

**SUMMARY OF INFORMATION
AND
STATEMENT OF PROPOSAL
FOR THE
PROPOSED AMENDMENT
TO THE
WELLINGTON CONSOLIDATED BYLAW 2008:
PART 2 - ANIMALS**

ANIMALS BYLAW

HAVE YOUR SAY

The Wellington City Council is keen to hear what residents think about the proposal to amend the Animals Bylaw in Wellington.

Attached is a full Statement of Proposal to amend the existing Animals Bylaw along with a summary of the information in the proposal and a submission form. Copies of these documents are available at the Wellington City Council, 101 Wakefield Street, Wellington public libraries and on the Council website www.wellington.govt.nz

Please fill in a submission form, make a submission online at www.wellington.govt.nz or e-mail a submission to policy.submission@wcc.govt.nz

Written submissions can be sent to:
Freepost WCC
Submissions (Animals Bylaw)
Policy Unit
Wellington City Council
PO Box 2199
Wellington

Submissions close at 4 pm on Friday 7 August 2009.

Hearings and meetings on the bylaw will be open to the public. People wishing to speak on their submission can do so at the relevant Committee meeting.

SUMMARY OF INFORMATION IN THE STATEMENT OF PROPOSAL

The Council is reviewing its Dog Control Policy (2004) and a number of the proposed policy changes require amendments to the Wellington Consolidated Bylaw 2008: Part 2 – Animals (Animals Bylaw).

In addition to giving effect to the Dog Control Policy, as required by the Dog Control Act 1996, the Animals Bylaw also regulates animal keeping and husbandry activities for the purposes of animal welfare and public health and safety. It details the activities that require Council permission and when an offence is committed. The review of the Bylaw has been used as an opportunity to propose other amendments relating to animals generally.

The draft Bylaw includes the following changes relating to dogs to give effect to the Draft Dog Control Policy 2009:

- inclusion of a list of controlled public places, prohibited public places and dog exercise areas
- inclusion of a clause requiring the compulsory carrying of a receptacle for dog faeces
- clarification of the requirement for Council permission to keep more than 3 dogs on a property.

The draft Bylaw also includes the following requirements which relate to animals generally:

- adequate confinement of animals within an owner's property
- feeding of animals in a manner not to cause nuisance
- Council permission to keep more than 6 poultry or a rooster (urban area).

On completion of the review process, the draft Animals Bylaw will be adopted as an amendment to the Wellington Consolidated Bylaw 2008.

The Council is keen to know what residents think about the proposed Bylaw. The full Statement of Proposal to amend the current Bylaw is attached to this summary of information along with a submission form. It is also available online at www.wellington.govt.nz

Submissions close at 4 pm on Friday 7 August 2009.

FULL STATEMENT OF PROPOSAL

TO AMEND THE

WELLINGTON CONSOLIDATED BYLAW 2008

PART 2 – ANIMALS

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1. Introduction

The Council proposes to amend the existing Wellington Consolidated Bylaw 2008: Part 2 – Animals (Animals Bylaw) to align it with current legislation and Council policies.

This Statement of Proposal has been prepared in accordance with section 86 of the Local Government Act 2002 (LGA) and provides information about the review process and whether it is appropriate for the Council to have an animals bylaw.

2. Background

2.1 Relevant legislation

Various pieces of legislation govern the keeping of animals and their welfare and have been considered during the review of the Animals Bylaw. They include the:

- Local Government Act 2002 (the LGA) – prescribes the purposes for which bylaws can be made and the process for making and enforcing them. To make the draft Animals Bylaw the Council relies on section 146(a)(v) of the LGA ‘territorial authorities may make bylaws for its district for the purpose of regulating the keeping of animals, bees and poultry’
- Dog Control Act 1996 (the DCA) – regulates the ownership of dogs, requires territorial authorities to adopt a policy in respect of dogs and to make any bylaws necessary to give effect to that policy. Section 10(6) of the DCA requires that those bylaws must come into force within 60 days of the adoption of the policy
- Health Act 1956 – consolidates the law relating to public health and enables councils to make bylaws to regulate the keeping of animals
- Animal Welfare Act 1999 – sets out the obligations of owners and persons in charge of animals and the requirement for the physical, health and behavioural needs of animals to be met.

2.2 Council role in relation to animals

The Council’s primary role is to fulfil its responsibilities under the Dog Control Act 1996. In particular it aims to ensure that the rights of the public are protected and to:

- ensure owners of dogs comply with their obligations under the Act
- prevent the danger caused by dogs to the public and to wildlife and natural habitats
- minimise the distress and nuisance caused by dogs to the public and to wildlife and natural habitats

- actively promote the responsible ownership of dogs
- provide for the reasonable exercise and recreational needs of dogs and their owners.

The Council also needs to ensure that animals can live within the district in a safe and healthy manner while ensuring that people’s health and safety is not at risk. Under the Health Act (1956), the Council can set rules for conserving public health, preventing or abating nuisances, regulating, permitting, or prohibiting the keeping of animals in the district.

3. Making bylaws

The LGA prescribes the purposes for which bylaws can be made and the process for making and enforcing them.

Section 155 of the LGA says that before commencing the process to make a bylaw the Council must determine whether:

- a bylaw is the most appropriate way to address the perceived problem
- the proposed bylaw is the most appropriate form of bylaw
- the proposed bylaw gives rise to any implications under the Bill of Rights Act (1990).

Sections 3.1 and 3.2 consider how the procedure of making bylaws set out in section 155 of the LGA has been applied for each of the proposed amendments to the Animals Bylaw. Consideration of implications under the Bill of Rights Act (1990) is dealt with for the Bylaw as a whole in section 3.3

3.1 Proposed changes to the Animals Bylaw in support of the draft Dog Control Policy 2009

3.1.1 Inclusion in the Animals Bylaw of a list of controlled public places, prohibited public places and dog exercise areas

The perceived problem

Section 10 (3) of the DCA requires the Council to identify in its Dog Control Policy the areas where dogs are prohibited, must be controlled on a leash, or may be exercised off leash pursuant to bylaws made under section 20 of the DCA. Currently the Animals Bylaw includes definitions of “controlled public places”, “exercise areas”, “prohibited public places”, and “prohibited public places (specified times)”. Clause 3.4.1 of the Bylaw sets rules in relation to the use of such areas, but the specific areas are not defined.

Reason for using a bylaw

The Council is required to make bylaws specifying areas as prohibited, controlled, or exercise areas in accordance with the DCA. The draft Bylaw specifies the areas identified as such in the draft Dog Control Policy 2009.

Proposed change to Animals Bylaw

It is proposed to add a definition of “exercise area (specified times)” as set out below:

Exercise area (specified times) means any area declared under clause 3.4.1 where dogs are allowed and are not required to be on a leash at specified times.

It is also proposed to add a list of specified controlled public places, prohibited public places, prohibited public places (specified times), exercise areas and exercise areas (specified times) as Appendix 1 to the Animals Bylaw and to add the sentence “A list of areas is included as Appendix 1” to clause 3.4.1 of the Animals Bylaw.

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of bylaw as it sets out the specific areas described in clause 3.4.1 and gives effect to the draft Dog Control Policy as required by the DCA.

3.1.2 Compulsory carrying of a receptacle for dog faeces

The perceived problem

The removal of dog faeces is currently required under the Animals Bylaw, however, the prevalence of dog fouling remains a concern.

Reason for using a bylaw

Current mechanisms to encourage dog owners to remove faeces include:

- signage at dog exercise areas
- education of new dog owners through information packs
- reminders to dog owners through the dog owner newsletter
- appropriate monitoring and enforcement where non compliant dog owners are identified.

These have to date proven ineffective in ensuring owners remove dog faeces.

The experience of other councils (Manukau City and Porirua City) is that a Bylaw requirement for carrying a bag or receptacle has been successful in reducing dog faeces in public places and the number of dog fouling complaints.

Proposed change to Animals Bylaw

The proposed amendment to the Animals Bylaw to give effect to this proposal is to add a subclause (b) into the list of offences in clause 4.2, as highlighted below:

- 4.2 Every dog owner or person in control of the dog at the time commits an offence who:
- b. **does not carry a receptacle for the collection and removal of dog faeces when in a public place**

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of Bylaw as it gives effect to the Draft Dog Control Policy 2009 and effectively addresses the perceived problem of dog fouling.

3.1.3 Clarification of the requirement for Council permission to keep more than three dogs on a property (urban areas)

The perceived problem

The requirement to obtain Council permission to keep more than three dogs is an existing Animals Bylaw requirement. The existing requirement needs clarifying, however, to more clearly limit the number of dogs on an urban property to three, regardless of how many registered owners live there, or what address the dogs are registered to. This restriction does not apply to dogs in rural areas.

Reason for using a bylaw

A bylaw requirement for Council permission to keep more than three dogs allows officers to check that welfare conditions for multiple dogs are being met, and that any potential nuisance to neighbouring properties is being managed. This includes confinement to the property, removal of faeces that may accumulate and result in odour complaints, and noise from dogs barking. Such a requirement is already included in the Animals Bylaw, but further clarification is needed.

Proposed change to Animals Bylaw

The proposed amendment to the Animals Bylaw to give effect to this proposal is to add the words highlighted in clause 2.2.4 below:

2.2.4 Keeping more than three dogs:

An owner or occupier of any premises (other than rural premises) keeping more than three dogs **in total on a property**, over the age of three months, whether or not the dogs are registered or he or she is the registered owner of the dogs.

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of Bylaw as it gives effect to the Draft Dog Control Policy by clarifying the restriction on the number of dogs allowed to be kept on a property before Council permission is required.

3.2 Proposed changes to the Animals Bylaw which relate to animals generally

3.2.1 Adequate confinement of animals within owner's property

The perceived problem

Nuisances can be caused by wandering animals and can also arise around how Council deals with wandering animals after they have been impounded.

Reason for using a bylaw

The options for dealing with the problem of wandering animals are set out in Table 1 below.

Table 1: Options to address problems of wandering animals

Options	Assessment
<i>Public education</i> to ensure people are well informed about the requirement to keep animals confined.	The Animal Control Unit works to ensure people are well informed about the behaviour that is required to properly care for animals and to protect public health. However, specific tools are needed to allow officers to deal with cases of wandering animals to prevent them becoming a nuisance or a danger to public safety.
<i>Regulatory action</i> with the Council advocating that central government should develop new legislation to eliminate the need for a bylaw.	Such a process would be slow and time consuming and may not be supported by key stakeholders.
<i>Amend the existing Animals</i>	This ensures that officers can

<p>Bylaw to provide Council with legislation to manage the confinement of animals to their owners' property.</p>	<p>promptly deal with wandering animals, impound them, and dispose of them appropriately if they are not claimed within a reasonable time. The Animals Bylaw encourages people to comply with Council requirements as otherwise their animals may be impounded and disposed of.</p>
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Proposed change to Animals Bylaw

The proposed amendment to the Animals Bylaw to give effect to this proposal is to add the highlighted subclauses to clause 3.1. below:

3.1 General conditions of keeping animals

3.1.4 All animals capable of confinement must be confined within their owner's property.

3.1.5 All animals, other than dogs, found at large and not within their owner's property may be seized and impounded by an authorised officer.

3.1.6 The Council may sell, re-home or otherwise dispose of, any animal seized and impounded under clause 3.1.5 that has not been claimed or returned within 7 days after it was seized and impounded.

Dogs are excluded from the provision because their impounding is covered by the Dog Control Act.

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of Bylaw as it clearly states the Council's requirement to keep animals confined to the owner's property and how wandering animals will be dealt with. It also reflects existing policies and practices and effectively addresses the perceived problem.

3.2.2 Feeding of animals in a manner not to cause nuisance

The perceived problem

Where large numbers of animals are being fed, either by a single resident or multiple members of the public, there is a high likelihood of an ever expanding animal population due to a ready food source. This population can then create nuisance conditions in public places or on adjoining residential properties from droppings/faeces and roosting/nesting.

Reason for using a bylaw

The Health Act process for controlling animal nuisances that impact on public health and safety is problematic, as it is time consuming, often tenuous and expensive.

Under the Health Act, officers need to demonstrate that animal related complaints have a measurable effect on the health of humans, as opposed to amenity or nuisance value. An Abatement Notice under the Health Act is issued specifying the action and timeframe to abate the health nuisance. If the notice is not complied with, the matter is taken to the District Court for an order to abate the nuisance. This Court process can be both time consuming and costly.

A notice issued under a bylaw when a problem is first identified can reduce the impact of nuisances at a more manageable and cost effective level, and prevent escalation to a public health risk.

Proposed change to Animals Bylaw

The proposed amendments to the Animals Bylaw to give effect to this proposal are:

- Including wild birds in the definition of birds (and therefore animals) to allow the feeding of wild birds such as wild ducks and pigeons to be controlled to prevent nuisance.
- Adding clause 3.2 below:

3.2 Feeding Animals

3.2.1 Feeding of animals must be done in a manner that does not cause or is not likely to cause a nuisance.

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of Bylaw as it clearly states the Council's requirements in relation to feeding animals and effectively addresses the perceived problem.

3.2.3 Requirement for Council permission to keep more than 6 poultry or a rooster (urban area)

The perceived problem

Operational issues have arisen from the current Animals Bylaw, which sets no limit on the number of poultry that can be kept other than the requirement that there is no nuisance created or likely to be created. For example, a complaint was received regarding the keeping of poultry on an urban residential site. Officers visited and found that over 200 chickens were being kept. Enforcement measures were taken including the serving of notices. The matter was finally

resolved by the District Court (involving significant legal fees). The proposed Animals Bylaw amendment will enable officers to exercise discretion regarding the granting of permission and to take enforcement action without lengthy and expensive legal action.

Reason for using a bylaw

The current ability for officers to address animal nuisance in regard to chickens and roosters is limited as it relies on demonstrating a statutory health nuisance. The proposed change to the Animals Bylaw will provide clarity for urban property owners by specifying the number of poultry that can be kept on a residential property; it is considered that this number is unlikely to cause a nuisance,.

The provision relating to the keeping of roosters is to ensure that a noise nuisance is not caused. The current mechanism for control requires compliance officers to undertake noise readings to determine the level of the noise and determine whether it complies with the residential noise levels in the Wellington District Plan. This is an extensive, costly and unwieldy means of controlling the nuisance from roosters. The provisions apply to properties within the City that are not zoned rural.

Proposed change to Animals Bylaw

The proposed amendment to the Animals Bylaw to give effect to this proposal is to add the highlighted subclause 2.2.3 to clause 2 below:

2. Activities that Require Council Permission

2.2.3 Keeping poultry in an urban area
Anyone keeping more than 6 poultry.
Anyone keeping a rooster.

Appropriateness of bylaw

The draft Animals Bylaw is the most appropriate form of Bylaw as it clearly states the Council's limits on the keeping of poultry. The Council retains the discretion to grant permission to keep higher numbers of poultry, but is able to exercise that discretion to control potential nuisances and effectively address the perceived problem.

3.3 Bill of Rights implications

The Council must determine whether the draft amendments to the Animals Bylaw give rise to any implications under the New Zealand Bill of Rights Act (1990)¹ (BORA). In reaching a conclusion in relation to the BORA it is important

¹ Section 155, LGA 2002

to remember that under section 5 of the BORA all rights can be impinged upon if it can be shown to be a reasonable limitation that is justified in a free and democratic society.

The implications of the draft amendment to the Animals Bylaw on people's rights under the BORA has been considered. In particular, rights relating to freedom of movement and freedom of association are potentially relevant because people are affected by the operation of the draft Animals Bylaw. These rights are general rights and accordingly any claim that any aspect of the draft Bylaw may breach these rights must be considered based on the facts.

The Animals Bylaw imposes restrictions to certain areas where the Council has a justifiable interest or jurisdiction. The Council's legal advice has confirmed that while there is always the potential for a claim of breach of these rights (by bylaw clauses that address or restrict any activities in public places such as beaches and reserves) there is a sound prospect that a Court will conclude that the Animals Bylaw is not inconsistent with these rights.

3.4 Other changes to the Animals Bylaw

The draft Animals Bylaw (Appendix 1) makes minor amendments to the existing Animals Bylaw in addition to those set out in sections 3.1 and 3.2 above. These are:

3.4.1 Additions

- The definition of 'birds' has been amended by adding the following sentence:
Poultry includes geese, ducks, turkeys, pigeons, pheasants, domestic fowls, chickens or roosters.
- Council will no longer issue licences or permits for activities listed in clause 2 of the Animals Bylaw, but will instead grant permission for those activities.
- The words "and dispose of" have been added to clause 4.2 (c), which makes it an offence for an owner not to immediately remove dog faeces from public places. This is to align the Bylaw with the existing Dog Control Policy.

3.4.2 Deletions

The provision to impound dogs under the bylaw has been removed as this duplicated the DCA.

4. Next steps

Consultation on the proposed Animals Bylaw will open on 26 June 2009 and end on 7 August 2009. Hearings and meetings on the proposed Bylaw will be open to the public and people may speak on their submission at the relevant Committee meeting. An analysis of all submissions will then be presented to the Strategy and Policy Committee for consideration. On agreement the proposed Bylaw will be referred to Council for consideration and adoption.

Date	Action
May 2009	Strategy and Policy Committee consider the proposed Animals Bylaw and, if appropriate, refer it to Council for consideration.
May 2009	Council will consider the Summary of Information and Statement of Proposal for the draft Animals Bylaw and initiate the special consultative procedure as required under the LGA 2002.
26 June to 7 August 2009	Special consultative period.
September 2009	Strategy and Policy Committee hears oral submissions
October 2009	Present analysis of all the submissions to the Strategy and Policy Committee for consideration. If appropriate, refer the proposed Animals Bylaw to the Council to adopt the draft Bylaw
October 2009	The Council will consider the results of the special consultative procedure, and, as appropriate, approve the draft Animals Bylaw and determine its commencement date.