

DARWIN CITY COUNCIL
SPECIAL COUNCIL MEETING
WEDNESDAY, 20 MAY, 2009

MEMBERS: The Right Worshipful, Lord Mayor, Mr G R Sawyer (Chairman); Member J D Bailey; Member R T Dee; Member R K Elix; Member H I Galton; Member G M Jarvis; Member G A Lambert; Member R Lesley; Member F P Marrone; Member A R Mitchell; Member K M Moir; Member J L Sangster; Member H D Sjoberg.

OFFICERS: Chief Executive Officer, Mr B Dowd; General Manager Corporate Services, Mr F Crawley; General Manager Infrastructure, Mr L Cercarelli; General Manager Community & Cultural Services, Mr J Banks, Committee Administrator, Ms L Elmer.

Enquiries and/or Apologies: Linda Elmer
E-mail: l.elmer@darwin.nt.gov.au
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1 MEETING DECLARED OPEN

2 APOLOGIES AND LEAVE OF ABSENCE

2.1 Apologies

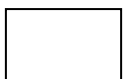
2.2 Leave of Absence Granted

THAT it be noted that Member K M Moir is an apology due to a Leave of Absence being previously granted on 12 May 2009 for the period 14 - 22 May 2009.

DECISION NO.20\() (20/05/09)

2.3 Leave of Absence Requested

3 DECLARATION OF CONFLICT OF INTEREST OF ELECTED MEMBERS

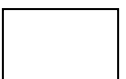


4 MISCELLANEOUS ITEMS

4.1 **By-law 45 Amendment - Ignition of Fireworks**

Report No. 09C0083 JB:kl (20/05/09) Common No. 1176862

Report Number 09C0083 attached.



ENCL: YES

DARWIN CITY COUNCIL

DATE:20/05/09

REPORT

TO: SPECIAL COUNCIL/OPEN

APPROVED:

FROM: GENERAL MANAGER COMMUNITY &
CULTURAL SERVICES

REPORT NO: 09C0083 JB:kl

COMMON NO: 1176862

SUBJECT: BY-LAW 45 AMENDMENT – IGNITION OF FIREWORKS

ITEM NO: 4.1

SYNOPSIS:

Council has been advised that it is the Northern Territory Governments preference that Darwin City Council's by-laws be amended to facilitate Council's desired fireworks free area at Mindil Beach. This report describes the by-law making process and associated matters as well as a copy of a draft by-law for Council consideration.

GENERAL:

PREVIOUS DECISIONS

Decision No. 20\1260 (24/2/09)

That the Lord Mayor sign the letter attached to Report No. 09A0039 addressed to the Chief Minister seeking that the Mindil Beach area be excluded from the general approval for use of private fireworks on Self Government Day each year.

Decision No. 20\1144 (27/10/09)

That Report Number 09A0004 – Fireworks in Public Places, be received and noted.

Decision No. 20\0704 (16/9/08)

That the Briefing from Mr Richard Giles of Cridlands in relation to fireworks in public places be received and noted.

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Decision No.20\0705 (16/09/08)

THAT in an attempt to introduce improved measures to control the use of fireworks on land owned or controlled by the Council, appropriate amendments to Council By-laws be prepared to enable the Council to, amongst other things:

- (i) prohibit the use of fireworks on certain land, beaches or roads;
- (ii) prescribe areas where the ignition of fireworks may take place.

THAT amongst other things, the Council call upon the Northern Territory Government to review the existing process under the Dangerous Goods Regulations for the issue of permits for fireworks displays to simplify the process and to clarify the Council's role, if any, in this process in the future.

Decision No. 20\0395 (24/6/08)

THAT the verbal report provided by the Chief Executive Officer regarding Territory Day Fireworks Preparations for 1 July 2008, be received and noted.

Decision No. 19\5924 (25/3/08)

THAT Council acknowledge that Alderman K Moir raised the issue of Firecrackers still being set off in Darwin and urged that Council continue to work on solutions to this matter.

Decision No. 19\5875 (26/2/08)

THAT Council continue with the process of amending by-law 45 (4) as soon as possible.

Decision No.19\5372 (11/12/07)

THAT increased security patrols are instigated for Territory Day.

THAT Darwin City Council By-Law, 25 January 2006, *Sect 45 (4) - Nothing in this by-law applies to the ignition of fireworks on the day on which self-government of the Territory is celebrated* be Repealed and that the appropriate action to achieve this be commenced.

THAT the Council further consider the controls it wishes to introduce to control the use of fireworks on land owned or controlled by it including the reimbursement of clean-up and damage costs from the Northern Territory Government.

THAT the Northern Territory Government be urged to introduce greater controls on the use of fireworks, particularly in public areas, and to provide sufficient resources to ensure those controls are enforced.

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THAT representation be made to the Chief Minister to work in partnership with Darwin City Council and other agencies to ensure public safety is the top priority in arrangements made for Territory Day Fireworks.

Decision No.19\4913 (28/08/07)

THAT the temporary closure of Alec Fong Lim Drive from Dudley Point northwards, on Territory Day, between 6.00 p.m. until 5.00 a.m. the following day for three years, be undertaken in accordance with the Local Government (Road Opening and Closing) Regulations.

THAT the temporary closure of Alec Fong Lim Drive from Dudley Point northwards between 11.00 p.m. and 5.00 a.m., seven days per week for three years commencing 18 November 2008 be undertaken in accordance with the Local Government (Road Opening and Closing) Regulations.

THAT the matter of fireworks on Council land be the subject of a further report.

THAT Council commence a public consultation and notification process for the closure of Alec Fong Lim Drive from Dudley Point northwards, in accordance with the provisions of the *Local Government (Road Opening and Closing) Regulations*.

Decision No. 19\4615 (12/6/07)

THAT letter, document number 1210084, from the Minister for Employment, Education and Training, advising that the Northern Territory Government would not consider covering the costs of cleaning up after fireworks on Territory Day, be received and noted.

Decision No. 19\4367 (24/4/07)

THAT Council continues to assist the Northern Territory Government with the segregation of Mindil Beach on Territory Day.

THAT Council advise the Northern Territory Government that it does not support the recommendation from the Fireworks Safety Strategy Project Team that Council provide extra lighting at Mindil beach on Territory Day.

THAT Council seek re-imbursement from the Northern Territory Government for the cost of the 2007 Territory Day clean up.

Decision No. 19\3483 (19\9\06)

THAT the committee resolve under delegated authority that letter, document number 1077969 from the Chief Minister, inviting a representative from Council to discuss on how Territory Day fireworks can be better managed, be received and noted.

Decision No. 19\3170 (11/7/06)

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THAT the Lord Mayor write to the Chief Minister seeking a meeting to discuss how local government and Territory government can develop more appropriate controls for the future use of fireworks in the Northern Territory.

BY-LAW MAKING PROCESS

Guidelines to making by-laws

1. Councils are given the power to make by-laws by section 188 of the *Local Government Act* (2008) ("the Act") which commenced on 1 July 2008. These guidelines will assist the Council to formally make new by-laws or make amending by-laws to change existing by-laws.

Part 13.1 of Chapter 13 of the Act (current as at xx May 2009) which governs the making of by-laws is attached.

2. Instructions may be given to Council's lawyers Cridlands MB or to the Parliamentary Counsel, for the preparation of draft by-laws as requested by the Council. Once these have been drafted, there are legislative requirements under the Act which must be complied with in order for the By-law to validly come into force and become binding. If requested, Cridlands MB or Parliamentary Counsel may be able to assist in complying with these requirements.
3. The Act makes a number of changes in relation to the making of by-laws. Specifically, under section 189 of the Act, there are a number of principles to which by-laws made or amended after 1 July 2008 must conform. Each of these principles must be considered in drafting any proposed by-laws.
4. The Council must, at least 21 days before the meeting at which the Council proposes to make the by-laws:
 - (a) Publish the proposed by-laws on its website; and
 - (b) Make copies of the proposed by-laws available for public inspection, without charge, at the Council's public office; and
 - (c) Give notice in the NT News of the availability of the by-laws and of its general nature and effect; and

Council is required to take into consideration any written representations made by members of the public with regard to the proposed by-laws.

5. Once the Council has agreed to the final draft by-laws and the above steps (a) to (c) have been satisfied, the Council must obtain a certificate from a legal practitioner certifying that, in the legal practitioner's opinion, the by-laws may be made consistently with the principles prescribed under section 189 of the Act – see section 190(1)(c). In other words, the by-laws do not go beyond the powers of the Council and comply with the prescribed principles.

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This certificate should be requested from a partner at Cridlands MB or the Parliamentary Counsel.

6. Cridlands MB or the Parliamentary Counsel should be asked to provide you with 2 original prints of the by-laws, together with a “settled” copy and a certificate.
7. Once the certificate has been received by Council, the by-laws should be placed on the agenda for the next meeting.
8. If the Council decides to make the by-laws, the Act provides that this must be done by a special resolution, which is a resolution supported by the votes of at least three-quarters of the total members of the Council.
9. The resolution should read like this: “It is resolved that the Council makes the <xyz> by-laws as certified by <insert name of legal practitioner>, a legal practitioner on x/x/xxxx (as per attachment A of these Minutes), and that the Common Seal be affixed to the by-laws and they be signed and sealed by the Lord Mayor or Acting Lord Mayor (as appropriate) and the CEO.”
10. The two original prints of the by-laws should be signed and sealed where indicated on the first page of the by-laws. One original should be kept on the Council’s records and the other forwarded to the Department.
11. The “settled” copy is not signed or sealed and should be placed on your file.
12. You should then send the second original print of the signed and sealed by-laws, a copy of the “settled” by-laws and a copy of the section 190 certificate to the Director of Legislation, Department Local Government and Housing.
13. Once the by-laws are passed by a special resolution and signed by the appropriate person, there are a number of steps which must then be followed pursuant to section 63 of the *Interpretation Act*.
14. The Department will arrange for the Minister for Local Government and Housing to consider your new by-laws and, if the Minister agrees, publish a notification of the making of the by-laws in the *Gazette*. The Minister may, alternatively, return the by-laws to Council with recommended changes – refer section 63(4) of the *Interpretation Act*.
15. The by-laws will usually come into effect upon notification in the *Gazette*, unless a later date of commencement is provided for in the by-laws.

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16. Assuming the by-laws are acceptable to the Minister and are notified in the Gazette, the Department will prepare an explanatory memorandum describing the by-laws and will request the Cabinet Secretariat to arrange for the by-laws to be tabled in the Legislative. The Subordinate Legislation and Publications Committee will examine the by-laws. The Assembly may disallow the by-laws.
17. The Government Printer will be asked to print the by-laws; copies will be sent to Council.
18. Council is required to maintain a register of all by-laws made or adopted by it and the register must:
 - (a) include the text of each by-law and of any other document referred to or incorporated in the by-law;
 - (b) be accessible on the Council's website; and
 - (c) be available for inspection in hard copy, at the Council's public office. A member of the public is entitled, upon payment of the prescribed fee to a certified copy of a by-law.
19. If further information is required, please call xxx on xxx.

Part 13.1 By-laws

188 Power to make by-laws

- (1) Subject to this Part, a council may make by-laws for the good governance of its area.
- (2) Regulations may be made defining the subjects that fall within the ambit of a council's power to make by-laws or excluding subjects from the ambit of a council's power to make by-laws.
- (3) A by-law may be of general or limited application.
- (4) A by-law binds the Territory and all its instrumentalities.
- (5) A by-law may impose a penalty, not exceeding 100 penalty units for an individual or 500 penalty units for a body corporate, for contravention of the by-law.
- (6) A by-law may also provide for a daily penalty, not exceeding 5 penalty units for an individual or 25 penalty units for a body corporate, for each day a contravention of the by-law continues.

189 Principles applying to by-laws

- (1) A by-law must conform with the following principles:
 - (a) a by-law must not exceed the power under which it is purportedly made;
 - (b) a by-law must not, without clear authority:
 - (i) operate retrospectively; or
 - (ii) impose a tax;
 - (c) a by-law must not shift the onus of proof to the accused in criminal proceedings unless:
 - (i) the offence is a parking offence or other minor traffic infringement; or
 - (ii) the shift of onus concerns only formal matters or matters peripheral to the substance of the offence; or
 - (iii) there is clear authority in the authorising legislation to shift the onus of proof to the accused;
 - (d) a by-law must not infringe personal rights in an unreasonable way or to an unreasonable extent.
- (2) A by-law should reflect the following principles:
 - (a) a by-law should be consistent with other legislation applying in the council's area;
 - (b) a by-law should not impose unreasonable burdens on the community;
 - (c) a by-law should not restrict competition unless the benefits of the restriction clearly outweigh the detriments;
 - (d) a by-law should avoid duplication of, or overlap with, other legislation;
 - (e) a by-law should be consistent with basic principles of justice and fairness;
 - (f) a by-law should be expressed plainly and in gender neutral language.

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- (3) If a by-law infringes one or more principles stated in subsection (2) it is not necessarily invalid on that ground, but a court, in considering whether the by-law represents a reasonable exercise of the power under which the by-law was made, must take the infringement into account.
- (4) This section does not affect the validity of a by-law made before the commencement of this Act.

190 Making by-laws

- (1) Before a council makes a by-law:
 - (a) the council must at least 21 days before the meeting at which the council proposes to make the by-law:
 - (i) publish the proposed by-law on its website; and
 - (ii) make copies of the proposed by-law available for public inspection, without charge, at the council's office; and
 - (iii) give notice in a newspaper circulating in the area of the council of the availability of the by-law and of its general nature and effect; and
 - (b) the council must consider written representations made by members of the public about the by-law; and
 - (c) the council must obtain a certificate from a legal practitioner certifying that, in the legal practitioner's opinion, the by-law may be made consistently with the principles prescribed in this Part.
- (2) A special resolution of the council is required for making a by-law.

Note

Section 63 of the Interpretation Act is also relevant to the making of by-laws. Section 63(2) provides that by-laws must be signed by a person authorised by the council to sign them and forwarded to the Minister. Section 63(3) provides that, where by-laws are forwarded to the Minister, the Minister must cause them to be notified in the Gazette and must lay them before the Legislative Assembly within 3 sitting days after the Gazette notification. By-laws are then liable to disallowance by the Legislative Assembly under section 63(9). By-laws take effect when notified in the Gazette unless the by-laws themselves make provision for commencement on a later date (section 63(3)(b)).

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191 Model by-laws

- (1) The Minister may, by *Gazette* notice, make, alter or revoke model by-laws dealing with a particular subject.
- (2) A model by-law must be published on the Agency's website.
- (3) A council may, by special resolution, adopt a model by-law, or an alteration to a model by-law, made by the Minister under this section.

192 Register of by-laws and certified copies

- (1) A council must keep a register of all by-laws made or adopted by the council.
- (2) The register must include the text of each by-law and of any code, standard or other document referred to or incorporated in the by-law.
- (3) The register:
 - (a) must be accessible on the council's website; and
 - (b) must be available for inspection at the council's public office.
- (4) A person is entitled, on payment of a fee fixed by the council, to a certified copy of a by-law.

STRATEGIC PLAN IMPLICATIONS:

The issues addressed in this Report are in accordance with the following Goals/Strategies of the Darwin City Council 2008 – 2012 as outlined in the 'Evolving Darwin Strategic Directions: Towards 2020 and Beyond':-

Goal

1 Achieve Effective Partnerships and Engage in Collaborative Relationships

Outcome

1.1 Improve relations with all levels of Government

Key Strategies

1.1.1 Effectively engage with Territory and Australian Government officials, particularly in the Darwin region

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Goal

5 Facilitate and Maintain a Cohesive Community

Outcome

5.3 Support harmony within the community

Key Strategies

5.3.2 Develop and support programs to promote community spirit, cohesion and safety

LEGAL IMPLICATIONS:

The progression of the by-law amendment is subject to the provisions of the Local Government Act and the Interpretation Act. Several actions specified within the legislation are time critical.

Council has received legal advice indicating that the application of the by-law is subject to concurrent actions to be undertaken by the Northern Territory Government.

PUBLIC RELATIONS IMPLICATIONS:

A communications plan is being developed in respect to the development of the by-law. The plan is to include:

Electronic media (Television & radio) advertisements

Print advertisements

The distribution of informative leaflets

On-site signage

It is likely that a range of views for and against the implementation of the by-law amendment will be expressed during the consultation phase and leading up to the Territory Day fireworks celebrations.

It is probable that some misconceptions about the extent of Council's fireworks restrictions will be addressed during the advertising campaign, however the community discussion about the value and problems associated with the public use of fireworks will continue regardless.

If the application of the by-law or its enforcement are demonstrated to be ineffective a further public discussion about improvements to the legal mechanism may be anticipated.

COMMUNITY SAFETY IMPLICATIONS:

A primary consideration in the development of the proposed by-law is the creation of an area from which the public may view the Territory Day fireworks display without the direct hazard of privately purchased fireworks.

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FINANCIAL IMPLICATIONS:

Cost estimates for the implantation of the by-law are as follows:

\$5000	Electronic media publicity
\$6,000	Staff costs - Reg. Services
\$5,000	Professional services - Site survey & legal
\$5,000	Signage / bunting.
\$3,000	Print advertisements & printed information

Total

\$24,000

A budget variation will be required.

DELEGATION:

Nil

CONSULTATION:

External:

Legal Policy Office, Northern Territory Department of Justice
 Northern Territory Police
 Cridlands MB Lawyers

Internal:

Chief Executive Officer
 Manager Regulatory Services
 Manager Communications & Marketing
 Occupational Health & Safety Officer

PROPOSED PUBLIC CONSULTATION PROCESS:

Consultation will be carried out in accordance with Section 190 Local Government Act

“190 Making by-laws

- (1) Before a council makes a by-law:
 - (a) the council must at least 21 days before the meeting at which the council proposes to make the by-law:
 - (i) publish the proposed by-law on its website; and
 - (ii) make copies of the proposed by-law available for public inspection, without charge, at the council's office; and

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- (iii) give notice in a newspaper circulating in the area of the council of the availability of the by-law and of its general nature and effect.”

APPROPRIATE SIGNAGE:

On-site signage and bunting to denote the fireworks free area will be stalled.

LEGAL ADVICE:

E-mail from Richard Giles – May 20, 2009

As I noted in my letter, whatever happens to your by-laws, it is critical that the Minister's approval be stated as not applying to Mindil Beach. Without this, no matter what clause (4) says, it will not be an offence to ignite or throw fireworks on Mindil Beach on 1 July - clause (1) will remove any element of breach as the person will be "allowed to do so" under the Regulations.

I strongly suggest that you obtain a copy of the proposed approval as soon as possible to ensure that it excludes Mindil Beach. It is essential that you have this in order to be able to assert with any confidence at all that there has been a breach of your by-laws. You need this now in order that you can start whatever public information process you propose between now and 1 July.

RECOMMENDATIONS:

That it be a recommendation to Council:-

- A. THAT Report Number 09C0083 JB:kl entitled By-law 45 Amendment – Ignition of Fireworks, be received and noted.
- B. THAT Council resolves to commence the process for making amendments to its by-laws in the terms of the draft “Darwin City Council (Fire Works) Amendment By-laws 2009” contained in Attachment B to Report Number 09C0083 JB:kl as prepared by the Office of the Parliamentary Counsel and dated 20 May 2009, including the public notification process outlined in section 190 of the Darwin City Council By-laws.

JOHN BANKS
GENERAL MANAGER
COMMUNITY & CULTURAL SERVICES

NORTHERN TERRITORY OF AUSTRALIA

DARWIN CITY COUNCIL (FIRE WORKS) AMENDMENT BY-LAWS 2009

Subordinate Legislation No. [] of 2009

TABLE OF PROVISIONS

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Schedule

NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. [] of 2009*

Darwin City Council Amendment (Fireworks) By-laws 2009

Darwin City Council], at a meeting held on [] 2009, made the following by-laws under the *Local Government Act* and, for section 63(2)(a) of the *Interpretation Act*, authorised [], [the Chief Executive Officer], to sign them.

Dated 2009

Chief Executive Officer

The common seal of the Darwin City Council is affixed under a resolution authorising the seal to be affixed passed on [] 2009.

[Lord Mayor/Mayor/President/member]

Chief Executive Officer

NB: A certificate of a legal practitioner is required under section 190(1)(c) of the *Local Government Act*. Also, a special resolution of the council is required for making a by-law under section 190(2) of the *Local Government Act*.

DRAFT ONLY

Prepared by the Office of the Parliamentary Counsel

Date: 19 May 2009 20:21

Ref: 1byIL018|R|4V1C

* Notified in the *Northern Territory Government Gazette* on [] 2008.

1 Citation

These By-laws may be cited as the *Darwin City Council (Fireworks) Amendment By-laws 2009*.

2 By-laws amended

These By-laws amend the *Darwin City Council By-laws*.

3 Amendment of clause 45 (Igniting fireworks, &c.)

- (1) Clause 45(1), from "without a permit" to "meaning of"

omit, substitute

unless allowed to do so under

- (2) Clause 45(4)

omit

celebrated

substitute

celebrated at a place other than at the Mindil Beach area

- (3) Clause 45

insert

- (5) In this by-law:

firework includes (but is not limited to) shopgoods fireworks as defined in regulation 70(1) of the *Dangerous Goods Regulations*.

Mindil Beach area means all that parcel of land at Mindil Beach in the Town of Darwin, Northern Territory of Australia bounded by lines described as follows:

Commencing at the intersection of the north-westerly prolongation of the north-eastern boundary of Lot 5244 with the Low Water Mark of Fannie Bay; thence south-easterly by the said prolongation and boundary and its south-easterly prolongation to the north-easterly prolongation of the north-western boundary of Lot 5257; thence south-westerly to the northern corner of the said Lot; thence south-easterly by its north-eastern boundary to a north-western boundary of Gilruth Avenue; thence generally north-easterly by the said boundary to intersect parallel of south latitude 12 degrees 26 minutes 33.9 seconds, being a point on the centreline of a stormwater drain exiting under Gilruth Avenue; thence generally

north-westerly by the centreline of the said drain to intersect a south-western boundary of Lot 5670; thence north west to Low Water Mark of Fannie Bay; thence generally south-westerly by the said Low Water Mark to the point of commencement, the position of Low water Mark referred to here-in being as at Lowest Astronomical Tide.

Note for V1C.

I will talk to other drafters about how they handle descriptions here. I don't want to include in schedule as then I need to retitle existing schedule etc. The above is a little unusual I suspect but legally effective.

4 Amendment of Schedule (Fixed Penalties)

Schedule, before entry for section 63(1)

insert

45(1)	Offence in relation to lighting or assisting to make a bonfire, or igniting or throwing a firework or similar article, in a public place	4
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Schedule

by-law []

Provision	Amendment
	<div><div>omit</div><div>substitute</div></div>