

**40TH PARLIAMENT**



## **Report 2**

# **JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*Town of Cambridge Local Government and Public Property  
Local Law 2016*

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Presented by  
Ms Emily Hamilton MLA (Chair)

and

Hon Robin Chapple MLC (Deputy Chair)

September 2017

## **Joint Standing Committee on Delegated Legislation**

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**REPORT 2**

**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

**TOWN OF CAMBRIDGE LOCAL GOVERNMENT  
AND PUBLIC PROPERTY LOCAL LAW 2016**



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**EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE  
REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION  
IN RELATION TO THE TOWN OF CAMBRIDGE LOCAL GOVERNMENT AND PUBLIC  
PROPERTY LOCAL LAW 2016**

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**EXECUTIVE SUMMARY**

- 1 The Joint Standing Committee on Delegated Legislation (Committee) is of the view that the Town of Cambridge (Town) did not follow section 3.6(1) of the *Local Government Act 1995* (Act) when it made the Town of Cambridge Local Government and Public Property Local Law 2016 (Local Law).
- 2 The procedure in section 3.6(1) required the Town to ‘*first*’ obtain the Governor’s approval to apply the Local Law to places outside its district before making the Local Law. The Town failed to obtain the Governor’s approval.
- 3 Being a condition precedent the Local Law is invalid and offends Committee Term of Reference 10.6(a) in that it is not ‘*within power*’ of the Act.

**RECOMMENDATIONS**

- 4 The Committee’s recommendation is as it appears in the text at the page number indicated:

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**Recommendation 1: The Committee recommends that the Town of Cambridge Local Government and Public Property Local Law 2016 be disallowed.**





**REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION  
IN RELATION TO THE TOWN OF CAMBRIDGE LOCAL GOVERNMENT AND PUBLIC  
PROPERTY LOCAL LAW 2016**

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**1 REFERENCE AND PROCEDURE**

- 1.1 On 24 January 2016 the Town of Cambridge Local Government and Public Property Local Law 2016 (Local Law) was gazetted.
- 1.2 Upon gazettal, the Local Law stood referred to the Joint Standing Committee on Delegated Legislation (Committee). Once the Local Law was tabled in the Parliament, it became an Instrument that may be subject to disallowance.

**2 STATUTORY PROCEDURE FOR MAKING A LOCAL LAW AND NON-COMPLIANCE WITH THE LOCAL GOVERNMENT ACT 1995**

- 2.1 The Explanatory Memoranda accompanying the Local Law revealed non-compliance with the procedure for making a local law prescribed in section 3.6 of the *Local Government Act 1995* (Act). That section states:

**3.6. Places outside the district**

*(1) If the Governor's approval has been first obtained, a local government may make a local law under this Act that applies outside its district.*

*(2) A local government cannot, under subsection (1), make a local law that applies to —*

*(a) a part of the State that is in the district of another local government; or*

*(b) a part of the State to which a local law made by another local government concerning the same subject matter applies under this section.*

*(3) The Governor may revoke any approval given under subsection (1) and, after that revocation, a local law made under the approval ceases to apply to the part of the State for which the approval was given.*

*(4) The Minister is to cause notice of any revocation under subsection (3) to be published in the Gazette. [Emphasis underlined]*

- 2.2 The Town of Cambridge (Town) sought to apply the operation of the Local Law outside its district. This is a common practice amongst coastal local governments attempting to control activities on foreshores and beaches.
- 2.3 Section 9 of the *City of Perth Restructuring Act 1993*, prescribes in Schedule 2, the boundaries for the Town as follows:

*onwards to the Low Water Mark of the Indian Ocean, and thence generally northerly along that water mark to the starting point.*

- 2.4 A local law that applies outside the district of a local government will not be enforceable unless the local government has ‘first’ obtained the Governor’s approval to make such a local law pursuant to section 3.6(1) of the Act. The Town failed to obtain the required approval. A local law which does not follow section 3.6(1) is invalid.

### **3 PROCEDURAL SCRUTINY OF THE LOCAL LAW**

- 3.1 The Committee first scrutinised the Local Law made pursuant to the general, local government law making power in section 3.5(1) of the Act at its meeting on 7 August 2017. The Committee resolved to conduct a procedural scrutiny of the Local Law, not substantive scrutiny of its contents beyond clause 1.5(1).
- 3.2 Clause 1.5(1) is an ‘Application’ clause. It states:

#### ***Application***

*This local law applies throughout the district of the Town of Cambridge and in the sea adjoining the district for a distance of 200m seawards from the low water mark at ordinary spring tides.*

- 3.3 The reason for not scrutinising the Local Law’s substantive content further was because the Town indicated in the *Statutory Procedures Checklist* accompanying the Explanatory Memoranda for the Local Law that section 3.6(1) of the Act was ‘Not applicable’. The Contact Person said:

*Due to an administrative oversight, the Town did not obtain the Governor’s approval as required under section 3.6(1) of the Local Government Act 1995.*

- 3.4 In order to overcome this oversight, the Town subsequently located and provided a copy of a May 2001 Governor’s approval that attached to the *Town of Cambridge Local Government and Public Property Local Law* gazetted on 22 March 2002 which was being repealed by the new Local Law. It was hoped that this Governor’s approval (replicated below) would authorise the Local Law.

**LG404**

**LOCAL GOVERNMENT ACT 1995**  
*Town of Cambridge*  
(Local Government and Public Property Local Law)

Department of Local Government  
Perth, 18 May 2001.

LG: CE 7-11

It is hereby notified for public information that the Governor has approved under the provisions of section 3.6 of the *Local Government Act 1995* of the Town of Cambridge extending the area of application of its Local Government and Public Property Local Law for a distance of 200 metres seawards from its western district boundary which is bounded by the low water mark of the Indian Ocean.

JOHN LYNCH, Executive Director,  
Department of Local Government.

- 3.5 The question before the Committee was whether the above approval could be a ‘blanket’ approval for the new Local Law or just for the particular type of law nominated in the approval.
- 3.6 The Committee formed a view that section 3.6(1) requires a new Governor’s approval on each occasion that a *new* local law is made or when a new local law is made that repeals an earlier law with the Governor’s approval in place.
- 3.7 The Committee wrote to the Minister with its preliminary view of section 3.6(1), making the following points.
- The term ‘*first*’ in section 3.6(1) is construed as meaning a local government must undertake some preliminary action on each occasion a law is needed outside its district and implies there must be second, third (and so-on) step. These other steps are located in section 3.12, itself a highly prescriptive and mandatory, sequential procedure for making each individual local law.<sup>1</sup> That is, section 3.6(1) and 3.12 must be read together as applying to ‘*a*’ local law that seeks to extend a local government’s district boundary.
  - Section 3.6(1) states that a local government may make ‘*a*’ local law, not just any law under the Act meaning a specific law will require the Governor’s approval on each occasion. The 2001 approval though general in nature attached to a specific law eventually made in 2002.
  - The gazetted Governor’s approval the Town provided is linked to ‘*a*’ law subsequently made on 22 March 2002 – the undated *Town of Cambridge Local Government and Public Property Local Law* but now repealed by the new Local Law. Although the Governor has not, to the best of the Committee’s knowledge, revoked that approval its link to the law gazetted on 22 March 2002 means it serves no useful purpose.
  - The Parliament in the Act clearly contemplated an active role for the Governor in determining the boundaries of a local government’s district. This is a check and balance on local governments that the Parliament considered important. To construe section 3.6(1) as a blanket approval for each and every future local law, rather than applying to each new local law, fundamentally disrespects the institution of the Governor by diminishing and devaluing that role.

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<sup>1</sup> Five steps are described. Step 1 requires that at a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner. Step 2 involves the giving of a Statewide public notice and giving it (and a copy of the proposed local law) to the Minister and other relevant Ministers. Step 3 involves the publishing and exhibiting of the Statewide public notice as if it were a local public notice. Step 4 deals with the consideration of public submissions. Step 5 concerns what occurs after the proposed law is made such as publishing it in the *Government Gazette* and giving a copy of it to the Minister(s) as well as the requirement for giving local public notice.

3.8 The Acting Director General of the Department of Local Government, Sport and Cultural Industries, writing on behalf of the Minister, agreed with the Committee's interpretation of section 3.6(1). (See Appendix 1).

3.9 By letter dated 28 August 2017, Mayor Shannon stated that the '*Town of Cambridge will accept the Committee's final view*' of the Local Law.<sup>2</sup>

#### **4 THE IMPORTANCE OF SECTION 3.6(1) OF THE LOCAL GOVERNMENT ACT 1995**

4.1 The requirement in section 3.6(1) to obtain the Governor's approval is a critical step in the making of the Local Law. It is a condition precedent to the taking of the five further steps described in section 3.12 of the Act.

#### **5 CONCLUSION**

5.1 Term of Reference 10.6(a) states:

*In its consideration of an instrument, the Committee is to inquire whether the instrument — (a) is within power.*

5.2 The Local Law is invalid by reason of non-compliance with section 3.6(1) of the Act. It offends Term of Reference 10.6(a) (above). The Committee therefore recommends to the Legislative Council that the Local Law be disallowed.

5.3 There are a number of benefits in recommending disallowance of invalid local laws, including ensuring that they are quickly removed from the public record thereby reducing the risk of public misinformation.

5.4 Should the Legislative Council disallow the Local Law, the *Town of Cambridge Local Government and Public Property Local Law* gazetted on 22 March 2002 (being repealed by the Local Law) will automatically revive.

#### **6 RECOMMENDATION**

6.1 The Committee makes the following recommendation.

**Recommendation 1: The Committee recommends that the Town of Cambridge Local Government and Public Property Local Law 2016 be disallowed.**



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**Ms Emily Hamilton MLA**  
**Chair**

**14 September 2017**

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<sup>2</sup> Kerri Shannon, Mayor, Town of Cambridge, Letter, 28 August 2017, p 1.

# APPENDIX 1

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Department of  
**Local Government, Sport  
and Cultural Industries**

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Ms Emily Hamilton MLA  
Chair  
Joint Standing Committee on Delegated Legislation  
Legislative Council Committee Office  
GPO Box A11  
PERTH WA 6837

Dear Ms Hamilton

## **Town of Cambridge Local Government and Public Property Local Law 2016**

Thank you for your correspondence dated 9 August 2017 regarding the Joint Standing Committee on Delegated Legislation's (the Committee) consideration of the *Town of Cambridge Local Government and Public Property Local Law 2016*. The Minister has asked that I respond to your correspondence on his behalf.

The Department agrees with the Committee's preliminary view of clause 1.5(1) of the *Town of Cambridge Local Government and Public Property Local Law 2016* and the Committee's interpretation of section 3.6 of the *Local Government Act 1995* (the Act). The Department provided comments to the Town of Cambridge (the Town) on its proposed local law on 14 September 2016. The Department advised the Town that it 'must obtain the Governor's approval to make a local law outside the district' and that following the approval of the Governor, the Council could resolve to make the local law.

The Department recommends that the Town restarts the local law making process under section 3.12 of the Act and obtains the approval of the Governor to make a local law that applies outside the district, prior to adopting the local law under section 3.12(4) of the Act.

I thank you for the opportunity to comment on the Committee's preliminary views of the *Town of Cambridge Local Government and Public Property Local Law 2016*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Duncan Ord'.

Duncan Ord OAM  
A/Director General

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# Joint Standing Committee on Delegated Legislation

## Date first appointed:

15 June 2017

## Terms of Reference:

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

### '10. Joint Standing Committee on Delegated Legislation

- 10.1 A Joint Standing Committee on Delegated Legislation is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) 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.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 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.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is within power;
  - (b) has no unintended effect on any person's existing rights or interests;
  - (c) provides an effective mechanism for the review of administrative decisions; and
  - (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on -
- (a) any proposed or existing template, *pro forma* or model local law;
  - (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
  - (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order-
- "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*.



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