorial Park, Reserve 25746 will not be included as Designated Prohibited Cat Areas.**

In relation to clause 20(1)(b) the Committee notes that the explanatory memorandum indicates that the City wishes to provide a mechanism to respond to resident's complaints about nuisance cats. The clause as it stands does not make mention of nuisance or define a nuisance cat.

The Committee notes that the clause 20(1)(b) could potentially have an adverse effect on cat owners beyond that contemplated by the Act. There is no requirement for a complaint to be in writing, the local law does not set out any requirements for notification of the owner and the section creates an offence based on the transitory behaviour of cats.

The Committee seeks an undertaking that clause 20(1)(b) be deleted and the Local Law be amended to include the following:

- **a definition of nuisance in relation to cats which does not include the transient presence of a cat during daylight hours**
- **a requirement that a complaint regarding nuisance must be in writing**
- **a requirement that, prior to the issuing of a notice, an authorised officer must be satisfied that a nuisance has occurred**
- **the requirement for the trapping and identification of the cat on the complainant's premises be set out in the local law**
- **a process for the serving of written notice on an owner.**

The Committee wishes to raise with the City the quantum of the maximum penalties imposed under clause 20 of \$500 and \$1000 which seem to the Committee to be excessive. Please advise the Committee of the City's justification for the imposition of penalties at this rate.

Clause 25

Clause 25 refers to a registration tag but fails to include a collar or microchip as a means of identification. The Committee notes there is a reference in that clause to where *the owner is otherwise readily identifiable* but it is not clear that this would include a collar or microchip.

Clause 8 includes collars and microchips as one of three means by which a cat owner may elect to identify their cat. Clause 25 as it stands results in inconsistency within the Local Law.

- 5. The Committee seeks an undertaking that clause 25 will be amended to include a collar and a microchip as means of identification of an impounded cat.**

Clause 27

Clause 27 was raised in the Committee's letter to the City dated 26 May 2009. The City has agreed in its response that a minimum period of 7 days should be included in the clause and should therefore be amended accordingly.

- 6. The Committee seeks an undertaking that clause 27 will be amended to include a period of 7 days within which the cat must be reclaimed.**

Clause 33

Clause 33(3) imposes a maximum penalty of \$1000 for offences under the Local Law, however, clause 20(b) imposes a maximum penalty of \$500.

7. The Committee seeks an undertaking that clause 33(3) be amended to read

(3) Any person who commits an offence under this local law, for which a penalty is not otherwise specified, shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.

Drafting issues

The City agreed that reference to the Court of Petty Sessions should be amended to the Magistrates Court of Western Australia and that forms 3, 5 and 6 should be linked to the local law.

8. The Committee seeks an undertaking that the Local Law will be amended to delete the reference to the Court of Petty Sessions and insert in its place Magistrates Court of Western Australia and that references to forms 3, 5 and 6 will be made in accordance with the City's proposals in its letter dated 28 May 2009.

9. The Committee requires an undertaking that all consequential amendments arising from undertakings 1-8 will be made.

10. The Committee requires a further undertaking that:

- i) the required undertakings will be completed within 2 years of the date of this letter; and**
- ii) the City of Joondalup will not seek to enforce provisions in a manner inconsistent with the undertakings provided.**

Please provide the Committee with a copy of the Council's resolution in relation to the undertakings requested.

The Committee confirms that the City is correct in its assumption that the Committee had resolved to give notice of motion in the Legislative Council to disallow the *City of Joondalup Cats Local Law 2008*. That notice was given on 24 June 2004.

The Committee notes the City's inquiry regarding amendment of the Local Law. The Committee considers that the only method for amendment of a Local Law following gazettal is found in section 3.12 of the Act.

With regard to correspondence the Committee has a standing resolution that all correspondence with local governments is to be addressed to the Mayor.

Notwithstanding the privileged status of this letter, the Committee has no objection to the Shire discussing its contents with the Department of Local Government and Regional Development, WALGA, and/or its legal advisers.

Your written response is required by **5pm on Thursday, 30 July 2009**.

Queries can be directed to Ms Christine Kain (Advisory Officer Legal) on ph 9222 7872 or facsimile 9222 7805

Yours sincerely



Mr Joe Francis MLA
Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

APPENDIX 5
LETTER FROM THE CITY OF JOONDALUP TO THE
COMMITTEE DATED 4 AUGUST 2009

of support from within the local community to adopt a local law. It is therefore deemed, from the City's perspective, more appropriate that the issue of compulsory cat sterilisation be dealt with on a municipality basis, where local governments with similar concerns are able to model their own local laws on the City of Joondalup's approach.

If the Committee disagrees with the City's position above, it should be noted that it may seem unreasonable, and perhaps disadvantageous, to disallow a local law that is so close to its operational date and reflects the main purpose of a State Bill that is currently in its drafting phase.

Allowing the City to operationalise its law and review its success after a 2-year period, (as resolved by Council at the time of adoption)¹, would give the State Government a practical pilot study from which to assess the City's experiences. This could inform the basis from which an Act is drafted and applied across the State.

Or alternatively, the Committee may wish to advise the City as to how it may amend clause 7 to better align with the proposed intent of the State legislation. Options such as introducing the compulsory sterilisation requirement on a 'phase-in' basis, applying the clause to only new kittens from the age of 3 months, may provide a more appropriate alternative from which to review the City's law.

Should the Committee consider the option to amend clause 7 as having merit, it is requested that additional information be provided to discuss how the clause may be changed to better suit the Committee's purposes.

2. Amend clause 18: registration tags should not have to be worn if a cat is microchipped.

From an administrative perspective, the City strongly opposes the Committee's recommendation to amend this clause. The purpose of requiring all registered cats to wear a registration tag is to enable City Officers to identify, by sight, cats that are registered and those that are not. This is no different from the requirements under the *Dog Act 1979*.

Should registered and microchipped cats not be required to wear registration tags, all non-collared and non-tagged cats will need to be trapped and identified to determine if they are registered. This is a significantly onerous task and can be easily overcome through the use of visual aids, such as coloured registration tags.

3. Deletion of clause 20(1)(b) and amendment of local law to: define nuisance behaviour, require that a complaint for nuisance cats be provided in writing, that an authorised Officer be satisfied that a nuisance has occurred, that the process for trapping and identifying a nuisance cat be set out in the law and

¹ Resolution obtainable from the Minutes of the Meeting of Council 17 February 2009 at: <http://www.joondalup.wa.gov.au/Govern/CouncilMeetings/MinutesAndAgendas.aspx>

- 3 -

that a process for serving written notice on an owner also be included in the law.

The City opposes the Committee's recommendation to include a definition of nuisance behaviour in the local law, as the evidence required to prove that a nuisance has occurred, and that a specific cat was the cause of the particular nuisance, is difficult to obtain from both the City's and complainants' perspective.

However, creating an offence that is based on a cat's unwanted presence on private property means that if a complaint is received, the City can log the complaint as an action request (overcoming the need for residents to provide their complaint in writing), issue a cat trap to the owner, and if trapped on the private premises and identified, City Officers will have sufficient evidence to prove that an offence by a cat owner has occurred.

To create a narrow definition of nuisance, such as, 'spraying on private property', 'noise-related nuisances' and 'activity resulting in damaged property' would be significantly difficult to implement from an evidentiary perspective. (The current review of the *Health Act 1911* demonstrates how problematic nuisance provisions can be, as the nuisance-related clauses contained within that Act are currently being considered for removal). The City believes that its approach to cat control, as prescribed in clause 20(1)(b) of its local law, is a far more practical way of alleviating resident concerns regarding nuisance cats.

It should also be noted that the City's clause is not dissimilar to a clause contained within the City of Swan's *Consolidated Local Laws 2005 Amendments*, as the excerpt below outlines:

"12.20 Control of cats

- (1) *A cat shall not be in a place that is not a public place unless consent to its being there has been given—*
 - (a) *by the occupier or a person apparently authorised to consent on behalf of the occupier; or*
 - (b) *if the place is unoccupied, by the owner or a person apparently authorised to consent on behalf of the owner.*
- (2) *If a cat is at any time in a place in contravention of subsection (1) of this section, the keeper of the cat commits an offence and the cat may be impounded pursuant to section 3.37 of the Act and regulation 29(1a) of the Local Government (Functions and General) Regulations 1996."*

As with the City of Joondalup's local law, the City of Swan does not set out the requirement for trapping and identifying the cat on the complainant's premises, despite undertaking this process when implementing the clause. It would seem inequitable to allow the City of Swan's clause to prevail, while setting greater requirements for the City of Joondalup and its local law.

In addition, the City's perspective is that the law is better understood and more effectively operationalised if it is drafted in a manner which applies generalized or "fuzzy" drafting styles rather than a more prescriptive or "fussy" style.² This builds in a level of flexibility for the City to adapt its implementation approach should concerns from residents be raised. The philosophical nature of this argument is acknowledged, however, given the prolific use of new communication devices such as the internet and public websites, it would seem appropriate to apply a 'fuzzy' interpretation of the law, as residents are able to easily obtain and seek out information in relation to the law's implementation processes, without having to interpret highly technical and prescriptive legislation. Facts and information provided on the City's website should be viewed as sufficient to support offences contained within the law, as residents are more likely to seek information from this source, rather than the law itself. The City believes that a general approach to drafting subsidiary legislation should receive greater support from Parliament based on these reasons.

In terms of the other recommendations for minor amendments raised by the Committee, the City maintains its position previously provided to the Committee on 28 May 2009, that these amendments be supported. However, it is requested that if the Committee accepts the City's justifications for retention of clauses 7, 18 and 20(1)(b), as outlined in this letter, that the City is able to operationalise its law on 1 October 2009, subject to a written undertaking to implement the following clauses in a manner that is not inconsistent with the undertakings provided and commit to amending the clauses as soon as possible:

- *Clause 9 is amended to include provision for a cat owner to apply to have their details omitted from the register for their own protection or that of their family.*
- *Clause 1 in Schedule 2 is amended to delete the words 'Any area listed under Schedule 5 of the District Planning Scheme No.2' and list the designated prohibited cat areas within the local law and remove Pinnaroo Valley Memorial Park from the list of prohibited cat areas.*
- *Clause 25 is amended to include a collar and microchip as a means of identifying an impounded cat.*
- *Clause 27 is amended to include a period of 7 days within which a cat must be reclaimed.*
- *Clause 33(3) be amended to read, '(3) Any person who commits an offence under this local law, for which a penalty is not otherwise specified, shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.*

² Campbell, L. 1996, "Legal Drafting Styles: Fuzzy or Fussy?", *Murdoch University Electronic Journal of Law*, Vol. 3, No. 2. <http://www.murdoch.edu.au/elaw/issues/v3n2/campbell.html>

- 5 -

- *References to the "Court of Petty Sessions" be removed and replaced with the words "Magistrates Court of Western Australia" and that references to forms 3, 5 and 6 be made in accordance with the City's proposals in its letter dated 28 May 2009.*

I thank you for the opportunity to respond to the Committee's recommendations and look forward to receiving confirmation of the Committee's decision soon.

Please direct any queries to the City's Senior Policy Research Officer on 9400 4219 or sheree.edmondson@joondalup.wa.gov.au.

Yours sincerely,



GARRY HUNT
Chief Executive Officer

APPENDIX 6
COMMITTEE'S LETTER TO THE CITY OF JOONDALUP
DATED 10 AUGUST 2009

APPENDIX 6

COMMITTEE'S LETTER TO THE CITY OF JOONDALUP DATED 10 AUGUST 2009



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your ref: 29182
Our ref:3809/3

Mr Troy Pickard
Mayor
City of Joondalup
PO Box 21
Joondalup WA 6919
Attn: Ms Sheree Edmonson

By Facsimile: 93001383

10 August 2009

Dear Mr Pickard

City of Joondalup Cats Local Law 2008

The Committee considered the City's letter dated 4 August 2009 at its meeting today.

Clause 7

The Committee notes that the City's response did not address the Committee's view, set out on pages 1-3 of its letter dated 16 July 2009, that clause 7 of the *City of Joondalup Cats Local Law 2008* was not authorised by the *Local Government Act 1995* (the Act). As advised, the Committee reached this view on the basis that the compulsory sterilisation of cats was not does not fall within the "accepted notions" of local government.¹ The Committee seeks your response to its views on authorisation. Please provide full details of any statutes or case law referred to.

Clause 18

In relation clause 18 and the Committee's concern that a registration tag may cause harm to a cat, please advise the Committee as to whether the City:

- consulted any animal welfare organisations on this issue and, if so, please provide their responses; and

¹ See the Committee's discussion of the High Court decision in *Lynch v Brisbane City Council*¹ (1960) in its letter dated 16 July 2009.

- has considered whether clause 18 is inconsistent with the *Animal Welfare Act 2002*.

Clause 20(1)(b)

The Committee notes the City's comments on drafting styles however, in its current form, clause 20(1)(b) produces an unreasonable outcome that in the Committee's view is not authorised or contemplated by the Act. Currently an unsubstantiated complaint can be made to the City who will log that call as an initial complaint for the purposes of an offence under clause 20(1)(b). There is no requirement to give notice to the owner of the cat of the complaint.

Section 9.16 of the Act provides that local governments should only prescribe infringement notices when straight forward matters of fact and law are involved. An offence based on an unsubstantiated complaint via a phone call does not appear to the Committee to be a straight forward issue of fact and law.

The City drew attention to similar offence clauses in the City of Swan's local laws. On that point the Committee advises that it has, in the past, identified systemic issues in other local laws which it considered required amendment.

The Committee seeks an undertaking that the clause be amended to provide for

- **positive identification of the cat by an authorized person as a basis for an initial complaint;**
- **written notice of the complaint to be provided to the owner of the cat; and**
- **positive identification by an authorized person on the second incident of unwanted cat presence.**

The Committee seeks a response from the Committee to its comments on page 5 of its previous letter in relation to the quantum of the maximum penalties imposed by the Local Law.

On a further issue, please advise the Committee what action the City will take when a cat is seized for contravention of the local law and is found to have an owner who resides outside the City of Joondalup.

Please note that the motion for disallowance of the *City of Joondalup Cats Local Law 2008* remains in place.

Your written response is required by **5pm on Friday 14 August**.

Queries can be directed to Ms Christine Kain (Advisory Officer Legal) on ph 9222 7872 or facsimile 9222 7805

Notwithstanding the privileged status of this letter, the Committee has no objection to the Shire discussing its contents with the Department of Local Government and Regional Development, WALGA, and/or its legal advisers.

Yours sincerely

Hon Robin Chapple MLC
Deputy Chairman



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APPENDIX 7
LETTER FROM THE CITY OF JOONDALUP TO THE
COMMITTEE DATED 13 AUGUST 2009

- In terms of the Committee's view that the sterilisation of cats is incorrectly categorised as relating to local government property, the City disagrees with this position based on the reasons outlined above.
 - The City also believes that basing the concept of "accepted notions of local government" on the existence of current local laws reduces the capacity for precedents to be set on a particular matter. In light of the strong support received from the local community regarding this matter, (84.2% of submissions received), the City believes that a significant impetus is present to create a local law requiring the compulsory sterilisation of cats. It is also believed that the significant community support satisfies the condition for making local laws for the purposes of "good government" as required by s. 3.1(1) of the *Local Government Act 1995*.
 - In addition, the City acknowledges the need to "weigh [up]...the significant competing interests"² of introducing a compulsory cat sterilisation requirement, however, it disagrees with the Committee's position that "the rights of cat owners to be free of sanctions relating to the sterilisation of their pet"³ outweighs the need to protect wildlife and decrease incidences of kitten abandonment. Attached is a brochure produced by the *Cat Welfare Society Inc. ("Cat Haven")* which illustrates the current extent of the issue within the Perth Metropolitan Area. It is the City's view that given the current facts surrounding euthanasia numbers and the support of the RSPCA to sterilise cats as part of being a responsible cat owner, that the obligation for owners to sterilise their cat(s) under the City's local law is far outweighed by the greater need to reduce preventable cat euthanasia numbers and levels of wildlife predation.
2. *Has the City consulted animal welfare organisations regarding the harm that registration tags may have on cats?*

When undertaking its public consultation process, the City sent direct correspondence to the following groups, seeking their opinion on the City's *Cats Local Law 2008* and received the following responses:

Veterinary Clinics/Hospitals/Surgeries (Local)	Response
Belridge Veterinary Centre	
Caryn Veterinary Clinic	
Connolly Vet Hospital	Supported all elements of the law
Duncraig Veterinary Hospital	
Kingsley Veterinary Hospital	
Kinross Veterinary Hospital	
Lakeside Veterinary Centre & Hospital	
Ocean Reef Veterinary Clinic	

² Refer to the Committee's previous correspondence to the City, dated 16 July 2009, p. 3.

³ Ibid.

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Padbury Vet Clinic	Did not support the law
Vetwest Animal Hospitals (Beaumaris - Ocean Reef)	
Vetwest Animal Hospitals (Carine - Duncraig)	
Vetwest Animal Hospitals (Whitfords - Hillarys)	Supported all elements of the law
Warwick Veterinary Hospital	Did not support the law
Woodvale Park Veterinary Hospital	Supported all elements of the law
Pet Stores (Local)	Response
Aqua Paws	
City Farmers (Joondalup)	
Joondalup Pets & Aquariums	
Pet City (Joondalup)	
Pet Stop Whitford City	
Pets Paradise (Joondalup)	
Pets Paradise (Warwick)	
Woodvale Pet Centre	
Cat Associations/Councils/Registering Bodies	Response
Animal Protection Society of WA Inc	
Attadale Veterinary Clinic	Supported all elements of the law
Australian Cat Federation Inc	
Cat Owners' Association of WA Inc	Only supported compulsory identification and sterilisation requirements – not registration
Cat Sterilisation Society (WA) Inc	Did not support the law - the organisation does not believe that sterilisation should be compulsory
Cat Welfare Society Inc (Cat Haven)	Supported all elements of the law
Co-ordinating Cat Council of Australia Inc	
Feline Control Council of WA Inc	
Friends of Companion Animals (FOCUS)	
RSPCA WA	Supported all elements of the law, in particular, the compulsory requirement to wear a registration tag and collar. Though noted that the registration tag should be designed in a way that will reduce its capacity for getting caught in things.
SAFE (Perth)	
Catteries (Local)	Response
Bowbilla Kennels	
Northern Districts Cattery	Supported all elements of the law
Cat Clubs	Response
Burmese and Other Breeds Cat Club Inc	
Burmese Cat Club of WA Inc	
Chinchilla and Shaded Cat Fanciers of WA Inc	

Feline All Breeds Society Inc	
Oriental Shorthair Cat Club	
Rex, Abyssinian & Russian Enthusiasts Cat Club	
Siamese Cat Club of WA	
Southern and Siamese Cat Club Inc	
WA Cat Club Inc	
WA Shorthair Cat Club	
West Coast Cat Club	
West Coast Companion Cat Club Inc	

3. *Has the City considered whether the compulsory requirement to wear a registration tag is inconsistent with the Animal Welfare Act 2002?*

The City does not believe that the requirement to wear a registration tag is inconsistent with the *Animal Welfare Act 2002*, given that it is not captured by the definition and circumstances under which acts of “cruelty” are described within the Act and supporting Regulations.

4. *Clause 20(1)(b)*

The City acknowledges the Committee’s views regarding this clause, however, it maintains its position that in a practical sense, the clause is “a straight forward matter of fact and law”⁴.

As part of its implementation process, the City has committed to informing residents of a cautionary method that will be applied when responding to initial complaints. This will be distributed to all residents as a FAQ brochure, outlining what to expect as part of the law’s implementation. If a complaint is received, the cat will be trapped, identified and returned to the owner with a caution and information on strategies for reducing the likelihood of future offences occurring. This supports the City’s approach to flexibility within the law to assist in delivering more amenable implementation methods.

Regarding the Committee’s concerns around positive identification and notice to the cat owner, the following response is offered. Clause 20(1)(b) is supported by clauses 22 and 23, which relate to the seizure and impoundment of cats found in contravention of clause 20(1). The clauses refer to an authorised person’s ability to seize a cat and either return it to its owner or impound it. This would mean that in order for the City to act on a complaint, a positive identification of the cat by an authorised officer would have to take place. This could only practically occur by trapping the cat on the private premises and identifying its owner(s) via a registration tag/microchip/identification tag.

In addition, notice of a complaint to the owner of the cat is required under clause 25 if impounded and will occur as a matter of fact if the cat is returned directly to its owner.

⁴ Refer to the Committee’s previous correspondence to the City, dated 10 August 2009, p. 2.

- 5 -

The City would also like to highlight that if the offence were ever prosecuted in a court of law, in order to avoid possible invalidation of the clause, the City would need to ensure that fair and practical notification methods and sufficient evidence were undertaken and provided. The City's proposed implementation processes acknowledge this, as it would not be in the City's interests to enforce the clause contrary to these requirements.

In light of the above, the City's current position is that clause 20(1)(b) remain in its current format and be supported by easily obtainable information on the law's implementation process.

5. *Justification for the maximum penalties imposed under clause 20.*

It is the City's view that the maximum penalties imposed under this clause are not excessive, given that they will only apply if prosecuted in a court of law.

The modified penalties for clauses 20(1)(a) and 20(1)(b) are \$100 and \$50 and are in fact considerably less than the modified penalties currently prescribed in the City of Stirling's *Keeping and Control and Cats Local Law 1999*, which are between \$250 and \$500. Also, the City of Swan's *Consolidated Local Laws 2005* prescribes a \$100 modified penalty for a similar offence.

6. *What action will the City take when a cat is seized for contravention of the local law and is found to have an owner who resides outside the City of Joondalup?*

The only areas identified as being problematic in this regard are the southern boundary suburbs of Marmion, Duncraig and Warwick. (All other areas bordering the City are separated by large and busy road reserves, are undeveloped, or are adjacent the ocean).

These suburbs border the City of Stirling and are subject to its local law, which applies prohibited cat areas and buffer zones to coastal reserves and contains provisions in relation to cat identification. If a cat from these suburbs is identified or trapped within the City of Joondalup, they will be returned to their owner without penalty. (The City is purchasing multi-microchip scanners that will be able to read any microchip, regardless of its origin or source). It is also likely that most cat owners within these areas already comply with identification requirements, given their close vicinity to prohibited cat areas along the coastal reserves.

Information will also be provided to residents of the City of Stirling through advertisement in a locally distributed newspaper, encouraging them to identify their cats in order to avoid impoundment by City of Joondalup Officers. The City will also work closely with the City of Stirling to ensure that resident concerns are alleviated.

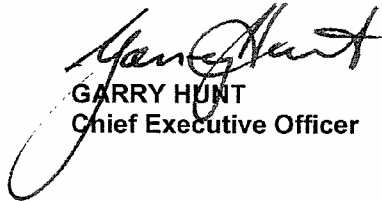
The City would like to reiterate that all correspondence received by the Committee so far form only a preliminary response and does not reflect full consideration of the matter by Elected Members. A report has been drafted for

- 6 -

the Meeting of Council on 18 August 2009, in which a resolution will be obtained and provided to the Committee as soon as possible.

Thank you for your consideration.

Yours sincerely



GARRY HUNT
Chief Executive Officer

Financial Report

by Carol Hudson

Even when the 2008/9 AGM had a large showing of ten wide smiles of joy, when attendees had indicated as if they were happy to see a large amount of income over the last financial year, following the change in our financial year from November through to April in 2008/9.

	2007/8	2008/9
Donations	\$164,874	\$187,382
Legacies & Bequests	\$356,107	\$660,014

From this year onwards in the Cal Haven calendar, the balance sheet will be shown on a quarterly basis, rather than on an annual basis.

It is also worth noting that the balance sheet for the year ending 31st March 2008/9 shows a surplus of £1,000,000, which is a result of the fact that the balance sheet for the year ending 31st March 2008/9 shows a surplus of £1,000,000.

Nevertheless, it is important to recognise and appreciate the spirit behind the gifting of this income from the Denis Faith Trust, The Girls Trust, the Abbell Charitable Trust, the Don Bailey Charitable Trust and the Cordelia Medd Trust. And you know what? We will never forget these names because they come to us on a regular quarterly basis with deposits into our Gift Fund.

Additional to these are the bequests written into Wills by caring, cat-loving people. Whether it be a smaller bequest, or something more substantial, each is valued and appreciated. It is our job to see that these gifts are wisely and fruitfully invested so as to ensure the ongoing viability of our cat shelter.

Recently, there has been an increase in the number of people who have contacted us regarding their cats. We have had a number of people who have contacted us regarding their cats, and we have had a number of people who have contacted us regarding their cats.

While we are thinking of increasing the number of people who have contacted us regarding their cats, we are also thinking of increasing the number of people who have contacted us regarding their cats. We are also thinking of increasing the number of people who have contacted us regarding their cats.

Underpinning our ability to do this is the fact that we have had a number of people who have contacted us regarding their cats. We are also thinking of increasing the number of people who have contacted us regarding their cats.

In the future, we will be increasing the number of people who have contacted us regarding their cats. We are also thinking of increasing the number of people who have contacted us regarding their cats.



YEAR	RECEIVED		HOMED		EUTHANASED	
	CATS	KITTENS	CATS	KITTENS	CATS	KITTENS
1998	5001	7148	1185	2059	3332	5267
	12,149		3,244		8,599 (71%)	
1999	5428	6699	1225	2132	4216	4366
	12,127		3,357		8,582 (71%)	
2000	4719	6265	1195	2098	3487	3864
	10,984		3,293		7,351 (70%)	
2001	4636	5491	958	1728	3838	3678
	10,127		2,686		7,516 (74%)	
2002	4492	6486	698	1686	3736	4630
	10,978		2,384		8,366 (76%)	
2003	4326	5691	892	1695	3457	3967
	10,017		2,587		7,424 (74%)	
2004	4027	5574	852	1943	3228	3792
	9,601		2,795		7,020 (78%)	
2005	3940	5037	876	1712	2864	3341
	8,977		2,588		6,205 (69%)	
2006	3338	4370	728	1683	2586	2784
	7,708		2,411		5,370 (69%)	
2007	2673	3809	809	1684	2236	1171
	6,482		2,493		3,407 (52%)	
2008	4027	4779	969	1784	3058	2995
	8,806		2,753		6,053 (68%)	

While it's difficult to read a table filled with numbers, it is clear that over the ten years since 1998 there has been an overall reduction in the number of cats and kittens being surrendered to Cal Haven and, as a consequence, a reduction in the number being euthanased. This is good news but at the same time we have seen a reduction in the numbers being rehomed or reunited with their owners – and maybe this is where we need to work a little harder to achieve a better outcome.

Generally, the constant barrage of PR activity and community education put in by Cal Haven appears to be paying off in reducing the number of surrendered pets. This should be helped with the introduction of State-based compulsory sterilisation laws later this year, along with local council support.

The following are figures for 1 January to 30 April 2009:

	CATS	KITTENS	CATS	KITTENS	CATS	KITTENS
To April	999	2300	241	987	712	1028
2009	3,299		1,228		1,740 (53%)	

APPENDIX 8
COMMITTEE'S LETTER TO THE CITY OF JOONDALUP
DATED 17 AUGUST 2009

APPENDIX 8
COMMITTEE'S LETTER TO THE CITY OF JOONDALUP DATED
17 AUGUST 2009



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your ref: 29182
Our ref:3809/3

Mr Troy Pickard
Mayor
City of Joondalup
PO Box 21
Joondalup WA 6919
Attn: Ms Sheree Edmonson

By Facsimile: 94004336

17 August 2009

Dear Mr Pickard

City of Joondalup Cats Local Law 2008

Thank you for your letter dated 13 August 2009 which the Committee considered at its meeting today. The Committee has noted the City's arguments but has not been persuaded to change its view in this case.

Clause 7

As previously indicated, the Committee's view in relation to the compulsory sterilisation of cats imposed by clause 7 of the *City of Joondalup Cats Local Law 2008* (Local Law) is that it is in breach of two of the Committee's Terms of Reference, namely;

- *3.6(a) is the instrument authorised or contemplated by the empowering enactment; and*
- *3.6(f) does the instrument contain provisions that, for any reason, would be more appropriately contained in an Act.*

In relation to Term of Reference 3.6(a) the question for the Committee is not whether there is a need or justification for the Local Law but rather, whether the *Local Government Act 1995* (Act) authorises or contemplates the making of the Local Law.

The Committee remains unconvinced that the Local Law can be characterised as a law for management and control of local government property given that it imposes a requirement on individuals to sterilise their private property (their cat) regardless of whether the cat frequents local

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government property. As discussed in previous correspondence it is the Committee's position that while the general function power found in section 3.1 of the Act is a broad one, to be interpreted liberally, it is not unfettered. The Committee continues to hold the view, for reasons provided previously, that a local law requiring compulsory sterilisation of cats extends beyond accepted notions of local government and is therefore not authorised by the Act.

In relation to Term of Reference 3.6(f) the Committee notes the City's assertion that the Committee has taken the position that the rights of cat owners outweigh the need to protect wildlife and reduce kitten abandonment. The Committee has not formed a view on this matter and it is not the Committee's role to weigh up competing public interests. The Committee's view is that the provisions in relation to sterilisation involve a significant question of policy and in these circumstances, the weighing of competing public interests should occur within the context of Parliamentary debate¹. It is on this basis that the Committee considers that the provisions would be more appropriately contained in an Act because an Act is subject to Parliamentary debate.

Clause 18 Tags

For reasons set out in its letter dated 16 July 2009, the Committee seeks the undertaking set out at number 3 below.

Clause 20(1)(b)

The Committee notes the City's opposition to its requested amendments to clause 20(1)(b).

The offence created by clause 20(1)(b) has two elements:

- (i) a complaint about a cat presence must have been made by the property owner; and
- (ii) the cat is on the complainant's property following the initial complaint.

The Committee is of the view that the clause in its current form gives rise to unreasonable outcomes which are not contemplated by the Act. The unreasonable outcomes of the clause are as follows:

- The offence created is based on a cat presence on premises without the requirement for any additional problematic behaviour.
- In order to avoid breaching the Local Law, the cat must be restrained at all times from leaving the owner's property.
- There is no requirement to substantiate the initial complaint regarding the cat's unwanted presence by identification of the cat on the property by an authorised officer. This potentially places the owner in breach of the first element of the offence on the basis of an unsubstantiated telephone complaint. This concern is not addressed by the issuing of a caution.

¹ A position also taken at Commonwealth level see: Department of Prime Minister and Cabinet, *Legislation Handbook*, Commonwealth of Australia, Canberra, 1999, p3.

- There is no requirement to provide notice to an owner of the initial complaint. The outcome of the clause is that an individual can be penalised or prosecuted for a breach without notification of the initial complaint.

The Committee takes the City's point that if a cat is in contravention of clause 20(1) an authorised person will seize, impound and identify the cat. This clause does address the Committee's concerns regarding identification of the cat in relation to the second complaint.

City policies regarding cautions and notification are open to change by the City at any time and do not adequately protect the rights of individuals who may be subject to penalty or prosecution as a result of a breach of clause 20(1)(b) in its current form.

The Committee also remains of the view that the clause in its current form is inconsistent with section 9.16 of the Act.

The Committee seeks an undertaking that the offence created by clause 20(1)(b) be amended so that;

- problematic cat behaviours which may give rise to a complaint are identified in the Local Law. The behaviours identified will not include the unwanted presence of a cat on private premises;
- any initial complaint regarding cat behaviour is substantiated by written evidence or identification of the cat on the property by an authorised officer; and
- written notice of any complaint will be given to the owner of the cat.

In summary, the Committee seeks the following undertakings from the Joondalup City Council:

1. That clause 7 will be deleted.
2. That clause 9 will be amended to include provision for a cat owner to apply to have their details omitted from the register for their own protection or that of their family.
3. That clause 18 will be amended to remove the requirement for a registration tag to be worn where a cat has a collar or microchip implant as a means of identification.
4. That clause 1 in Schedule 2 will be amended to delete:

'Any area listed under Schedule 5 of the City's District Planning Scheme No 2'
5. All Designated Prohibited Cat Areas will be listed in the *City of Joondalup Cats Local Law 2008*.
6. Pinnaroo Valley Memorial Park, Reserve 25746 will not be included as a Designated Prohibited Cat Area.
7. That the offence created by clause 20(1)(b) be amended so that:

- problematic cat behaviours which may give rise to a complaint are identified in the Local Law. The behaviours identified will not include the unwanted presence of a cat on private premises;
 - any initial complaint regarding cat behaviour is substantiated by written evidence or identification of the cat on the property by an authorised officer; and
 - written notice of any complaint will be given to the owner of the cat.
8. That clause 25 will be amended to include a collar and a microchip as means of identification of an impounded cat.
9. That clause 27 will be amended to include a period of 7 days within which the cat must be reclaimed.
10. That clause 33(3) be amended to read:

Any person who commits an offence under this local law, for which a penalty is not otherwise specified, shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.

11. That the Local Law will be amended to delete the reference to the Court of Petty Sessions and insert in its place Magistrates Court of Western Australia and that references to Forms 3, 5 and 6 will be made in accordance with the City's proposals in its letter dated 28 May 2009.
12. That all consequential amendments arising from the undertakings will be made.
13. The Committee requires a further undertaking that:
- the required undertakings will be completed within 2 years of the date of this letter; and
 - the City of Joondalup will not seek to enforce provisions in a manner inconsistent with the undertakings provided.

The Committee draws to the City's attention that, as previously noted, references to schedules are not consistent throughout the Local Law. In some instances the references are simply to "a schedule". In other instances schedules are identified by number, which is preferable as it avoids confusion. The City may wish to rectify this issue when the Local Law is next amended.

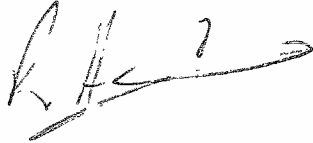
The motion for disallowance of the *City of Joondalup Cats Local Law 2008* remains in place pending the Council providing the undertakings listed below by **5pm on Thursday 20 August 2009**.

Please provide the Committee with a copy of the Council's resolution in relation to the undertakings requested.

Notwithstanding the privileged status of this letter, the Committee has no objection to the City discussing its contents with the Department of Local Government and Regional Development, WALGA, and/or its legal advisers.

Queries can be directed to Ms Christine Kain (Advisory Officer Legal) on ph 9222 7872 or facsimile 9222 7805.

Yours sincerely



Hon Robin Chapple MLC

Deputy Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

APPENDIX 9
LETTER FROM THE CITY OF JOONDALUP TO THE
COMMITTEE DATED 19 AUGUST 2009

- 2 -

- **Clause 1 in Schedule 2 is amended to delete the words 'Any area listed under Schedule 5 of the District Planning Scheme No.2' and list the designated prohibited cat areas within the local law and remove Pinnaroo Valley Memorial Park from the list of prohibited cat areas;**
 - **Clause 25 is amended to include a collar and microchip as a means of identifying an impounded cat;**
 - **Clause 27 is amended to include a period of 7 days within which a cat must be reclaimed;**
 - **Clause 33(3) be amended to read, '(3) Any person who commits an offence under this local law, for which a penalty is not otherwise specified, shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued;**
 - **References to the "Court of Petty Sessions" be removed and replaced with the words "Magistrates Court of Western Australia" and that references to forms 3, 5 and 6 be made in accordance with the City's proposals in its letter dated 28 May 2009;**
- 3 REQUESTED that the CEO writes to the Joint Standing Committee on Delegated Legislation, confirming Council's position, requesting a Deputation with the Mayor and relevant officers of the City and provides a written undertaking to commit to amending the Cats Local Law 2008 in accordance with the agreed changes reached between the City and the Committee;**
- 4 REQUESTED that efforts to implement the law be postponed until a final outcome from the Joint Standing Committee on Delegated Legislation or the Legislative Council is determined.**

In light of the above, the City requests that you consider a deputation within the Committee forum consisting of the City's Mayor and relevant Officers to discuss the potential for reaching a "compromise position" regarding clauses 7, 18 and 20(1)(b) of the local law (as outlined in resolution 1).

Should the Committee agree to a meeting with delegates from the City, it is requested that appropriate meeting dates be provided to the City as soon as possible to ensure that the matter continues to progress.

It should be noted that under resolution 2, Council have agreed to undertake the Committee's request for minor amendments to the local law, as outlined in the City's preliminary responses, dated 4 and 13 August 2009.

- 3 -

Thank you for your consideration of this matter. Any queries can be directed to Ms Sheree Edmondson on 9400 4219 or at sheree.edmondson@joondalup.wa.gov.au.

Yours sincerely



GARRY HUNT
Chief Executive Officer

APPENDIX 10
COMMITTEE'S LETTER TO THE CITY OF ALBANY
DATED 10 AUGUST 2009

APPENDIX 10
COMMITTEE'S LETTER TO THE CITY OF ALBANY DATED
10 AUGUST 2009



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref:SER036
Our Ref:3813/08

Mr Milton Evans JP
Mayor
City of Albany
PO Box 484
Albany WA 6331

Attention: Mr Graeme Bride

By Facsimile: 9841 4099

10 August 2009

Dear Mr Evans

City of Albany Keeping and Welfare of Cats Local Law 2008

The Committee considered the *City of Albany Keeping and Welfare of Cats Local Law 2008* (Local Law) at its meeting today and resolved to write to you regarding the issues set out below.

Clause 4.2(e) and 4.5

The Committee notes that, in the absence of a permit, it is a prerequisite to registration that a cat be sterilised.

Under its Term of Reference 3.6(a) the Committee is required to inquire as to whether the Local Law is authorised or contemplated by the Act. The policy issue of whether compulsory sterilisation of cats is desirable is not a matter for the Committee's consideration.

The Explanatory Memorandum advises that the local law is made under sections 3.5 and 3.10 of the *Local Government Act 1995* (the Act). The Committee has assumed that the City is, pursuant to section 3.5, prescribing the Local Law for performance of its general function under section 3.1 of the Act.

The Committee has formed a preliminary view that clause 4.2(e) is not authorised under section 3.1 of the Act. The Committee considers that the compulsory sterilisation of cats does not fall within the

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“accepted notions” of local government, as discussed below, and as such, is beyond the scope of the general function of a Local Government under section 3.1

The leading Australian authority on the scope of the general function found in section 3.1 is the decision of the High Court in *Lynch v Brisbane City Council*¹ where Dixon J, with whom the other members of the court agreed, said:

*a power to make by-laws for the good rule and government of a municipality is capable of a diversity of applications and is an effective power of control by ordinance*²

and further in relation to a power to make ordinances for ... ‘good government of the city and the well being of its inhabitants said of those words that:

*They give a power to lay down matters in respect of municipal concern, matters that have been reasonably understood to be within the province of municipal government because they affect the welfare and good government of the city and its inhabitants. The words are not to be applied without caution nor read as if they were designed to confide to the city [of Brisbane] more than matters of local government. They express no exact limit of power but, directed as they are to the welfare and good government of a city and its inhabitants, they are not to be read as going beyond the accepted notions of local government.*³

In considering whether clause 4.2(e) falls within the accepted notions of Local Government the Committee noted that

- A search of the State Law Publisher reveals only one piece of legislation dealing with the issue of compulsory sterilisation of a domestic pet being the *Dog Act 1976* which permits regulations to be made regarding compulsory sterilisation of **certain dangerous dogs**;
- Control of dogs has been viewed by the community and Parliament as a matter that should be the subject of an Act; and
- Prior to this year no other local government had attempted to impose laws requiring sterilisation of cats.

The Committee invites you to respond to its preliminary view and/or provide additional justification as to why clause 2(e) is authorised under the Act. Please provide full details of any statutes or case law referred to.

¹ (1960) 104 CLR 353

² Ibid, paragraph 5.

³ Ibid, paragraph 6.

The subject matter of clause 7 involves a weighing of the significant competing interests including the rights of communities to be free of stray cats and the rights of cat owners to be free of sanctions relating to the sterilisation of their pet. Given the nature of the issue and the need to weigh competing public interests in relation to Term of Reference 3.6(f), the Committee has formed the preliminary view that the subject matter of clause 7 would be more appropriately dealt with in an Act. The Committee invites you to respond to its preliminary view on this point.

Keepers of Cats- Clause 3.1

The Committee has formed the view that clause 3.1 is not authorised by the Act.

The Committee notes that as the Local Law is currently drafted, a person, who has no connection to the cat in question, but shares a house with another occupier who is an owner or someone who feeds and cares for a cat on a regular basis is liable for the above offences unless they can effectively invoke the defence found in clause 10 which is currently only available for the offence of contravening a permit.

It is a fundamental principle of criminal law that liability for an offence depends upon the presence of requisite elements, which consist primarily of a prescribed form of conduct accompanied by a prescribed form of mental state or fault on the part of the accused.

1.2 The common law in this area is reflected in section 7 of the Criminal Code:

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

(a) Every person who actually does the act or makes the omission which constitutes the offence;

(b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) Every person who aids another person in committing the offence;

(d) Any person who counsels or procures any other person to commit the offence.

1.3 The Committee stated in its Report No 31 that:

The Committee reminds local governments that, absent an authorising provision in empowering legislation, the general power to make local laws conferred by sections 3.5 and 3.1 of the Local Government Act 1995, for the good governance of persons in a district does not authorise imposition of

*criminal liability in circumstances not contemplated by the Criminal Code or the common law.*⁴

Please direct the Committee to the sections of the Act that you consider authorise imposition of liability on an occupier as defined in the Local Law.

In the event that this is not authorised, the Committee seeks an undertaking that the definition of keeper in clause 3.2, in relation to an occupier, be amended to further define occupier and read:

...,the occupier of the dwelling where the cat normally kept who has care and control of the cat,

The Committee also notes that the defence found in Clause 10 applies only to contravention of clause 5.12, however, there are other offences for which a keeper may be prosecuted.

The Committee seeks an undertaking that clause 10 be amended to delete the reference to clause 5.12.

Clause 4.3

The Committee notes that persons under the age of 18 are not permitted to register a cat. Please advise the Committee of the justification for this clause.

Penalties Clause 9.3

The Committee's preliminary view is that the penalties imposed by the Local Law are disproportionate to the offences committed and that the Parliament never intended that the power to create offences and prescribe penalties under section 3.10 of the *Local Government Act 1995* would authorise such local laws.

The Committee invites you to respond to its preliminary view and/or provide additional justification for the quantum of the penalties.

Cat Register

The Committee notes that that the Local Law does not provide for individuals to apply to the City to have their details omitted from the register for their own protection or that of their family. This omission may have an adverse effect on an individual's safety.

The Committee seeks an undertaking that clause 9 be amended to include provision for a cat owner to apply to have their details omitted from the register for their own protection or that of their family

Your written response is required by **5pm on Friday 14 August 2009.**

⁴ Western Australia. Legislative Council, Delegated Legislation Committee, Report 31 *Issues of Concern Raised by the Committee Between 1 May 2007 and 30 April 2009 With Respect To Local Laws-*, May 2009, p12 paragraph 7.25.

Queries can be directed to Ms Christine Kain (Advisory Officer Legal) on ph 9222 7872 or facsimile 9222 7805.

Notwithstanding the privileged status of this letter, the Committee has no objection to the Shire discussing its contents with the Department of Local Government and Regional Development, WALGA, and/or its legal advisers.

Yours sincerely



Hon Robin Chapple MLC
Deputy Chairman

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APPENDIX 11
LETTER OF ADVICE FROM MINTER ELLISON DATED 13
AUGUST PROVIDED BY THE CITY OF ALBANY TO THE
COMMITTEE

APPENDIX 11
MINTER ELLISON OPINION DATED 13 AUGUST PROVIDED BY
THE CITY OF ALBANY TO THE COMMITTEE

MinterEllison

L A W Y E E R S

13 August 2009

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& POST

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Dear Graeme

Keeping and Welfare of Cats Local Law 2008 – compulsory sterilisation provisions

We refer to your email correspondence with Stephen Willey on 11 August 2009.

The City of Albany (City) requests our advice on whether we agree with the initial view expressed by the Joint Standing Committee on Delegated Legislation (Committee), in its facsimile dated 10 August 2009 (Facsimile), that the compulsory sterilisation provisions of the *Keeping and Welfare of Cats Local Law 2008 (Cats Law)* go beyond the scope of the City's general function under section 3.1 of the *Local Government Act 1995 (LG Act)* and therefore exceed the City's legislative power.

1. Background

In its Facsimile, the Committee makes the following comments, which in our view must be addressed in the City's response to the Committee:

- (a) Compulsory sterilisation of cats does not fall within the 'accepted notions' of local government.
- (b) The State Law Publisher reveals only one piece of legislation dealing with compulsory sterilisation of a domestic pet; that is, the *Dog Act 1976 (WA)*.
- (c) Prior to this year no other local government had attempted to impose laws requiring sterilisation of cats.

2. 'Accepted notions' of local government

The Committee relies on the High Court's comments in *Lynch v Brisbane City Council* (1960) 104 CLR 353 (Lynch) that a general power to make by-laws for 'good government' of persons in

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a local government district is not to be applied 'without caution', nor read as 'going beyond the accepted notions local government'.

However, the Court in Lynch also recognises that such law-making powers are 'capable of a diversity of applications and [are] an effective power of control ...'. This aspect of the High Court's reasoning in Lynch cannot simply be overlooked or ignored.

The LG Act provides that the general function of a local government is to provide for the good government of persons in its district: section 3.1(1). The LG Act further provides that a liberal approach is to be taken to the construction of the scope of the general functions of a local government: section 3.1(3). The notion that a local government's powers are to be interpreted liberally derives further support from a range of judicial authorities, including the Queensland Court of Appeal decision in *Bone v Mothershaw* (2002) 121 LGERA 75 (the most recent case applying Lynch) at paragraph [6] and *Bunbury-Harvey Regional Council v Giacci Bros Pty Ltd* (2000) 117 LGERA 1 at paragraph [74].

We are not aware of case law which considers the meaning of 'good government' in a factual context similar to that surrounding the Cats Law. Nevertheless, there are factors – discussed in the remainder of this advice – which on balance, would in our view support the contention that the compulsory sterilisation provisions of the Cats Law do not go beyond accepted notions of local government.

3. Western Australian legislation

The Committee indicates that only one piece of Western Australian legislation – namely the *Dog Act 1976* (WA) (**Dog Act**) – deals with compulsory sterilisation of domestic pets. Whilst this may in fact be the case, we do not consider this to be of any consequence to the Cats Law.

It is axiomatic that the matters on which the State Government may choose to legislate are different to those on which local governments may choose make local laws. The mere existence of the Dog Act neither supports nor detracts from the proposition that good government may involve controlling cat sterilisation and therefore fall within a local government's general function under section 3.1 of the LG Act. With respect, the Dog Act is not a relevant consideration in ascertaining the scope of section 3.1 of the LG Act.

In any event, the Dog Act (as recognised by the Committee) reflects the fact that control of dogs is viewed by the community and Parliament as a matter that should be the subject of specific legislation. The Dog Act is a response to the perceived and actual danger that derives from some breeds of canines.

Notwithstanding the above, the *Cat Bill 2003* (WA) (**Bill**) was introduced into the Legislative Council in 2003 but, perhaps unfortunately, lapsed. The Bill, amongst other things, required a permit to keep a cat that had not been desexed. The Bill strengthens the argument that sections of the community at least would consider compulsory sterilisation of cats to be in the interest of good government.

4. Other local government laws

4.1 Committee's 'lack of precedent' argument

The Committee's attempts to bolster its view with the statement that prior to this year, no other local government had attempted to impose laws requiring sterilisation of cats. The scope of legislative power available pursuant to section 3.1 is to be determined by reference to subsections (2) and (3) of that section, and the matters discussed under heading 2 of this advice.

The Committee's approach of limiting legislative power by reference to legislation already in existence is an unusual (and we submit incorrect) approach. In our view there is no basis for such considerations, except insofar as they assist in establishing 'accepted notions' of local government. However, just as the needs of a community are in a constant state of flux, so is the notion of what is good government. This is the express reason why the LG Act provides that the scope of a local government's general functions is to be construed liberally.

In any event, we note that the City of Joondalup has prepared a local law (**Joondalup Cat Law**) similarly imposing a compulsory sterilisation regime. The fact that two local governments have now made attempts to enact local laws on this issue, in our view, detracts from any weight that the Committee's 'lack of precedent' argument may otherwise have had.

4.2 Control of cats falls within local government power

Numerous Western Australian local governments have passed local laws dealing with the control of cats as this falls clearly within a local government's ranger functions.

If it is within the scope of section 3.1 to make local laws with respect to control of cats generally, then it is in our view too fine a distinction to distinguish certain aspects of cat control from others, such that only some aspects can be said to fall within the general function of local governments.

Furthermore, it appears that the Joondalup Cat Law is an extension of a cat control regime already in place by reason of the its *Animals Local Law 1999*. Section 45(2) of this local law provides that subject to certain requirements, 'a person who breeds cats may, with the written approval of the local government, keep up to 6 adult breeding cats on a property in the district'.

From this it would appear that local governments are competent to control the breeding of cats. This is precisely what clauses 4.2(e) and 5 of the Cats Law are directed towards.

We understand that the City's reasons for enacting clauses 4.2(e) and 5 of the Cats Law are to respond to the following community concerns (and thereby effect good government):

- (a) The City is one of only 25 biodiversity hot spots in the world and reducing feral cat populations through sterilisation would represent a good environmental outcome.
- (b) The City has advocated for the State Government to introduce a Cat Act in the past without success. We refer in this regard to the Bill mentioned earlier in this advice.

- (c) Unlike other domestic animals such as dogs, cats are difficult to contain within a property and can have up to 3 litters per year, thereby producing many unwanted kittens which impact on the amenity of residential areas and the ecology of reserves.
- (d) Compulsory sterilisation as part of the cat registration process would assist the City and benefit residents of Albany by reducing kitten numbers, which in turn would reduce the number of abandoned cats that ultimately end up in reserves and national parks, as well as urbanised areas.
- (e) The Cat Sterilisation Society's Albany branch assists cat owners who hold health care and pension cards, but this organisation has limited resources and is not equipped to respond to ever-increasing cat populations in the district.

5. Conclusions

In summary our advice is that whilst the Committee is correct in taking a cautious approach when interpreting section 3.1 of the LG Act, on balance, we remain of the view that compulsory sterilisation of cats is a matter which can be regulated as part of the City's general function under section 3.1 of the LG Act. This conclusion is strengthened by the City's evidence which confirms that Cats Laws have been drafted as a response to community concern and thereby falls within the City's powers to make laws for the good government of persons in its district.

We trust this advice is of assistance. If you have any further questions please do not hesitate to contact Stephen Willey or Mark Gregory.

Yours faithfully

MINTER ELLISON

M. Gregory

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APPENDIX 12
CITY OF JOONDALUP - ANIMALS LOCAL LAW 1999
CLAUSE 45(1)

APPENDIX 12

CITY OF JOONDALUP - ANIMALS LOCAL LAW 1999 CLAUSE 45(1)

27 August 1999]

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Stablehand Room

43. The owner or occupier of a premises shall not permit a habitable room, including a stablehand's room, to open directly into a stable area.

Manure Receptacle

44. An owner or occupier of a premises where a large animal, miniature horse or miniature pig is kept shall—

- (a) provide in a convenient position, an impervious receptacle with a tight fitting lid, for storage of manure;
- (b) keep the lid of the receptacle closed except when manure is being deposited or removed;
- (c) cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects; and
- (d) cause all manure produced on the premises to be collected daily and placed in the receptacle.

Keeping of Cats

45. (1) Subject to sub-clauses (2) and (3), a person shall not keep more than 3 cats over the age of 3 months.

(2) A person who breeds cats may, with the written approval of the local government, keep up to 6 adult breeding cats on a property in the district, subject to—

- (a) each cat being permanently confined in an effective cage system on the property; and
- (b) under such terms and conditions that may be imposed by the local government from time to time.

(3) A person may keep more than 3 cats over the age of 3 months in any rural area, if the owner or occupier of such lot has—

- (a) obtained written approval from the local government to establish a cattery;
- (b) paid to the local government, the annual fee for registration and certification of the premises as a cattery;

(The annual registration and certification fee shall be due each June 30th, except for the first issue which may be paid on a pro-rata basis.)

- (c) provided for each cat on the lot, a properly constructed shelter with an enclosure, which complies with the following specifications:
 - (i) a floor area of not less than 0.56m² for each cat;
 - (ii) the area of the enclosure adjacent to any shelter or group of shelters forming a cattery shall be at least 3 times the area of the shelter or the group of shelters;
 - (iii) no shelter or enclosure shall be closer than 9 meters from the boundary of the lot of the keeper or any other building on the property of the keeper; and
 - (iv) all enclosures, yards, runs and shelters within a cattery shall be maintained in a clean condition and shall be cleaned, disinfected or otherwise dealt with as an environmental health officer may direct.

(3) A registration issued by the local government shall lapse upon the keeper vacating the premises although a transfer of the registration may be effected if the cattery operation remains continuous and the approved transfer fee is paid to the local government.

Burial of Animals

46. (1) The operators of commercial poultry farms, licensed piggeries and similar intensive animal or bird farming shall not dispose of any dead animals or birds on their premises without written approval from the local government.

(2) Owners and occupiers of properties in any rural or special rural area who occasionally need to bury an animal on their property, shall cover the carcass with lime before burial.

Keeping of Ostrich or Emu

47. (1) A person shall not keep an ostrich or emu on any land in any residential area, or any land zoned commercial or industrial under the town planning scheme.

(2) A person shall not keep an ostrich or emu in any special rural area without the written approval of the local government.

(3) A person shall not keep more than 3 adult pairs of ostrich or emu for each 2 hectares of land and no single pair shall be confined in any area less than 0.1 hectares.

(4) The local government may prohibit the keeping of any ostrich and emu on any land or state the conditions under which they may be kept.

Keeping Poultry in Residential Areas

48. (1) A person shall not keep or suffer to remain, in any residential area a rooster, turkey, goose or geese, peacock or a peahen.

(2) Notwithstanding sub-clause (1), the owner or occupier of a premises situated in any residential area shall not keep thereon or permit to be kept thereon any poultry otherwise than under the following conditions—

- (a) no poultry shall be kept in an open yard;