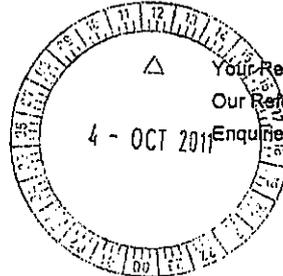


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29 September 2011

Mr Joe Francis MLA
Chairman
Legislative Council Committee Office
18-32 Parliament Place,
WEST PERTH WA 6000



Your Reference: 3872/2
Our Reference:
Enquiries: Trevor Perkins
08 9397 3011

Dear Mr Francis

City of Gosnells Waste Local Law 2011

Thank you for your correspondence received by facsimile on 28 September 2011. You have indicated the City's response is required by '5pm on Wednesday, 12 October 2011' and further that the Committee requires a copy of the Council's relevant resolutions.

As discussed with Ms Veletta today's date, it is not possible to have a report with recommendations to Council by 12 October. However, an undertaking has been given that a report will be presented to the next Council meeting, being Tuesday 25 October 2011. A copy of Council's resolution will then be provided to the Committee.

However, the City has concerns regarding the undertakings requested by the Committee. Specifically:

- ***to amend the instrument to make the terms in the instrument consistent with the Waste Avoidance and Resource Recovery Act 2007 and the Local Government Act 1995 by replacing references to the 'City' with 'local government'***

When drafting our waste local law, particular attention was given to the 'Local Government Undertakings' register published by the Committee on your website to ensure we did not replicate mistakes. Although your letter refers to the Committee raising "the issue of the use of the word 'City' in previous instruments including the *City of Perth Parking Local Law 2010* and the *City of Mandurah Waste Management Local Law 2010*", this does not appear on the register and was therefore not considered.

However we have deliberated on this issue in the past. In November 2010 the City wrote to McLeod's Barristers and Solicitors (McLeod's) requesting advice regarding the reference of 'local government' in the context of the City's drafting of local laws under the *Local Government Act 1995* (the Act). It was the view of McLeod's that the term 'City' in a local law is preferable to the use of the more generic term 'local government' and that there is no legal difference between the two.

Further, s1.4 of the Act, 'local government' is defined as a local government established under the Act. Part 2 of the Act defines the constitution of the local government and that an order can be made designating a 'district a city, town or shire'. The City of Gosnells was proclaimed a 'city' on 1 July 1977 by the Governor and is deemed a body corporate by virtue of s2.5 of the Act.

As a local law is a legislative power of local governments, a proceeding emanating from any breach of a local law is commenced under the organisations corporate name, not 'local government'. Further, as a local law does not apply outside the local government's district, it is logical that the local law refer to the correct title of the local government and not a generic term. Additionally, the local law is titled *City of Gosnells Waste Local Law 2011* so reference to 'City' within the local law is consistent with the title. For these reasons, I believe referring to 'city' in our waste local law is correct.

I also note that the City of Gosnells is not the only local government using this term and similar in their local laws. I refer the committee to the following local laws made since 2010 not using the term 'local government':

- *City of Kalgoorlie-Boulder Local Government Property Local Law 2010;*
- *Shire of East Pilbra Standing Orders Local Law 2010;*
- *Shire of Busselton Standing Orders Local Law 2010;*
- *Shire of Busselton Dust and Building Waste Control Local Law 2010;*
- *Shire of Busselton Local Government Property Local Law 2010;*
- *City of Canning Parking Local Law 2010;*
- *Shire of Capel Waste Facility Local Law 2010;*
- *Shire of Collie Dogs Local Law 2010;*
- *Shire of Dardanup Standing Orders Local Law 2010;*
- *Shire of Nannup Standing Orders Local Law 2010;*
- *City of Stirling Waste management Local Law 2010.*

Is it the intention of the Committee to ensure the above local laws are amended also?

- ***To define the phrases 'collection service of recyclable material' and 'collection for bulk material' in clause 1.2***

As mentioned above, the City constantly refers to the 'Local Government Undertakings' register published by the Committee when drafting local laws. It is interesting that four waste local laws examined by the Committee and listed in this register, did not require amendment to the phrases 'collection service of recyclable material' and 'collection for bulk material'. I refer the Committee to the following local laws:

- *Shire of Dowerin Waste Local Law 2010*
- *Shire of Goomalling Waste Local Law 2010*
- *Shire of Broomehill-Tambellup Waste Services Local Law 2010*
- *Shire of Northam Waste Local Law 2009*

Additionally, the *Shire of Merridin Waste Local Law 2011* contains the same wording. Is the undertaking required by the Committee from the City of Gosnells to define these terms made in error?

- ***To review and revise the offences and Schedule 1 (Prescribed Offences). Please provide details of proposed amendments***

In your letter you state "the Committee is concerned about a number of offences and prescribed offences in the Local Law. The Committee is of the firm view that many offences and prescribed offences are contrary to the principles of good governance"

and "the Committee notes that offences that are too vague and uncertain are not authorised by the empowering provision". However, these specific offences causing concern to the Committee are not listed and therefore the City is uncertain which provisions you are referring to. Could the Committee please provide this list?

The letter does list some examples, although the City is not the only local government using this particular wording.

However I am particularly concerned with your comment "...some offences including failing to keep a lid closed, failing to keep the receptacle so it is not visible from the street or failing to keep it in a prescribed position may be considered more trivial acts or omissions, not conduct that should attract the fines enacted in the Local Law". This is a personal opinion.

These clauses have been specifically included in the local law to deal with ongoing health issues experienced by our local government. I am sure you can understand some of the issues confronting local governments in relation to waste and how necessary these provisions are. In any event, as these clauses create an offence, it is proper to have a penalty attached. Is it the view of the Committee that the clauses giving rise to the offence be disallowed?

While I await the Committee's response to the above, I will arrange for the matter to be presented to Council. However, as you have raised concerns about the term 'City' and prescribed offences in the local law, are you suggesting the entire local law not be enforced until the undertakings have been completed?

Your prompt reply is appreciated.

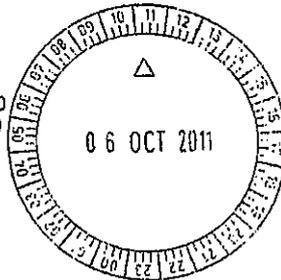
Yours sincerely



Trevor Perkins
DIRECTOR GOVERNANCE

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5 October 2011

Joint Standing Committee on Delegated Legislation
GPO Box A11
PERTH WA 6837

Your Reference:

Our Reference:

Enquiries:

Trevor Perkins
9397 3010

Attention: Ms Suzanne Veletta

Dear Suzanne

Thank you for your prompt action in forwarding copies of correspondence to and from the Minister for Local Government in relation to Cities of Perth and Mandurah local laws.

Having now had an opportunity to read that correspondence and cross reference it with the relevant Perth local law, I can understand your reasoning for requiring change to clauses 2.1 and 2.2 but enquire as to what legislative provision would prevent the administrative arm of the local government (City) from determining such issues.

While you have identified three clauses where reference is made to 'City' that you require amendment, the said local law contains no less than 50 references to 'City'.

As previously indicated there are a number of local governments throughout the past two years that have gazetted local laws that, rather than make reference to local government, refer to either Shire, Town or City, none of which appear to have been required by the Joint Standing Committee on Delegated Legislation to amend such wording.

As the City of Gosnells currently has a number of local laws utilising the term 'City' in an advanced state of drafting, it is imperative not only for my sake, but that of the Committee to have this matter clarified and as such I will be writing to the Department of Local Government requesting they obtain advice on the matter from the State Solicitor's Office.

Thank you for your assistance in this matter.

Yours faithfully

A handwritten signature in black ink, appearing to read "Trevor Perkins".

Trevor Perkins
Director Governance