

## **AGENDA**

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### **Environment and Planning Committee**

**Monday, 09 September 2019**

**7.00pm**

**Georges River Civic Centre  
Hurstville**



## ENVIRONMENT AND PLANNING

### ORDER OF BUSINESS

1. **Opening**
2. **Acknowledgement of Country**
3. **Apologies / Leave of Absence**
4. **Notice of Webcasting**
5. **Disclosures of Interest**
6. **Public Forum**
7. **Confirmation of Minutes of Previous Meeting**

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#### 8. **Committee Reports**

<b>ENV029-19</b>	<b>Legal Services Report - August 2019</b> (Report by Director Legal Services and General Counsel) .....	3
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## Committee Reports

**Item:** ENV029-19 Legal Services Report - August 2019

**Author:** Director Legal Services and General Counsel

**Directorate:** Office of the General Manager

**Matter Type:** Committee Reports

ENV029-19

### Recommendation

That the report “Legal Services Report – August 2019” be received and noted.

To avoid breaches of legislation, the Code of Conduct, perceived conflicts of interest and Council’s policies, this report provides a high level summary of the current litigation matters where Council is a party.

### Current Matters

1. The current Court Proceedings for the reporting period are broken down as follows:

#### Land and Environment Court

- 15 x Class 1 (Merit/DA)
- 2 x Class 4 proceedings (including 1 x Contempt of Court proceedings)

#### Local Court

- 3 x Council Prosecutions (including 1 x Police matter)

#### Supreme Court

- 1 x Summons

### Costs

2. The nett costs for financial year 2019/2020 to date are \$141,186.

### Current Status of Court Actions and Legal Matters

3. Detailed information regarding these matters is provided in the Councillors’ Information Bulletin and the quarterly Legal Services briefings to Council.

### Financial Implications

4. Within budget allocation.

### Risk Implications

5. No risks identified.

## **Community Engagement**

6. No Community engagement is required.

## **File Reference**

17/1831

**Item:** ENV030-19 Dog Waste Bag Dispensers  
**Author:** Coordinator, Environmental, Sustainability and Waste  
**Directorate:** Environment and Planning  
**Matter Type:** Committee Reports

**Recommendation**

That Council endorse the implementation of the dog waste bag programs involving the following actions:

- a) Installation of additional dog waste bag dispensers in 14 parks;
- b) Use of compostable dog waste bags; and
- c) Contractor (Suez) to be engaged to service the dispensers.

**Executive Summary**

1. There has been a significant increase in dog walking across many of Council parks especially in off-leash areas. To ensure that a clean and healthy environment for our community is maintained, Council has previously installed dog waste bag dispensers in various parks.
2. If left in parks and on footpaths, dog waste can reduce the aesthetics of the area and potentially create a health hazard to other animals and people as dog waste contains many known pathogens. Therefore proper removal and disposal is essential to maintain public health standards.
3. The previous installation of dog waste bag dispensers across the LGA has been ad-hock with some parks in Kogarah having dog waste bag dispensers, whilst there were none in the former Hurstville.
4. Further, a dog waste bin was also located alongside the bag dispensers. These dog waste bins were only 20L in capacity and were becoming contaminated with other waste which resulted in overflowing and odorous dog waste bins. To overcome this issue Council has recently removed these dog waste bins and replaced them with a 240L bin either on a stand or in a surround. This has significantly reduced the contamination and overfilling of the dog waste bins in parks.
5. The Companion Animals Act 1998 (the Act) stipulates that dog owners are responsible for the removal and appropriate disposal of waste generated by their dog in a public place. While most dog owners clean up their dog's waste, this report outlines a proposal by which Council will assist all dog owners, in a more coordinated manner to comply with the Act by providing dog waste bag dispensers and bins at high use dog walking parks across the LGA.
6. In summary first year actions include:
  - purchase and install 14 additional dog waste bag dispensers,
  - Council to purchase the Cardia compostable bags and
  - Suez to be engaged to replace bags.

## Background

7. Council at its meeting on 23 April 2019 resolved the following (Notice of Motion NM029-19 Dog Waste Bags):
- (a) *That the General Manager prepare a report on the cost and practicality of providing 'dog waste [or Dog tidy] bag dispensers in all parks within Georges River Council.*
- (b) *That the report include:*
- The location of all existing bag dispensers within the Council area
  - A prioritised list of parks most frequently used by dog walkers
  - Comment on the types of bags available to minimise environmental impact
  - Investigation of other options that Council can explore to educate and promote the environmentally friendly removal and disposal of dog waste deposited in our public areas.
8. Council staff have conducted an audit of all parks and liaised with key operational areas and Council's Animal Management Contractor to determine the best locations for dog waste bag dispensers within the LGA. The information listed in this report below provides a proposal including costs for installing dog waste dispensers into a priority list of parks.

## Report

### List of Parks

9. Council currently has 11 dog waste bag dispensers installed in parks, the locations of which are outlined in the table below. A list of priority parks for the installation of dog waste bag dispensers has been developed with input from key operational areas including Parks, Cleansing and Council's Animal Management Contractor. The development of the priority parks list considered those parks experiencing recent high demand for dog walking as well as the off leash parks.
10. Table 1 lists the current locations of dog waste bag dispensers. These parks are well used by dog owners and the existing 'Dog Tidy' dispensers in these parks do not require replacement.

**Table 1 - Current location of dog waste bag dispensers**

Council Ward	Current location of dog waste bag dispenser
Blakehurst Ward	Poulton Park
	Shipwrights Reserve Blakehurst (Woodlands Ave)
Kogarah Bay Ward	Claydon Reserve
	Parkside Drive Reserve, Carss Park
	Kogarah Park, Carlton
	Moore Reserve, Oatley
	Moore Park, Beverley Park
	Carss Bush Park, Carss Park
	Todd Park, Carss Park

Council Ward	Current location of dog waste bag dispenser
	Empress Park, Hurstville
	Carss Park Football fields

11. Table 2 lists the additional priority parks which were identified through internal consultation as proposed locations for the installation of dog waste bag dispensers.

**Table 2 - Priority list of parks that require a dog waste bag dispenser**

Council Ward	Priority list of parks to locate a Location of dog waste bag dispenser
Hurstville Ward	Kempt Field
	Timothy Reserve (outside Hurstville Oval)
	Peter Low Reserve
	Beverly Hills park
	Olds Park Penshurst
Mortdale Ward	Mountview Ave Park
	Peakhurst Park
Peakhurst Ward	Evatt Park
	Riverwood Park
	Donnelly Park
Blakehurst Ward	The Green Kyle Bay
	Kogarah Park, Carlton
	Swastener and Stevens Park
Kogarah Bay Ward	Anglo Square, Carlton

#### Dog waste bag dispensers

12. There are a limited number of options for dog waste bag dispensers available. The option currently used in our parks is called 'Dog Tidy' refer to Image 1. This option can be sourced locally and can be attached to a pole for easy access. The purchase price for the dog waste dispenser is \$98 each plus approximately \$25 for installation. Therefore, the cost to install these into the 14 priority parks listed above is \$1,722.

**Image 1 'Dog Tidy' waste bag dispenser**

13. After the installation of the dog waste bag dispensers at the parks in Table 2. Council would have a total of 25 dog waste bag dispensers across the Local Government Area. Each of these parks already have rubbish bins installed which can be used by dog owners to dispose of dog waste generated in these high use dog walking parks across the LGA.

**Dog waste bags**

14. There are a few options for bags currently on the market. These come with different environmental ratings and are made from different products. The current option used by Council is made of degradable plastic and comes at a cost of \$4 per roll. Feedback from the community regarding bag requirements is that the bags need to be large and durable. Alternatives to the current bags are compostable bags made from corn starch which will fit into the 'Dog Tidy' waste bag dispenser. A summary of the bag options is provided in table 3 below.

**Table 3 - Comparison of dog waste bags**

Brand	Degradable /compostable	Price/roll (250)	Usually purchased in lots of 400
Maxpak (handles)	Envirogreen*	\$4	\$1,600
<b>Cardia (handles)</b>	<b>Compostable^</b>	<b>\$12</b>	<b>\$4,800</b>
Oh Crap (no handles)	Compostable^	\$9	\$3,600

*\*breaks down in landfill in 3 years ^made from cornstarch*

15. The dog waste bags that are currently purchased by Council are the Maxpak bags. The replenishment of dog waste bags into the dog waste bag dispensers was previously conducted by Council during the collection of waste bins from the parks. However, as part of the recent transfer of the park bin collection service from Council to a private contractor a regular dog waste bag replenishment service has not been maintained.



16. To rectify this situation quotes for the replenishment of the dog waste bags were obtained from Council’s Engineering Operations Section and the current waste bin collection contractor (Suez). The quote received from Suez was the most financially beneficial at an approximate annual cost of \$3,000. It is anticipated that this service will commence following the installation of the 14 additional dog waste dispensers at the recommended priority parks and the existing parks following a contract variation with Suez to vary the Park and Litter Bin collection and Disposal Contract to add the replenishment of the dog waste bag dispensers.
17. From the above summarised information, it is recommended that Council move to a cornstarch bag (Cardia or Oh Crap) that is fully compostable instead of a degradable bag that will end up as microplastic in landfill (Maxpak). Feedback from the community is that they prefer a durable bag and the bags currently used have handles to provide an easy tie method. Therefore the preferred bag is the Cardia compostable bag with handles.
18. In summary the anticipated first year set up costs to:
  - purchase and install 14 additional dog waste bag dispensers,
  - Council to purchase the Cardia compostable bags and
  - Suez to be engaged to replace bags

Equals \$9,522 which is highlighted in the table below

**Table 4 - First year set up cost for 14 new dog waste dispensers**

	Dog Tidy dispensers	Cost for 400 rolls	Bag Replenishment costs	First year set up cost to Council
Max pak bags	\$1,722	\$1,600	\$3,000	<b>\$6,322</b>
<b>Cardia</b>	<b>\$1,722</b>	<b>\$4,800</b>	<b>\$3,000</b>	<b>\$9,522</b>
Oh crap	\$1,722	\$3,600	\$3,000	<b>\$8,322</b>

19. At this stage the actual frequency of replacement for the dog waste bag dispensers is not known. However if Suez were to replace the bags on a monthly basis the ongoing annual costs for this service would be \$7,800 per annum.

Alternative options and Education

20. After researching what services other Council’s provide for dog waste bins, it was identified that most Council’s provide a similar service to Georges River Council, i.e. using the dog waste dispensers and 240L garbage bins to deposit the waste. Bayside Council has recently implemented a dog waste composting vessel pilot program which is not emptied but instead is dug into the ground and maintained using a reactor to assist with the composting of the dog waste in situ. This system is similar to a composting toilet and requires ongoing staff maintenance to add the reactor and aerate the system.
21. There are two companies that offer this type of system with information provided by the companies indicating that the vessel can easily compost 3-4kg of dog waste per week, however they require regular maintenance where a staff member would need to aerate the

vessel weekly and both vessels can only accept waste in compostable bags. As this is currently a pilot program, Council will monitor the progress of this program.

### Signage

22. The 'Dog Tidy' bag dispenser itself is easily identifiable, within the park due to its bright green colour. Once all the dispensers are installed, Council will update our website with this information. Council will also promote the availability of dog waste bags in parks at our major events.

### **Conclusion**

23. The installation of the additional 14 dog waste bag dispensers will ensure that there is consistency in the provision of this service across high use dog walking parks within the Local Government Area. This will provide a convenience to the community and will assist in ensuring that our parks are kept in a clean and hygienic manner. Therefore, it is recommended that Council use Domestic Waste Reserve funding to:

- Order and install the additional 14 dog waste bag dispensers.
- Contact Suez to vary the Park and Litter Bin collection and Disposal Contract to add the replenishment of the dog waste bags to the dog waste dispensers.
- Monitor the current supply of dog waste bags and once repurchasing is required, purchase 400 rolls of the Cardia compostable (with handles) dog waste bags.

### **Financial Implications**

24. Additional non-budgeted funds of \$9,522 from the Domestic Waste Reserve.

### **Risk Implications**

25. No risks identified.

### **Community Engagement**

26. Formalised community engagement was not conducted.

### **File Reference**

17/1831, D19/187826

**Item:** ENV031-19 **Abandoned Shopping Trolleys**  
**Author:** Manager Environment Health & Regulatory Services  
**Directorate:** Environment and Planning  
**Matter Type:** Committee Reports

**Recommendation**

- (a) That Council adopt a policy position that all new or upgrades to an existing shop or shopping centre where shopping trolleys are/proposed to be used be required to use coin operated or wheel locking trolleys.
- (b) That a condition of development consent to be applied to all development applications for new or upgrades to an existing shop or shopping centre requiring the use of coin operated or wheel locking trolleys.
- (c) That Council staff continue to work with retailers and centre managers to introduce on-premises controls to all premises that use trolleys to prevent trolleys from entering public land throughout the Local Government Area.
- (d) That Council write to the Minister for Better Regulation and Innovation, The Hon Kevin Anderson, MP seeking amendments to the Impounding Act 1993 to regulate abandoned shopping trolleys similar to those recently introduced to address abandoned share bikes.
- (e) That Council write to all retailers requesting that they commit to developing, publishing and reporting on a service level for the removal of trolleys from public land.
- (f) That Council commence a community education campaign as detailed in this report to educate the community that dumping trolleys is illegal and that retailers be contacted requesting their support to work with their shops during the campaign's implementation.
- (g) That a further report be provided to Council within 6 months to update on the outcomes of the above recommendations.

**Executive Summary**

1. Council is continuing to receive an increasing number of complaints from Federal and State Members of Parliament, Councillors and members of the community, about the number of shopping trolleys abandoned on public land within the LGA, and the length of time these trolleys are allowed to remain on public land.
2. Abandoned shopping trolleys pose a safety risk to pedestrians and motorists, with an associated potential liability for the owner of the abandoned trolley. They can also cause environmental harm (for example, when deposited into waterways) and are visually intrusive.
3. The abandonment of shopping trolleys by members of the public upon roads, footpaths and public land is a growing and complex problem and while Council is not responsible for causing the problem the community looks to Council to find workable solutions.
4. In response to a Council resolution in March 2019, staff have made contact with retailers who use shopping trolleys to seek their support to keep trolleys from entering public land and to improve retrieval services for trolleys that enter public land.

5. Whilst there have been some positive steps much more work is to be done across levels of government and the retail sector. There is no one solution to the problem and this report outlines a number of options which must work together to reduce the impact of shopping trolleys on the community.
6. The recommendations proposed by this report are considered to provide a balanced and collaborative approach and if supported and once implemented should bring about noticeable changes with regards to the incidence of abandoned trolleys within the community.

### **Background**

7. Council, at its meeting on 25 March 2019, adopted the following Notice of Motion NM012-19 to address the issue of abandoned shopping trolleys:

*That the General Manager prepare a report to Council on the options to prevent the accumulation of abandoned shopping trolleys in public places including:*

*(a) the implementation of wheel lock or coin operated systems to prevent trolleys from being removed from shopping centre premises;*

*(b) the legislative and practical requirements for impounding trolleys and options for future impounding programs;*

*(c) methods for deterring the dumping of shopping trolleys in public places;*

*(d) methods to improve the time taken by shopping trolley owners to retrieve abandoned shopping trolleys; and*

*(e) a public awareness/education campaign to assist in voluntary compliance.*

8. This report addressed each of the above matters and recommends an approach for the future management of abandoned shopping trolleys.

### **Report**

#### **(a) Wheel lock or coin operated systems for trolleys**

9. The only retailer that fits all of their shopping trolleys with a method to prevent trolleys from being removed from their shopping centre premises is Aldi who use a coin operated system.
10. Currently Coles has three stores within the LGA. At Coles Oatley West, Coles trolleys are contained by an installed 'Catronics' wheel lock containment system. At Coles Hurstville Station, Coles has coin operated lock mechanisms on its trolleys to deter customers from removing them from the carpark. There is no system attached to trolleys from Coles Westfields and a trolley collection service is solely relied upon to retrieve trolleys from public land.
11. Woolworths relies on a trolley collection service to retrieve trolleys from public land for all of its stores within the LGA.

12. A recent survey conducted by Council's Rangers of abandoned shopping trolleys on public land within the Hurstville and Kogarah CBDs identified that the least number of trolleys belonged to Aldi which confirms that an on-premises containment approach is effective in preventing the dumping of shopping trolleys.
13. Currently there is no legislative requirement for retailers to install on-premises containment systems on their trolleys and any decision to do so is therefore voluntary on behalf of the retailer.
14. The only opportunity that Council has to compel retailers to use coin operated or wheel locking trolleys is via conditions placed on a development consent for a new or upgrade to an existing shop or shopping centre. It is therefore recommended that Council adopt a policy position that all new or upgrades to an existing shop or shopping centre where shopping trolleys are used be required to use coin operated or wheel locking trolleys. To support this policy position, it is further recommended that a condition of development consent to that effect be applied to all development applications for new or upgrades to an existing shop or shopping centre.
15. Whilst the above recommendations will assist with the resolution of the abandoned shopping trolley issue for new or upgrades to existing shops or shopping centres, actions need to be taken to address the current situation.
16. In this regard Council wrote on 17 May 2019 to all shops within the LGA which currently use shopping trolleys to advise of Council's resolution on 25 March and requested a "written submission on this issue, outlining the commitments your organisation is willing to make to reduce the number of shopping trolleys abandoned in our Council area and the length of time they remain on public land."
17. Council received an on-time submission by Woolworths and after further follow-up received a submission from Coles. Coles also took the opportunity to meet with the Deputy Mayor to outline their proposed options. No other replies were received to Council's letter.
18. Both major retailers are prepared to install one of the on-premises options to control the removal of trolleys from their premises, however for commercial reasons the stores requested that their options to manage the trolley not be released. One of the options proposed for Hurstville required the cooperation of Westfields as part of the systems installation, contact was made with Centre Management at Westfields on a number of occasions, however to date no reply has been received. Council staff will continue to liaise with the retailers and shopping centres in an attempt to have on-premises controls implemented on all premises using shopping trolleys.

(b) Legislative and practical requirements for impounding trolleys

19. The legislation in NSW that covers abandoned trolleys is the Impounding Act 1993 (the Act). The intention of this Act is to provide a process for the removal and retrieval of abandoned items from public places.
20. Under this Act impounding officers must notify an owner whenever a trolley is impounded and keep a record of each item including its description, time of impoundment and details of release or disposal. Council is also required to have an impounding facility of sufficient size to hold any impounded trolley.

21. The Act enables councils to impose fees and Council has a range of fees for impounding trolleys which have increased over recent years as an incentive to retailers to rapidly collect abandoned trolleys as indicated below:

	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>
<b>Holding Fee (per day)</b>	\$40.00	\$50.00	\$80.00
<b>Administration Fee (one off)</b>	\$20.00	\$20.60	\$21.00
<b>Release Fee (one off)</b>	\$76.50	\$78.80	\$81.00
<b>Disposal Fee (if not claimed)</b>	N/A	\$50.00	\$50.00

22. The key changes over the past three years have been the introduction of a \$50 disposal fee in 2017/2018 and the \$60 increase in the holding fee from \$20 in 2016/2017 to \$80 in 2018/2019.
23. While there are financial deterrents associated with an impounding program there are a number of other practical and operational limitations impacting on the effectiveness of the program including the:
- administrative burden to notify the owner of every impounded trolley.
  - provision of a suitably sized impounding facility to accept and store impounded shopping trolleys, for a minimum period of 28 days.
  - practical application of impounding trolleys on busy streets within the CBD where parking is difficult and there are numerous parking restrictions.
  - Work Health and Safety risks applied to Council staff in impounding abandoned shopping trolleys.
24. As a consequence, any systematic impounding program would need to occur after hours and would be best managed by a contractor engaged for the specific purpose. Currently there is no budget for such an approach and this option is considered a last resort should negotiated attempts to install on-premises controls not be successful.
25. Under the Act, any abandoned trolley is owned by the retailer and it is the retailers responsibility to collect their property. However while there are fines for abandoning a trolley, currently set at \$220, a fine can only be issued to the person who abandons the trolley in a public place and not the trolley owner. Before an authorised officer can issue a fine, the offender's name and address must first be obtained which is often a major practical limitation as cooperation is not always forthcoming and identifying the address of an offender who has disappeared into a secured apartment building is almost impossible.
26. Recently the NSW Government made amendments to the Act by including specific provisions in relation to abandoned share bikes. In summary the key provisions of these amendments that should/could also apply to abandoned shopping trolleys are:
- Council's Rangers will be able to immediately impound shared bicycles causing an obstruction or safety risk in a public place, or move them to another location.
  - Operators that do not remove a shared bicycle causing an obstruction or safety risk within 3 hours of being notified of their location by an impounding officer or any other person are taken to have abandoned the shared bicycle.

- Operators that do not remove a shared bicycle left in the same place for more than 7 consecutive days within 4 days of being notified of its location by an impounding officer or any other person are taken to have abandoned the shared bicycle.
  - Where an operator is taken to have abandoned a shared bicycle, they will now be subject to a fine of \$500 or a maximum court penalty of \$2750.
  - Council's Rangers can also issue removal notices for shared bicycles left in a public place in contravention of the new laws. Operators failing to comply with the notice are taken to have abandoned the shared bicycle.
27. These provisions move the emphasis of responsibility for abandoning the bike from the user to the owner of the bike which would if applied to trolleys provide a further incentive for retailers to install on-premises controls to prevent trolleys entering public land. Since the introduction of these new provision Council's Rangers have not impounded a single share bike, however a recent 4-day audit of streets within the Hurstville and Kogarah CBD's between 6:30am and 7:30am, identified a total of 226 abandoned shopping trolleys.
28. As the impact upon the community from abandoned shopping trolleys is considered to be far greater than that of abandoned share bikes, it is recommended that Council write to the Minister for Better Regulation and Innovation seeking amendments to the Impounding Act 1993 to regulate abandoned shopping trolleys similar to those recently introduced to address abandoned share bikes.

(c) Methods to deter the dumping of trolleys

29. As indicated above there are practical limitations in issuing fines to individuals who abandoned shopping trolleys. Further, many people do not believe they have done anything wrong as the retailer has allowed them to remove the trolley from their premises and have established a system in place to retrieve the trolley once used from public land. This system of retailers using public property to conduct their business for the convenience of their customers has operated for many years and to implement a compliance response in the first instance is not considered appropriate. However, the following deterrent options which have worked successfully in other regulatory schemes and are considered below:
- i) CCCTV
30. The main problem areas within both CBD's are unit complexes where occupants dump shopping trolleys on the footpath in front of the complex when they have finished with the trolley. Council could install CCTV cameras with appropriate signage similar to the waste dumping program to monitor known 'hot spots' as a deterrent to dumping trolleys. However, even if clear images of the person dumping the trolley are obtained, the person will need to be identified and unlike the waste dumping program which relies on motor vehicle registration details to identify the offender via this option is not available for trolley dumping.
- ii) Dob in a dumper
31. Whilst there have been a number of successful 'dob in a dumper' schemes across NSW they have all relied upon obtaining irrefutable proof of the offender mostly through linking an offending vehicles registration details to the vehicle owner. As indicated above this evidence is not applicable for shopping trolley matters and therefore evidence will most often be based on one person's word against another's which is not reliable should a regulatory response be considered appropriate.

## iii) Name and Shame

32. Whilst the NSW Food Authority operate a successful name and shame program for food premises operators who are fined or prosecuted for breaches of the Food Act, it is not considered appropriate to publish nameless images of people captured on CCCTV who dump trolleys.
33. It is considered that the above three options are not viable, therefore an education which is outlined latter in this report is the best option.

(d) Methods to improve retrieval time for abandoned trolleys

34. Both major retailers have trolley retrieval services which are supported by phone, web sites and smart phone apps for members of the community to notify of abandoned trolleys.
35. These services are promoted by the retailers and are also available on Council's web site as follows:
  - **Coles Trolley Collect** - Bi-Lo, Bunnings, Coles, Kmart, Officeworks and Target  
Call - 1800 876 553  
Website - [www.coles.com.au/customer-service/abandoned-trolley](http://www.coles.com.au/customer-service/abandoned-trolley)  
App - Download the free Coles Supermarket App from the [App Store](#) for Apple devices for [Google Play Store](#) for Android devices.
  - **Trolley Tracker** - Big W, Dan Murphys and Woolworths  
Call - 1800 641 497  
Website - <http://trolleytracker.com.au>  
App - Download the free Trolley Tracker App from the [App Store](#) for Apple devices for the [Google Play Store](#) for Android devices.
36. While these services are used by members of the public and Council staff, their effectiveness has been questioned due to instances where trolleys have not been collected for extended periods after notification or where advice has been provided by the retailer that the trolley has been removed when in fact it has not.
37. Irrespective of the success of these systems they are effectively Band-Aid solutions in removing trolleys from public places and the best option is to prevent trolley dumping is to prevent trolleys from leaving the shop premises in the first instance.
38. However, even with the introduction of on-premises systems there will always be some people who will remove trolleys and not return them to the store and therefore some form of trolley retrieval service will always be required.
39. It is interesting to note that neither of the above notification methods used by the major retailers contain a time (service level) by which the trolley will be removed and while Coles has an option to receive notification when the trolley has been removed it is defaulted to the negative option.
40. In order to improve retrieval times for abandoned shopping trolleys it is recommended that Council write to the major retailers requesting that they commit to developing, publishing and reporting on a service level for the removal of trolleys. This would provide greater community certainty that the retailers are committed to maintain a safe and trolley free local environment.



(e) Public Education and awareness to limit the dumping of trolleys

41. For the reasons as outlined in part (c) above a regulatory approach is not considered appropriate and a community education program to change long held behaviours is favoured.
42. As the most frequent locations for the abandonment of shopping trolleys occur adjacent to unit developments in Hurstville and Kogarah CBD areas a campaign targeting residents in these locations is proposed.
43. Attached to this report is an example of a sign that has been developed to educate the community that dumping trolleys is illegal. The sign is in English and simple Chinese and is planned to be installed adjacent to shopping centre exits within the Kogarah and Hurstville CBD's as well as being produced as an A5 flyer for distribution to all units within both CBD's.
44. Both Coles and Woolworths have offered to work with Council in implementing an education program and this offer should be accepted by Council on an in-kind basis. For example, the attached sign should be installed at the exit of each of the retailers' full range of stores within the LGA and could also be included in advertising panels where provided on trolleys. Contact will also be made with other retailers who provide shopping trolleys, e.g. IGA Supermarkets requesting their assistance with the education program.
45. Council's public education campaign will also promote the use of alternatives to using a supermarket shopping trolley including encouraging the purchase and use of a personal shopping cart. The education campaign will be promoted on Council's website, Facebook page, local paper and local Chinese papers.

## Summary

46. The current system whereby retailers use public property to conduct their business for the convenience of their customers by allowing shopping trolleys to leave their premises has operated for many years. With changing community expectations and increases in urban density the abandonment of shopping trolleys has increased significantly and is now a major community concern resulting in numerous complaints to Council.
47. While council can require all future shops or upgrades to existing shops or shopping centres to install on-premises systems to limit the ability of trolleys that enter public land there is no compulsion for retailers to retrofit existing shopping trolleys.
48. Therefore, a number of options need to be explored in order to address this situation and while no one system will in itself solve the problem an integrated approach is required including:
  - Voluntary retrofitting of either coin operated or wheel locking systems for existing trolleys.
  - Amendments to legislation to transfer responsibility for abandoned trolleys to the owner rather than the user of the trolley.
  - A commitment by retailers to develop, publish and report on a service levels for the removal of trolleys from public land.

- A public education campaign to change long held community behaviours around dumping shopping trolleys.
- A legislative compliant impounding program

### **Financial Implications**

49. The anticipated cost associated with the installation of signage and printing of flyers for distribution to units is approximately \$5,000 which will be sourced from the Rangers' budget.

### **Risk Implications**

50. No risks identified.

### **Community Consultation**

51. Community consultation will be undertaken in accordance with the details contained within this report.

### **File Reference**

17/1831, D19/194557

**Item:** ENV032-19 Unregistered Motor Vehicles  
**Author:** Manager Environment Health & Regulatory Services  
**Directorate:** Environment and Planning  
**Matter Type:** Committee Reports

### Recommendation

- (a) That Council write to the Minister for Transport and Roads, The Hon Andrew Constance MP seeking amendments to the *Road Transport Act 2013* to enable Council Authorised Officers to issue fines for all types of unregistered vehicles parked on public roads.
- (b) That Council write to the Southern Sydney Regional Organisation of Councils to seek its support (and the support of member councils) to amend the Road Transport Act 2013 to enable Council Authorised Officers to issue fines for all types of unregistered vehicles parked on public roads.

### Executive Summary

1. In April 2018 Bayside Council adopted an Impounding of Vehicles Policy to ensure that unregistered vehicles that are abandoned or left unattended can be removed from public roads.
2. At that time, the interpretation held by local government was that unregistered vehicles were the responsibility of the NSW Police under road transport legislation and as such were not covered by the Impounding Act 1993.
3. Acting on Council's resolution from its meeting on 27 May 2019, external legal advice confirmed that unregistered vehicles could be processed by Council in an identical manner as abandoned motor vehicles have been under the Impounding Act 1993.
4. Contact with staff from Bayside Council following the 12 month operation of its policy has indicated that the process for removing unregistered vehicles from public streets could be improved if Council Authorised Officers (Rangers) were provided with the ability to issue fines rather than having to rely on the step by step process in the Impounding Act 1993.
5. Therefore to assist Council's Rangers in removing unregistered vehicles from public streets this report recommends that Council write to the Minister for Transport and Roads, The Hon Andrew Constance MP seeking amendments to the Road Transport Act 2013 for this purpose.
6. The purpose of this report is to outline the key aspects of the legal advice, update Council on the outcomes, provides information on the Bayside Council Policy on unregistered vehicles and outlines an approach for Council on impounding operations.

### Background

7. Council, at its meeting on 27 May 2019, resolved to address the impounding of abandoned or unregistered vehicles as follows:

*“That the General Manager prepare a report to Council on the operation of the Bayside Council Impounding of Vehicles Policy April 2018 which addresses the following:*

- (a) legal advice to clarify the interpretation of ‘unattended’ as it relates to the Policy regarding unregistered vehicles claimed by their owner that remain parked on the road;*
- (b) options to amend Section 68 of Road Transport Act 2013, which currently provides the ability for authorised Council officers to issue fines for unregistered trailers to also include other unregistered vehicles;*
- (c) the outcomes of the implementation of the Policy at Bayside Council, including the number of vehicles removed by their owner and the number impounded by Council;*
- (d) any additional resources incurred by Bayside Council in implementing the Policy; and*
- (e) any legal, resourcing or other impediments to Council adopting a similar Policy.”*

## Report

### Legal advice to clarify the interpretation of ‘unattended’

8. Council sought legal advice from Lindsay Taylor Lawyers which is provided in Attachment 1. The advice indicates that as ‘Unattended’ is not defined in the Impounding Act 1993, other than in relation to an animal. The term is to be given its ordinary meaning, being ‘unaccompanied, alone, with no-one in charge, not taken care of, not heeded or paid attention to’. The advice further states that ‘Council can lawfully impound an unregistered vehicle which appears to be unattended (as that word is defined above) even if the owner is or becomes known, after it gives the notice required by s16 of the Impounding Act.’
9. This advice supports the advice obtained by Bayside Council from the Local Government NSW when it developed its Impounding of Vehicles Policy April 2018.
10. Previous to obtaining this advice it has been the interpretation of councils that where an unregistered vehicle is parked on the street outside a property where the owner of the vehicle lives, then that the vehicle is not considered to be abandoned or unattended as the owner is known. The traditional approach has been to refer these vehicles to the police for road traffic offences as unregistered vehicles cannot be used on a road and only the Police have the authority to action these matters.
11. This advice now provides Council’s Rangers with a clear direction to enable them to impound unregistered motor vehicles after following the process outlined in the *Impounding Act 1993*.

### Options to amend Section 68 of Road Transport Act 2013

12. Currently Council Authorised Officers have the ability to issue fines only for unregistered trailers parked on the road. In order to issue fines for other unregistered vehicles parked on the road, Section 68 of the *Road Transport Act 2013* would need to be amended. With reference to options to amend Section 68 of *Road Transport Act 2013*, the legal advice indicates:
  - Council officers who are authorised persons under the *Local Government Act 1993*, may issue Penalty Notices for a breach of s68 in the case of standing a trailer only.

- To issue penalty notices for the use of other unregistered motor vehicles, Council would need to seek an amendment to Schedule 5 of the *Road Transport Regulation 2013*, so that Council authorised persons are named as authorised officers in respect of all breaches of s68.
  - As stated above, Council can already issue Penalty Notices of \$550 to owners of abandoned motor vehicles under the *Impounding Act 1993*. However, the advantage of having the power to issue Penalty Notices under s68 of the *Road Transport Act 2013* is that:
    - the penalty amount for ‘using’ an unregistered registrable trailer is \$686, and \$1,449 for other motor vehicles, and
    - Council is not required to be satisfied the vehicle has been ‘abandoned’. Standing the vehicle on a road is sufficient
13. NSW Police Officers are authorised to issue Penalty Notices for all types of unregistered vehicles and hence it has been the practice of Council to request the assistance of Police in relation to unregistered vehicles. While the legal advice has clarified that Council can impound unregistered vehicles, the ability to issue fines for the offence would be considered a more efficient deterrent than following the step by step process contained within the *Impounding Act, 1993*. This will be discussed further under the following section of the report.

#### Outcomes of the implementation of the Policy at Bayside Council

14. Contact was made with operational staff at Bayside Council in relation to the outcomes of their Policy one year after implementation. The advice provided indicated:
- An increase in voluntary compliance leading to the removal of unregistered vehicles from the roadway following receipt of a letter from Council advising that the vehicle will be impounded if not removed.
  - Approximately 20% of all vehicles impounded were investigated under the Policy with no legal challenges being made.
  - An increase in futile tow fees charged to Council from the vehicle collection contractor as vehicle owners approach the tow operators when cartage is organised claiming ownership and threatening them with stealing charges or violence. However, the vehicle was in most cases removed by the owner from the road.
  - Unregistered vehicles being moved from street to street are forwarded to the Local Police for their action in line with ‘Use Unregistered Vehicle’ offences.
  - The process could be made more efficient and provide an immediate deterrent if legislation was changed to permit Council Authorised Officers to issue fines to unregistered vehicles as is the case now with unregistered trailers.
15. Based on the above information it is considered that the implementation of the Policy by Bayside Council has resulted in the removal of unregistered vehicles from public roads that may not have been removed had the Policy not exist. The comment in relation to making the process more efficient should Council Authorised Officers have the ability to issue fines for unregistered vehicles parked on public roads is noted and would also apply to Council’s Rangers in the implementation of these requirements.

16. Therefore, to assist Council's Rangers to remove unregistered vehicles from public roads it is recommended that Council write to the Minister for Transport and Roads, The Hon. Andrew Constance MP seeking amendments to the Road Transport Act 2013. The amendment proposed would enable Council Authorised Officers to issue fines for all types of unregistered vehicles parked in public roads. The provision of this function to Council Rangers would alleviate the need for NSW Police to conduct this regulatory role and would therefore have the added benefit of enabling a better use of Police resources.
17. As the benefit to be achieved in changing the above legislation would apply equally to other member Councils of the Southern Sydney Regional Organisation of Councils, it is further recommended that Council write to SSROC to seek their support and the support of other member Council's to amend the legislation.

#### Additional resources incurred by Bayside Council

18. After initial teething issues in the establishment of the most efficient administrative processes (creating additional standard letters) there is now no discernible additional administrative functions required. However, the length of time to complete these matters is significantly lengthened as an additional 28 day period is granted under the Policy in addition to the time provided under the *Impounding Act 2013* for the owner to comply with the terms of the notice.

#### Any legal, resourcing or other impediments to Council adopting a similar Policy

19. The legal advice indicated that 'Council can lawfully impound an unregistered vehicle which appears to be unaccompanied and not taken care of, even if the owner is or becomes known, after compliance with the requirements of s16 of the Impounding Act 1993. There is no need for a policy in order for Council to exercise its functions under s15 and 16 of the Impounding Act 1993.'
20. The advice goes on to indicate that 'we do not see any legal impediments to Council adopting a policy similar to the Bayside Policy, and it might be helpful for council officers and the public to be aware of the circumstances in which Council will exercise those functions.' The advice also provides some suggestions should Council wish to adopt a policy.
21. Council's Rangers are currently reviewing their Abandoned Vehicles Procedure and this document will be updated to reflect the legal advice and as such it is not proposed to develop a Policy as the regulatory function is contained within legislation.
22. As Council has not previously processed unregistered vehicles using the provisions of the *Impounding Act 1993*, there is no historical data on the numbers of vehicles and hence it is difficult to determine impacts on Council resources in processing such vehicles.
23. During the past 12 months Council received 1052 customer requests in relation to abandoned motor vehicles. If the Bayside experience of 20% of total requests received being unregistered vehicles is used as a guide in attempting to estimate the additional workload, then approximately 210 additional requests or 4 requests per week would be received. It is anticipated that should this number of requests be received, Council's current resources would be sufficient to process the additional requests.

24. Therefore, it is proposed that Council Rangers commence processing unregistered motor vehicles in the same way as currently occurs for abandoned motor vehicles from 1 October 2019 and that a resourcing review will be conducted following 12 months, or sooner should demand deem it necessary.

### Summary

25. The legal advice obtained has clarified Council's responsibilities under the Impounding Act, 1993 as they relate to impounding unregistered motor vehicles parked on public roads. As a result, Council Rangers will commence processing unregistered motor vehicles in the same way as currently occurs for abandoned motor vehicles from 1 October 2019 and that a resourcing review will be conducted following 12 months or sooner should demand deem it necessary.
26. Given the experience of Bayside Council in implementing its *Impounding of Vehicles Policy April 2018* it is recommended that Council write to the Minister for Transport and Roads, The Hon. Andrew Constance MP seeking amendments to the *Road Transport Act 2013*. The amendment proposed would enable Council Authorised Officers to issue fines for any unregistered vehicles parked on public roads. This action would alleviate the need for Police to perform this function and as such would enable a better use of Police resources.

### Financial Implications

27. This is a legislative requirement and therefore an operational expectation of Council. Any financial implications of providing this legislative requirement will be monitored and a resourcing review will be conducted following 12 months, or sooner should demand deem it necessary.

### Community Engagement

28. Council will conduct a community education campaign via its web page, Facebook page and in the local papers to advise the community regarding the requirements of the *Impounding Act 1993* as it relates to impounding unregistered vehicles.

### Risk Implications

29. No risks identified.

### File Reference

17/1831, D19/194691

### ATTACHMENTS

Attachment 1 Legal Advice - Impounding Unattended Motor Vehicles (Confidential)