



80 MCGs of parklands
enough footpaths to reach Sydney
enough drains to reach Mildura
enough roads to reach South Australia
\$170m of town planning projects
2,000 food safety inspections
3,400 off-street car spaces
11,000 tonnes of recycling
40,000 tonnes of waste
one million library loans
care for 4,800 elderly
services for 5,000 children
6,200 immunisations
44 school crossings
46,000 street trees
8,500 street lights
45 sportsgrounds
45 playgrounds
and much more

30 NOVEMBER 2009

Dear Sir/Madam,

Re: Glen Eira Local Law 2009 (“Local Law”)

Thank you for your submission in respect of the Local Law. The Local Law was adopted by a unanimous resolution of Council at its meeting on 24 November 2009.

The purpose of this letter is to advise you as to Council's decision with respect to the submissions made and the reasons therefore as required by section 223(1) (d) of the Local Government Act 1989.

In determining the final content of the Local Law Councillors considered the proposed local law in detail both before it was exhibited and again after submissions were received. This was in addition to the formal Special Council Meeting to hear submissions and the subsequent Local Laws Committee Meeting.

For convenience the suggestions from all submitters and Council's response are included in this letter.

1. Issue:

Changes to clauses 501 and 503 of the local law. Concerns were expressed that the new version of the laws would allow the issue of resident parking permits in commercial centres, in particular Centre Road, and would allow permit holders to park in all spaces except those for periods of less than one hour.

Decision:

The intent was not to relax parking restrictions, but to move certain provisions from the local law to policy.

Council Policy 13.6 has been readopted in conjunction with the new local law. That policy contains the following provisions:-

“Where an applicant is the resident of premises situated in a recognized commercial area and restrictions are applied in that commercial area, any permit issued will be for the nearest adjacent street only.

No permits will be issued enabling parking on the major streets or within off-street car parks of commercial areas within the municipality”

Given the above, residents are not able to park for longer than prescribed in commercial areas.

Council has accepted the concerns in relation to less than one hour parking and Local Law clause 503 (2) has been amended to refer to “periods prescribed of one hour or less”.

2. Issue:

It was submitted that in addition to Local Law clause 318, the Local Law should provide for Council to fine people who affix posters, garage sale signs and the like to street poles, traffic signs etc as the submitter considered these items to constitute litter.

Decision:

Local Law clause 315 provides for a permit to be obtained in order to place any advertising signs on a Road (including a footpath) or Council Land unless otherwise permitted under the Planning Scheme. Local Law clause 318 requires a permit in relation to advertising etc on any Building, fence or Council Premises. Council determined not to extend the Local Law any further as the suggested changes would be very difficult to enforce.

3. Issue:

A submitter requested that a definition of “industrial waste bins” should be included and further suggested that Council supplied waste and recycle bins should be excluded from such definition.

Decision:

Council agreed with the intent of the submission and has revised clause 308 to refer to bulk rubbish containers, shipping containers and similar receptacles and has inserted a note that Council issued rubbish bins of 240 litres or less are not “bulk rubbish containers” for the purpose of the clause.

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4. Issue:

How local laws 403 and 412(8) may be enforced, particularly in relation to elderly, disabled or disadvantaged members of the community and whether it is reasonable to punish individuals for the actions of others.

Decision:

The clause has been adopted unchanged. The application of local law 412(8) to specific circumstances eg graffiti on the property of an elderly resident is more appropriately addressed in policy rather than seeking to limit the ambit of the local law.

5. Issue:

One submitter raised a series of matters, largely directed to the actions of an adjoining neighbour suggesting Local Laws as follows:

- penalizing the owners of nuisance barking dogs;
- penalizing property owners who cause nuisances such as the overflowing of water from detention tanks across driveways;
- penalizing dog owners that cause nuisance odours to emanate from their property;
- prohibiting dogs from street shopping areas as they defecate and urinate on footpaths and cause a nuisance by barking.

Decision:

No additional Local Laws were adopted as the matters referred to are complaints in relation to alleged non-enforcement of existing laws or matters the subject of private nuisance issues. The suggested restriction relating to dogs was considered unreasonable.

6. Issue:

That a notice of motion or similar procedure should be included to guarantee that Councillors have matters of interest to them included in the agenda, that preparation of the agenda should not be the CEO's exclusive responsibility and that matters such as rescinding a motion, suspension from standing orders and dissent from the Chair's ruling should be specifically provided for in the Local Law.

Decision:

No changes have been made to the Local Law. Council's "no-surprises" policy is in place to ensure that Councillors have an opportunity to properly respond to issues. It is considered that a notice of motion process does not add anything to Councillors

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existing ability to have matters brought before the Council. In particular a matter not on the agenda can be dealt with at an ordinary meeting if Council resolves to deal with it as urgent business.

In determining the final Local Law Council considered the following:

- pursuant to section 94A(1) of the Local Government Act 1989 (Act) the CEO is responsible, among other things, to provide timely advice to the Council;
- section 76E of the Act contains a number of prohibitions in relation to Councillors directing or seeking to direct a member of Council staff in the exercise of a power or performance of a function or duty, including in relation to advice provided to the Council or a special committee;
- section 84 of the Act enables the Mayor or at least 3 Councillors to call a special meeting of the Council to consider the business nominated in the notice of meeting.

The primary manner in which the CEO can discharge his duty under section 94A(1) is by including on the meeting agendas matters which require Council's consideration. A requirement that items are included either with the specific consent or mutual agreement of the Mayor or Chairperson imposes a fetter on the ability of the CEO to discharge his duty. In this regard it is worth noting that the Ombudsman considered in relation to the Brimbank Council, that the CEO ought to have put up for consideration the version of the Council budget that he proposed, despite the majority of Councillors wanting changes. Given that the CEO has responsibility for the day to day management of Council operations he is in the best position to ensure that agenda items are brought to Council at the most appropriate time and with the requisite background information and recommendations.

Additionally, Councillors should not be responsible for the Agenda as a consequence of the governance requirements to avoid improper influence.

Council did not consider that the other proposed procedural matters added anything to Council's meeting procedure.

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7. Issue:

Council advisory committees reporting in a consistent, timely way to Council.

Decision:

No change has been made to the Local Law. Council agreed that a process in relation to Advisory Committee reporting should be implemented. This should be done by Council determining procedures or policies, not in the Local Law.

8. Issue:

Audio recording and web casting of Council meetings.

Decision:

No change to the Local Law has been made. Audio recording and web casting of meetings raise issues in relation to privacy and resourcing. In particular all members of the gallery would need to be warned that private comments or conversations may be recorded and broadcast. Releasing such information without express consent also raising potential conflicts between a local law granting access and privacy legislation. The current recording system would not be appropriate and a system that ensured that only the comments of the person with the floor were recorded or broadcast would need to be implemented in order to protect both the privacy of the public and confidential conversations between Councillors and/or officers. Such a system is not currently viable.

9. Issue:

Proposed local law 227 adds a requirement that special meetings of Council be conducted in accordance with section 84(4) of the Act. One submitter suggests that this places a fetter on the ability of a minority of Councillors to raise additional matters of interest to them.

Decision:

No change to the Local Law. The proposed law simply reflects what is the legal position under the Act, namely, that unless all Councillors are present and agree unanimously only the matters specified in the notice and resolution may be transacted at a special meeting.

10. Issue:

Proposed local law 230 adds a provision that members of the public may address Council and Committee meetings as provided in section 223 of the Act. One submitter considers this limits public participation to matters where a section 223 notice is required.

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Decision:

No change to the Local Law. The proposed addition to the local law simply reflects the statutory entitlements of the public under section 223 of the Act. Addressing a meeting of Council or a Committee is otherwise within the discretion of the Chairperson and in accordance with any guidelines adopted from time to time. This was the case under the prior local law.

11. Issue:

One submitter questions the incorporation of the Councillor question policy into the local law. Two submitters query whether there should be a 'no surprises' policy at all.

No change to the Local Law. Council has made a deliberate decision to codify its Councillor questions policy. This is in line with the Ombudsman's position in recent reports. Local Law clause 231 is consistent with Council's obligations under section 91(1) of the Act, while providing some flexibility in being able to amend the policy in accordance with the Act.

The 'no surprises' policy is intended to aid the smooth and efficient conduct of business by affording people a proper opportunity to consider the question before responding.

12. Issue:

The reasonableness and lawfulness of proposed new local law 407(2) which makes it an offence for a person in charge of an animal to not carry faeces collection bags or the like.

Decision:

The tenor of local law 407(2) has been reversed to the effect that it is not a defence to an offence under 407(1) for a person to fail to carry a collection bag. This removes the issue of the requirement to carry a collection bag per se and ensures that it is only relevant where an issue of a person failing to cleanup after their animal arises.

13. Issue:

An amendment to local law 232(2)(h) should be made to require public questions answered in writing after the relevant to meeting to be included in the minutes of the later meeting rather than the agenda.

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Decision:

The Local Law has been amended to delete the last sentence of proposed local law clause 232(2)(h) and replace it with “Where an answer is given later in writing, the question shall be re-submitted to the meeting at which the answer is available and both the question and the answer shall be recorded in the minutes of that meeting”.

14. Issue:

The manner in which penalties for offences are described in the local law, the quantum of penalties and whether the local law indicates that infringement notice penalties are less.

Decision:

No change to the Local Law. The format adopted is usual and in accordance with the associated State legislation. The penalties stated are maximum penalties. Local Law clause 705 specifically states that the penalty on an infringement notice will be the greater of 25 per cent of the maximum penalty stated in the local law or \$50. Section 115 of the Act sets out Council’s entitlement to prescribe penalties and provides for a maximum of 20 penalty units for the contravention of any local law. If no amount is stated then a court may impose a penalty of up to 10 penalty units. The maximum penalty prescribed for any breach of the Local Law is 10 penalty units, half the permitted maximum. This means the maximum infringement notice amount is 2 penalty units. Council does not consider the penalties prescribed to be unreasonable.

15. Issue:

That requests for reports from officers in closed ‘briefing meetings’ should be documented in the agenda for public consumption.

Decision:

No change to the Local Law as the suggested procedure would defeat the purpose of an Assembly.

16. Issue:

That a more detailed public question policy which states when and how questions will be directed to individual Councillors should be implemented.

Decision:

No change to the Local Law. Council’s existing policy is detailed and appropriate.

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17. Issue:

Whether the Councillor Code of Conduct will be treated as an amendment to be incorporated into the Local Law.

Decision:

The Councillor Code of Conduct has been approved under section 76C of the Act and does not form part of the Local Law.

18. Issue:

That the protection of significant trees should be enshrined in the Local Law and that a publicity campaign should be launched to advise residents of the lack of freedom to plant trees of their own choosing on Council nature strips.

Decision:

No change to the Local Law. These issues in so far as Council is concerned are more properly addressed in the planning scheme, street tree strategy and the like. There is no existing entitlement for residents to plant trees on Council nature strips. Local Law clause 327 makes provision for this to occur by permit and is an expansion not reduction of the existing position.

19. Issue:

That the switching off of mobile phones during meetings be stipulated.

Decision:

No change to the Local Law. Inclusion of such a provision in the Local Law is excessive. Anyone interrupting the orderly and lawful process of the meeting can be removed if necessary under local law 24.

Council wishes to thank all submitters for the time and effort put into their submissions.

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