

11.2. DEPUTY CHIEF EXECUTIVE OFFICER

11.2.1 PROHIBITION OF KITE SURFERS FROM GRACE DARLING PARK - LANCELIN

LOCATION: LANCELIN
FILE: PTY/2-4318, LAW/25, RES/12
AUTHOR: MICHAEL PIMM – SENIOR RANGER
REPORT DATE: 8 MARCH 2009

OFFICER INTEREST DECLARATION

Nil.

BACKGROUND

At its Forum of 3 March 2009, Council considered a Discussion Paper which was prepared at the request of the Lancelin Ward Councillor Maley, in relation to the prohibition of kite surfers from the grassed area to the west of the Lancelin Sea Search and Rescue Building, at Grace Darling Park, Portion of Reserve 32942, Lot 606 Hopkins Street.

Grace Darling Park has been a popular venue for wind surfing since the early 1980's and is considered by many (including International sailors) to be one of the best sites in the world. The area is considered ideal because of the prevailing winds and the protecting reef providing exciting surf conditions. In the mid 1990's kite surfing was developed and it was not long before these kites were being used at Grace Darling Park alongside wind surfers.

The popularity of kite surfing has dramatically increased over the last few years with wind surfing also experiencing an increase in popularity.

Both sports attract a large entourage of spectators ranging from young people to older folk.

Grace Darling Park is ideally located to provide unhindered viewing of the sailors. Its grassed area, public ablution facilities, pergolas and barbeque make it a very popular venue for families who utilise these facilities for picnics. This area in summer is extremely populated.

The sport of kite surfing requires the use of a kite held by several very long strings. When not used correctly the kite and the attached strings can be extremely hazardous. During episodes of unpredictable wind shifts, the kite itself can be propelled to the ground with a great deal of force. The strings are often taut when under pressure from the kite and present a great risk to persons in their vicinity if they cross their path.

It is extremely hazardous to have kite surfers rigging up in such a heavily populated area with such a diverse range of user groups. The probability of a child running into the path of a kite under pressure is very real and highly likely, with dire

consequences. The same could apply to an elderly person who, with lessened agility, is unable to avoid a collision.

This hazard was initially identified in 2005 when Policy 4.4 was adopted in relation to *Trading Activities Within Lancelin Foreshore Reserves*. Council subsequently erected signs at Grace Darling Park, advising “KITE SURFING ACTIVITIES PROHIBITED FROM THIS PARK”. The area is identified on the plan attached as **Appendix 1**.

The problem was also referred to in the Lancelin Foreshore Land Use and Management Plan (LFLUMP) where in Section 7.11.4, Recommendations numbered 33 and 77 state:

No.	Recommendation	Priority	Responsibility
33	Encourage kite surfing in Precinct 1 and 2 with informational signage included in Precinct 1 and 6	High priority for signage	Parks Maintenance
77	Install appropriate signage detailing usage and safety issues of the area and other recreation areas in Lancelin (e.g. Kite surfing in Precinct 1 & 2)	High	Planning Services

It would appear that no formal laws were identified to legitimise Council’s position. That said, the signs, in most instances, have deterred kite surfers from Grace Darling Park and Rangers have received a small number of breach complaints, however, there have been more complaints received from kite surfers in relation to the belligerent behaviour of one of the permit holders in the area.

As a consequence of Council’s Forum deliberations, the following Consensus Forum Outcome resulted:

That Council:

1. *Make a determination in accordance with Section 2.1 of the Shire of Gingin Local Government Property Local Law 2004 to:*
 - (a) *Prohibit kite surfing activities from portion of Reserve 32942, Grace Darling Park, Lancelin including the beach area directly to the west; and*
 - (b) *Legitimise the existing signs prohibiting kite surfing activities from Portion of Reserve 32942, Grace Darling Park, Lancelin.*

2. *Increase signage in order to encourage kite surfers to use the area in the vicinity of Edward Island Point.*

Consistent with Council's Forum protocols, the abovementioned Consensus Forum Outcome is re-presented for formal Council deliberation.

COMMENT

The provisions of the Shire of Gingin's Local Government Property Local Law 2004 (LGPLL 2004) has the ability to address this issue by legitimising the signs as a lawful instruction. For LGPLL 2004 details refer to the Statutory Environment section of this Agenda item.

The formal prohibition of kite surfing activities from Grace Darling Park would legitimise what is already in place and has largely been accepted by residents and tourists alike. This prohibition is also supported in the LFLUMP.

Council has no jurisdiction over the ocean and, therefore, is unable to prevent kite surfers from the area of water adjoining Reserve 32942.

Council would need to maintain and replace the existing signs when necessary. In the past, these signs have been defaced or removed on a regular basis.

The policing of this section of the Local Law would be undertaken by Council's Rangers. An offence would attract a \$100 infringement as indicated below:

STATUTORY ENVIRONMENT

Shire of Gingin Local Government Property Local Law 2004

Division 1 - Determinations

Determinations as to use of local government property

- 2.1 (1) *The local government may make a determination in accordance with clause 2.2 –*
 - (a) *setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;*
 - (b) *prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;*
 - (c) *as to the matters in clauses 2.7(2) and 2.8(2); and*

- (d) *as to any matter ancillary or necessary to give effect to a determination.*

Procedure for making a determination

- 2.2
- (1) *The local government is to give local public notice of its intention to make a determination.*
 - (2) *The local public notice referred to in subclause (1) is to state that –*
 - (a) *the local government intends to make a determination, the purpose and effect of which is summarised in the notice;*
 - (b) *a copy of the proposed determination may be inspected and obtained from the offices of the local government; and*
 - (c) *submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.*
 - (3) *If no submissions are received in accordance with subclause (2)(c), the Council is to decide to –*
 - (a) *give local public notice that the proposed determination has effect as a determination on and from the date of publication;*
 - (b) *amend the proposed determination, in which case subclause (5) will apply; or*
 - (c) *not continue with the proposed determination.*
 - (4) *If submissions are received in accordance with subclause (2)(c) the Council is to –*
 - (a) *consider those submissions; and*
 - (b) *decide –*
 - (i) *whether or not to amend the proposed determination; or*
 - (ii) *not to continue with the proposed determination.*
 - (5) *If the Council decides to amend the proposed determination, it is to give local public notice –*
 - (a) *of the effect of the amendments; and*
 - (b) *that the proposed determination has effect as a determination on and from the date of publication.*

- (6) *If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.*
- (7) *A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).*
- (8) *A decision under subclause (3) or (4) is not to be delegated by the Council.*

Discretion to erect sign

- 2.3 *The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.*

Determination to be complied with

- 2.4 *A person shall comply with a determination.*

Register of determinations

- 2.5 (1) *The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.*
- (2) *Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.*

Amendment or revocation of a determination

- 2.6 (1) *The Council may amend or revoke a determination.*
- (2) *The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.*
- (3) *If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.*

Division 2 - Activities which may be pursued or prohibited under a determination

Activities which may be pursued on specified local government property

- 2.7 (1) *A determination may provide that specified local government property is set aside as an area on which a person may –*
- (a) *bring, ride or drive an animal;*

- (b) take, ride or drive a vehicle, or a particular class of vehicle;*
 - (c) fly or use a motorised model aeroplane;*
 - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;*
 - (e) launch, beach or leave a boat;*
 - (f) take or use a boat, or a particular class of boat;*
 - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;*
 - (h) play or practice –*
 - (i) golf or archery;*
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the Firearms Act 1973; or*
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;*
 - (i) ride a bicycle, a skateboard, roller-blades, a sand-board or a similar device; and*
 - (j) wear no clothing.*
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –*
- (a) the days and times during which the activity may be pursued;*
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;*
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;*
 - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;*

- (e) *may specify that the activity can be pursued by a class of persons or all persons; and*
- (f) *may distinguish between different classes of the activity.*

Activities which may be prohibited on specified local government property

2.8 (1) *A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property -*

- (a) *smoking on premises;*
- (b) *riding a bicycle, a skateboard, roller-blades, a sand-board or a similar device;*
- (c) *taking, riding or driving a vehicle on the property or a particular class of vehicle;*
- (d) *riding or driving a vehicle of a particular class or any vehicle above a specified speed;*
- (e) *taking or using a boat, or a particular class of boat;*
- (f) *the playing or practice of -*
 - (i) *golf, archery, pistol shooting or rifle shooting; or*
 - (ii) *a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;*
- (g) *the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and*
- (h) *the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.*

(2) *A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular –*

- (a) *the days and times during which the activity is prohibited;*
- (b) *that an activity is prohibited on a class of local government property, specified local government property or all local government property;*
- (c) *that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;*

- (d) *that an activity is prohibited in respect of a class of persons or all persons; and*
- (e) *may distinguish between different classes of the activity.*

PART 10 - ENFORCEMENT

Division 1 - Notices given under this local law

Offence to fail to comply with notice

- 10.1 *Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.*

Local government may undertake requirements of notice

- 10.2 *Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.*

Division 2 - Offences and penalties

Subdivision 1 - General

Offences and general penalty

- 10.3 (1) *Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.*
- (2) *Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.*

Subdivision 2 - Infringement notices and modified penalties

Prescribed offences

- 10.4 (1) *An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.*
- (2) *The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.*
- (3) *For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that –*

- (a) *commission of the prescribed offence is a relatively minor matter; and*
- (b) *only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.*

Form of notices

10.5 (1) *For the purposes of this local law -*

- (a) *where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;*
 - (b) *the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and*
 - (c) *the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.*
- (2) *Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.*

SCHEDULE 1

PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.4	<i>Failure to comply with determination</i>	100
5.5	<i>Failure to comply with sign or direction on beach</i>	100

POLICY IMPLICATIONS

Nil.

BUDGET IMPLICATIONS

It may be necessary to replace damaged or stolen signs. Shire Staff estimate that sign replacement costs and increased signage for Edward Island Point could be in the vicinity of \$1,000 Council's current Budget allocation for signs is sufficient to cover these costs.

STRATEGIC IMPLICATIONS

Nil.

VOTING REQUIREMENTS – SIMPLE MAJORITY

RECOMMENDATION

It is recommended that Council, consistent with the Consensus Outcome from its Forum of 3 March 2009:

1. Make a determination in accordance with Section 2.1 of the Shire of Gingin Local Government Property Local Law 2004 to:
 - (a) Prohibit kite surfing activities from portion of Reserve 32942, Grace Darling Park, Lancelin including the beach area directly to the west as identified on Appendix 1;
 - (b) Legitimise the existing signs prohibiting kite surfing activities from Portion of Reserve 32942, Grace Darling Park, Lancelin; and
2. Increase signage in order to encourage kite surfers to use the area in the vicinity of Edward Island Point.

RESOLUTION 09.0059

Moved Councillor Jarvis that Council, consistent with the Consensus Outcome from its Forum of 3 March 2009:

1. **Make a determination in accordance with Section 2.1 of the Shire of Gingin Local Government Property Local Law 2004 to:**
 - (a) **Prohibit kite surfing activities from portion of Reserve 32942, Grace Darling Park, Lancelin including the beach area directly to the west as identified on Appendix 1;**

(b) Legitimise the existing signs prohibiting kite surfing activities from Portion of Reserve 32942, Grace Darling Park, Lancelin; and

2. Increase signage in order to encourage kite surfers to use the area in the vicinity of Edward Island Point.

CARRIED UNANIMOUSLY

APPENDIX 1

LANCELIN KITE PROHIBITED AREA

