



# MINUTES

## Special Council Meeting

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### Thursday, 25 May 2017 at 6.00pm

#### **Disclaimer**

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## **CONTENTS**

1.	OFFICIAL OPENING	1
2.	ACKNOWLEDGEMENT OF COUNTRY	1
3.	RECORD OF ATTENDANCE	1
3.1	Attendance	1
3.2	Apologies	1
3.3	Approved Leave of Absence	1
4.	DISCLOSURES OF INTEREST	1
4.1	Financial	1
4.2	Proximity	1
4.3	Impartiality	1
5.	PUBLIC QUESTION TIME	1
5.1	Responses to previous questions from members of the public taken on notice	1
5.2	Public Question Time	1
6.	PRESENTATIONS/DEPUTATIONS	2
6.1	Presentations	2
6.2	Deputations	2
7.	BUSINESS	3
7.1	Plastic Bag Reduction Local Law	3
8.	CLOSURE	8

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**MINUTES OF A SPECIAL MEETING OF COUNCIL HELD AT IN DOVENBY HOUSE, 1 COUNCIL PLACE  
EAST FREMANTLE ON THURSDAY, 25 MAY 2017.**

**1. OFFICIAL OPENING**

The Presiding Member opened the meeting at 6.00pm.

**2. ACKNOWLEDGEMENT OF COUNTRY**

*"On behalf of the Council I would like to acknowledge the Nyoongar people as the traditional custodians of the land on which this meeting is taking place."*

**3. RECORD OF ATTENDANCE**

**3.1 Attendance**

The following members were in attendance:

Mayor J O'Neill	Presiding Member
Cr J Harrington	
Cr A McPhail	
Cr M McPhail	
Cr L Nicholson	
Cr A White	

The following staff was in attendance:

Mr G Tuffin	Chief Executive Officer
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There was one member of the public in attendance.

**3.2 Apologies**

Cr C Collinson  
Cr T Watkins

**3.3 Approved Leave of Absence**

Cr D Nardi

**4. DISCLOSURES OF INTEREST**

**4.1 Financial**

Nil.

**4.2 Proximity**

Nil.

**4.3 Impartiality**

Nil.

**5. PUBLIC QUESTION TIME**

**5.1 Responses to previous questions from members of the public taken on notice**

Nil.

**5.2 Public Question Time**

Nil.

**6. PRESENTATIONS/DEPUTATIONS**

**6.1 Presentations**

Nil.

**6.2 Deputations**

Nil.

## 7. BUSINESS

### 7.1 Plastic Bag Reduction Local Law

<b>Applicant</b>	N/A
<b>File ref</b>	H/HRW5
<b>Prepared by</b>	Janine May PA to CEO & Gary Tuffin Chief Executive Officer
<b>Supervised by</b>	Gary Tuffin Chief Executive Officer
<b>Meeting Date</b>	25 May 2017
<b>Voting requirements</b>	Absolute Majority
<b>Documents tabled</b>	Nil
<b>Attachments</b>	1. Plastic Bag Reduction Local Law 2. Submissions received

#### **Purpose**

To consider the adoption and gazettal of a Plastic Bag Reduction Local Law.

#### **Executive Summary**

It is recommended that Council adopt the following:

1. In accordance with section 3.12(4) of the Local Government Act 1995, the *Town of East Fremantle Plastic Bag Reduction Local Law 2017* be adopted subject to the definitions of “reusable plastic bag” and “single use plastic shopping bag” in part 4 of the draft local law being amended to replace “60 microns” with “35 microns”;
2. In accordance with s3.12(5) of the Local Government Act 1995, the local law be published in the Government Gazette and a copy sent to the Minister for Local Government;
3. After Gazettal, in accordance with s3.12(6) of the Local Government Act 1995, local public notice be given —
  - a. stating the title of the local law;
  - b. summarising the purpose and effect of the local law (specifying the day on which it comes into operation); and
  - c. advising that copies of the local law may be inspected or obtained from the Town’s office.
4. Following Gazettal, in accordance with the Local Laws Explanatory Memoranda Directions as issued by the Minister on 12 November 2010, a copy of the local law and a duly completed explanatory memorandum signed by the Mayor and Chief Executive Officer be sent to the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation.

#### **Background**

On 15 June 2004 Council adopted a Strategy for a Plastic Bag Free Town as a policy of Council. The Plan of Action to implement the Strategy included the establishment of a steering committee and an annual reporting system on the progress of the implementation of the strategy. Unfortunately, it appears the strategy was not progressed.

Although adopted as a Policy it was in effect a Strategy with milestones, therefore, it was decided during a review (November 2015) of Council Policy to delete it as a policy.

Nationally, South Australia, the ACT and the Northern Territory have all banned shops from selling or giving away lightweight single use plastic bags. Queensland, Victoria and New South Wales are

working on a joint approach to banning single use bags, but prior to the recent change of government, the Western Australian State government has opposed the move.

Following a survey of businesses within the Town in November 2016 regarding this matter, a draft local law was considered by Council at its meeting held on 21 March 2017 resulting in the following resolution:

*Moved Cr M McPhail, seconded Cr Nardi*

*That Council:*

1. *in accordance with s3.12(3)(a) and (3a) of the Local Government Act 1995, issue State wide and local public notices stating that:*
  - a. *Council proposes to make a Plastic Bag Reduction Local Law, and a summary of its purpose and effect;*
  - b. *Copies of the proposed Local Law may be inspected at the Town's offices;*
  - c. *Submissions relating to the proposed local law may be made in writing to the Town within a period of not less than 6 weeks after the notice is given;*
2. *in accordance with s3.12(3)(b), as soon as the notice is given, a copy of the proposed Local Law be supplied to the Minister for Local Government;*
3. *in accordance with s3.12(3)(c) of the Act, a copy of the proposed Local Law be supplied to any person requesting it; and*
4. *A report be prepared for Council on the summary of submissions received.*

At Council's Concept Forum held on 9 March 2017 elected members were keen to explore the possibility of providing a reusable (calico/hessian) shopping bag (with the Town's new logo) to every household within the Town, should the local law be gazetted.

Initial investigations have revealed a cost of approximately between \$2.50 and \$4.50 per bag subject to the size, material and the extent of branding.

### **Consultation**

#### November 2016 Survey

In November 2016, a survey was undertaken asking local businesses for their feedback about their use of grocery style single use plastic bags. Letters along with a hard copy survey were circulated to all business in the Town.

A total of five responses were received from East Fremantle businesses, three positive (agreeing to the ban of single use plastic bags) and two negative. These comments, together with a draft local law, were considered by Council at its meeting held on 21 March 2017.

#### Draft Local Law

The draft local law was advertised in the West Australian and Fremantle Herald newspapers on Saturday, 1 April 2017 and in the Fremantle Gazette on 4 April 2017 with a closing date of 19 May 2017. At the close of this comment period, the following comments were received:

<b>Comment</b>	<b>Recommended action</b>
<b>Resident:</b> This is an excellent initiative. Please continue with it.	Agreed.
<b>Ann Reeves Glyde-In:</b> O yes, please do introduce this, it is way overdue and will make a positive difference to our Town and the world. Thanks for offering it.	Agreed.

Comment	Recommended action
<p><b>Department of Local Government &amp; Communities</b> <u>Regulation of Plastic Bags</u> The Parliament &amp; the Joint Standing Committee on Delegated Legislation have previously raised the following concerns with local laws of this nature:</p> <ul style="list-style-type: none"> <li>(a) It concerns a matter that may be better reserved for State-wide legislation;</li> <li>(b) It imposes restrictions and costs on businesses in the district which may be perceived as anti-competitive;</li> <li>(c) The court may determine that the local law is not a lawful or reasonable use of the Town's lawmaking powers under the <i>Local Government Act 1995</i>.</li> </ul> <p>These issues may result in the local law being disallowed in Parliament. Even if the local law is not disallowed, it may potentially be vulnerable to legal challenge.</p> <p><u>Clause 4 Definition of plastic bags</u> The local law uses definitions of plastic bags that rely on the presence of handles. The Town should be aware that any single use plastic bags lacking handles or possessing a single handle are likely to fall outside the application of the local law. This could make the local law easy to circumvent.</p> <p><u>Clause 6 Prosecution of individuals outside district</u> Clause 6 states that a person must not supply single use plastic bags to retailers in certain circumstances. Section 3.5(2) of the <i>Local Government Act 1995</i> provides that the local law will not generally apply outside a local government district. As such, it is unlikely that this clause will be enforceable in situations where:</p> <ul style="list-style-type: none"> <li>(a) The supplier or the retailer is located outside the district; or</li> <li>(b) One or more elements of the offence occur outside the district.</li> </ul> <p><u>Entry into private property</u> As a general rule, local government employees may not enter private property except with the property owner's consent or where expressly permitted by legislation. When the Town is investigating potential breaches of the local law, it should ensure that its employees only enter private property when legally permitted. If a Town employee fails to do this, there is a risk that the Town will be sued or prosecuted for trespass.</p>	<ul style="list-style-type: none"> <li>(a) The Premier (Hon Mark McGowan) has publicly stated on a number of occasions that he believes this matter should be addressed by local governments.</li> <li>(b) The local businesses of East Fremantle were surveyed – with two objections received.</li> <li>(c) Noted.</li> </ul> <p>Noted – it is our intention to commence with banning general single use shopping bags (not all plastic bags) as a starting point, possibly with other types of plastic bags to follow in time (ie vegetable bags).</p> <p>Noted.</p> <p>Noted.</p>

Council's PEHO attended a meeting on 11 May 2017 arranged by WALGA to discuss legislation to ban single use plastic bags. The City of Fremantle is currently attempting for the third time to introduce a single use plastic bag ban consistent with South Australian legislation which defines these as having a thickness of less than 35 microns. Meeting attendees and WALGA staff were concerned with the

possibility of disallowance of local laws due to varying bag thickness between local governments. As a consequence, WALGA recommends that the definitions of “reusable plastic bag” and “single use plastic shopping bag” in part 4 of the draft local law be amended to replace “60 microns” with “35 micron”.

Foodworks East Fremantle advise the plastic shopping bags they issue are 11 microns.

Council’s PEHO has attempted to survey what thickness plastic bags are currently in use by Coles and Woolworths in Western Australia. We are currently waiting on confirmation from the respective Head Offices. WALGA have not undertaken any such research and are not aware of the thickness of plastic bags in common use in Western Australia.

It is recommended that Council adopt the local law subject to making a minor amendment to the thickness of the single use plastic bags from “60 microns” with “35 microns” to be consistent with the reusable plastic bag and single use plastic bag definitions used by other states and territories.

### **Statutory Environment**

Section 3.12 of the Local Government Act 1995 sets out the requirements for making a local law. This proposed local law must be made under the same process as described in s3.12 of the Local Government Act.

Section 3.13 of the Local Government Act states;

#### **3.13. Procedure where significant change in proposal**

*If during the procedure for making a proposed local law the local government decides to make a local law that would **be significantly different** from what it first proposed, the local government is to recommence the procedure.*

The proposed amendment is not considered to be significantly different from what was first proposed. The intent of the local law is still the same, only the definitions of a “reusable plastic bag” and “single use plastic shopping bag” have changed from 60 microns to 35 microns.

### **Policy Implications**

N/A

### **Financial Implications**

The cost of Gazettal of the local law.

### **Strategic Implications**

The Town of East Fremantle Strategic Community Plan 2015 – 2025 states as follows:

#### **KEY FOCUS AREA 2: Infrastructure and waste services**

**Aspiration:** *The needs of our community are met through the provision of high quality infrastructure and waste services*

2.3 *Promoting sustainable environmental management and use of sustainable resources*

### **Site Inspection**

Not applicable

### Comment

Council may now make the local law, which will come into effect 180 days after its publication in the Government Gazette to provide:

- a phasing in period for businesses to use up existing stocks,
- the opportunity for the Town to promote the local law as a means to reduce pollution and minimise plastic bag use and to encourage the use of alternative bags.

The implementation of this local law should substantially reduce litter in the terrestrial and marine environment. This reduces impacts on the environment and the need for local government cleanup activities. It has the potential to reduce plastic bag contamination of alternative waste treatment plants and composting facilities which increases the value of the compost and reduces the amount of pre-treatment necessary.

The recently appointed state Minister for the Environment has stated that local government were free to pursue their own bans but the Government would be exploring the possibility of a state-wide ban.

It is understood that a number of local governments are currently considering the introduction of plastic bag reduction local laws.

It is recommended that in line with WALGA's advice in regards to taking a state wide approach, Council adopt the *Town of East Fremantle Plastic Bag Reduction Local Law 2017* subject to the definitions of "reusable plastic bag" and "single use plastic shopping bag" in part 4 of the draft local law being amended to replace "60 microns" with "35 microns".

### 7.1 OFFICER RECOMMENDATION/COUNCIL RESOLUTION 120517

Moved Cr M McPhail, seconded Cr Harrington

That Council adopt the following:

- In accordance with section 3.12(4) of the Local Government Act 1995, the *Town of East Fremantle Plastic Bag Reduction Local Law 2017* be adopted subject to the definitions of "reusable plastic bag" and "single use plastic shopping bag" in part 4 of the draft local law being amended to replace "60 microns" with "35 microns";
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(CARRIED 6:0)

**8. CLOSURE**

There being no further business, the Presiding member declared the meeting closed at 6.14pm.

*I hereby certify that the Minutes of the special meeting of the **Council** of the Town of East Fremantle, held on **25 May 2017**, Minute Book reference **1. to 8.** were confirmed at the meeting of the Council on*

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*Presiding Member*