

10 REPORTS FOR DECISION**10.1 CITY OF PROSPECT BY-LAW REVIEW - LEGISLATIVE COUNCIL RECOMMENDATIONS****File Number:** IC23/33**Author:** Deborah Horton, Team Leader Governance & Risk**Responsible Executive:** Ginny Moon, Director City Corporate**EXECUTIVE SUMMARY**

The *Local Government Act 1999* (SA), gives Council power to make by-laws which are 'rules' that Council can legally make to manage the circumstances in which the community can use and access facilities for the '*...good rule and government of the area including convenience, comfort and safety...*'.¹

Essentially, there are significant legislative requirements of what a by-law must/must not do, when it expires and how a by-law is reviewed, remade and implemented.

Council embarked upon a by-law review in April 2022 which resulted in community consultation and a final report on 23 August 2022, whereby Council endorsed the new by-laws that would take effect 1 January 2023.

Once Council endorsed these bylaws, the Parliament of South Australia via its Legislative Review Council (LRC) is tasked with evaluating and certifying these by-laws to ensure they meet all legislative requirements.

As a result of this certification process, the LRC has effectively requested that Council address the following this calendar year;

- Inclusion of the words 'reasonable' or 'reasonably' in two by-laws, relating to an authorised officer's opinion, request or direction to a person (to be reasonable) when implementing the by-laws.
- Exclusion of gender specific language (he/she/his/her) to include gender neutral language (they/them) in four by-laws.

This report seeks a formal response from Council to the LRC and to provide Council with an action plan that will identify the next steps.

RECOMMENDATION**That Council:**

- 1. Having considered Item 10.1 City of Prospect By-Law Review - Legislative Council Recommendations receives and notes the report.**
- 2. Having considered Item 10.1 City of Prospect By-Law Review - Legislative Council Recommendations, writes to assure the Legislative Review Committee that Council has considered and agrees with the Legislative Review Committee's recommendations.**
- 3. Commences a by-law review to address the Legislative Review Committee's recommendations in full in accordance with the action plan outlined in this report.**

DISCUSSION

By-laws expire every eight years,² and cannot contradict or be inconsistent with legislation.³

¹ Local Government Act 1999 (SA) s 246.

² Ibid.

³ Above n1 (s 247).

City of Prospect has six by-laws which were comprehensively reviewed in 2022, which were gazetted on 1 September 2022, and took effect on 1 January 2023;⁴

- By-law 1 – Permits and Penalties
- By-law 2 – Moveable Signs
- By-law 3 – Local Government Land
- By-law 4 – Roads
- By-law 5 – Dogs
- By-law 6 – Waste Management

The LRC recommendations specifically refer to the following clauses (with the *red/italic* text showing the effect of compliance);

- By-law 2 – Moveable Signs - Clauses 10.1 and 10.2

Removal of Authorised Moveable Signs

- 10.1 in the *reasonable* opinion of the authorised person, and notwithstanding compliance with this by-law, there is any hazard or obstruction or there is likely to be a hazard or obstruction arising out of the location of the moveable sign; or
- 10.2 so required by the authorised person for the purpose of special events, parades, road or footpath works or any other circumstances which, in the *reasonable* opinion of the authorised person, requires relocation or removal of the moveable sign.

- By-law 3 – Local Government Land – Clauses 4.16, 7.1.1, 7.1.2, 7.2

Donations

- 4.16 ask for or receive or indicate that ~~he or she~~ *they* desires a donation of money or any other thing.

Removal of Animals and Exclusions of Persons

- 7.1.1 any person in charge of the animal shall forthwith remove it from that land on the *reasonable* request of an authorised person; and
- 7.1.2 any authorised person may remove any animal from the land if the person fails to comply with the request, or if *the authorised person reasonably believes* no person is in charge of the animal.
- 7.2 Any authorised person may *reasonably* direct any person who is considered to be committing, or has committed, a breach of this by-law to leave local government land.

- By-law 4 – Roads, clause 4.6

Donations

- 4.6 ask for or receive or indicate that ~~he or she~~ *they* desires a donation of money or any other thing.

⁴https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2022/September/2022_060.pdf

- By-law 5 – Dogs, clause 6.1

Dogs off leash areas

4.6 Subject to paragraphs 4 and 5, a person may enter any dog off leash area for the purpose of exercising a dog under ~~his or her~~ **their** control.

- By-law 6 – Waste Management, clause 4.1, 4.2, 5.1.1 and 5.2.1

Provide containers

4.1 An occupier of domestic premises must keep on ~~his or her~~ **their** premises a household waste container and a recyclables container as approved by council.

4.1 An occupier of domestic premises may keep on ~~his or her~~ **their** premises a green organics container as approved by the Council.

Household waste

5.1.1 ensure that the household waste container kept on ~~his or her~~ **their** premises is approved by the Council; and

Recyclables

5.2.1 ensure that the recyclables container kept on ~~his or her~~ **their** premises is approved by the Council; and

Administration recommend that Council consider and accept the LRC's recommendations to modernise the by-laws in accordance with social convention and avoid any confusion or challenge to the by-laws.

Implications, Related Questions and Further Information

Next steps

As a by-law can only 'expire' or be changed (by further by-law), Administration suggest the following logical next steps and suggested timeframes as explained further below, which anticipates no significant opposition from the community in doing so, which may or may not eventuate.

March/April

- An amending by-law that addresses the LRC recommendations drafted by administration.
- Council receives a report that endorses the draft amending by-law for community consultation.

April/May

- Amending by-law is made available for community consultation in accordance with legislative requirements.
- Community consultation closes and results compiled into a report.

June/July

- Council receives a report that details the consultation results and a report that will seek to address the results (as appropriate) and endorse the amending by-law as appropriate.

August/September

- Amending by-law progresses through certification processes as per legislative requirements.

January 2024

- Amending by-law progresses through certification processes as per legislative requirements and becomes operational.

Relevance to Core Strategies / Policy

Intelligent Community Indicators

6. Advocacy: Engaging leaders and citizens, businesses and institutions, in identifying opportunities to champion positive change

ATTACHMENTS

1. **Attachment 1 - By-Law Review 28/02/2023**

LEGISLATIVE REVIEW COMMITTEE
PARLIAMENT OF SOUTH AUSTRALIA



PARLIAMENT HOUSE
NORTH TERRACE
ADELAIDE SA 5000

Mr Chris White
Chief Executive Officer
City of Prospect
(by email)

8 February 2023

Dear Mr White,

Re: City of Prospect By-Laws

I refer to the Legislative Review Committee's ('the Committee') correspondence to you dated 10 November 2022 and to correspondence from Mr Paul Kelly, Principal, Norman Waterhouse Lawyers, dated 15 November 2022 with respect to the City of Prospect Moveable Signs By-law 2022 – No 2 ('the moveable signs by-law') and its Local Government Land By-law 2022 – No 3 ('the local government land by-law') ('the City of Prospect by-laws').

At its meeting today, the Committee confirmed that, should the City of Prospect make an amending by-law or by-laws to address the matters raised by the Committee, the Committee would not proceed with its notices of motion to disallow the City of Playford by-laws.

The Committee looks forward to your response on or before the close of business on Thursday 16 February 2023. If you have any questions or would like to discuss this matter further, please contact Mr Matt Balfour, Secretary to the Committee, on (08) 8237 9415.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Irene Pnevmatikos'.

Hon Irene Pnevmatikos MLC
PRESIDING MEMBER

cc Mr Clinton Jury, CEO, Local Government Association
Mr David Whiterod, Team Leader, Office of Local Government
Mr Paul Kelly, Principal, Norman Waterhouse Lawyers

Correspondence to: Parliament House, North Terrace, Adelaide SA 5000
08 8237 9415 or Free Call 1800 182 097 (SA Country Only)