
REPORT 3
(1215/52/IM)

REVIEW OF THE WELLINGTON CONSOLIDATED BYLAW 2008: PART 2 – ANIMALS

1. Purpose of Report

This report presents the results of the special consultative procedure and submissions on the Wellington Consolidated Bylaw 2008: Part 2 – Animals. It recommends amendments to the draft bylaw and seeks Committee agreement to refer the bylaw to Council for consideration and adoption.

2. Executive Summary

The Wellington Consolidated Bylaw 2008: Part 2 – Animals, gives legal powers to enforce the Dog Policy 2009 classifying public places where dogs are prohibited or allowed on and off-leash and providing conditions and a list of offences to ensure dog owners comply with their obligations under the Dog Control Act 1996 and its subsequent amendments.

The bylaw also specifies requirements for the keeping of animals to maintain and promote public health and safety, the welfare of animals and to protect the public from nuisance.

The revised bylaw includes:

- four new classifications for dog access to public places;
- a new offence provision to prevent animals or bees being kept in a manner that is likely to become a nuisance, dangerous, offensive or injurious to health; and
- a clause to prevent people feeding animals or birds in a manner where the feeding could attract rats or other vermin or the excessive fouling of a public place.

A report on the results of public consultation on the proposed Dog Policy 2009 is also being considered at this meeting and should be read alongside this report.

3. Recommendations

Officers recommend that the Committee:

- 1. Receive the information.*

2. *Note that 114 written submissions were received and 5 oral submissions were heard on the draft Wellington Consolidated Bylaw 2008: Part 2 – Animals, as a result of the special consultative procedure undertaken in accordance with section 10(8) of the Dog Control Act 1996 and section 83 of the Local Government Act 2002.*
3. *Agree to making the following changes to the bylaw:*
 - (a) *Remove proposed clause 2.2.3 'Keeping poultry in an urban area' and replace it with a new offence provision 4.1 (a) Everyone commits an offence who keeps animals and bees in a manner that is, or is likely to become a nuisance, dangerous, offensive, or injurious to health.*
 - (b) *Amend the wording of proposed clause 2.2.4 (now 2.2.3 in amended bylaw) to 'An owner or occupier of any premises (other than rural premises) keeping more than three dogs in total on a property. Permission will be required for more than three dogs over the age of three months, whether or not the dogs are registered or the owner/occupier is the registered owner of the dogs'.*
 - (c) *Remove proposed clause 3.1.4 'All animals capable of confinement must be confined within their owner's property.'*
 - (d) *Amend the wording of the proposed clause 3.1.5 (now 3.1.4 in amended bylaw) to exclude cats.*
 - (e) *Amend clause 3.2.1 'Feeding Animals' to state that the 'Feeding of animals can attract rats or other vermin or cause excessive fouling to public places. Where restrictions are required for specific areas, they will be clearly signposted. Animals must not be fed in these signposted areas.'*
 - (f) *Agree to include four new classifications of public places, where dogs will be allowed on and off-leash at specific times or prohibited, to enforce the Dog Policy 2009.*
4. *Note that a summary of issues raised by the submitters is attached at Appendix One.*
5. *Agree to the amended Wellington Consolidated Bylaw 2008: Part 2 – Animals, attached at Appendix Two.*
6. *Recommend to the Council that it agree to the proposed Wellington Consolidated Bylaw 2008: Part 2 - Animals, as set out in Appendix Two.*

4. Background

The Wellington Consolidated Bylaw 2008: Part 2 - Animals, gives legal powers to enforce the Dog Policy 2009 and determines requirements for the keeping of

animals to maintain and promote public health and safety, the welfare of animals and to protect the public from nuisance.

The bylaw is made under sections 145 and 146 of the Local Government Act 2002, section 20 of the Dog Control Act 1996 and section 64 of the Health Act 1956 and with consideration to the Animal Welfare Act 1999.

Consultation on the draft Wellington Consolidated Bylaw 2008: Part 2 – Animals, occurred from 26 June to 7 August 2009 with the draft Dog Policy 2009.

The Council received 114 written and 5 oral submissions on the draft bylaw during the special consultative procedure. Eighty eight percent of respondents owned a dog, 57% held 'Responsible Dog Owner' status.

5. Discussion

5.1 Feedback from consultation questions

Submissions received from consultation on the Wellington Consolidated Bylaw 2008: Part 2 – Animals, focused on the following proposed bylaws:

- a) 2.2.3 – A requirement to have Council's written permission to keep more than six poultry in total or a rooster on a property in an urban area.
- b) 3.1.4 – 'All animals capable of confinement must be confined within their owner's property'.
- c) 3.2.1 – 'Feeding of animals must be done in a manner that does not cause or is not likely to cause a nuisance'.

This report provides feedback from submissions received on each proposed clause and on the bylaw generally.

5.1.1 General feedback

Although the majority of respondents were supportive of the proposed changes to the bylaw, some concerns were raised about the proposed non-dog bylaws including the clarity, enforceability and unintended consequences of these bylaws. Amendments have been made to the bylaw to try and address these concerns.

In addition to comments made about specific bylaw changes (considered below in the relevant sections of this report) the Council received:

- 22 submissions that specifically commented on the proposed Dog Policy 2009¹;
- 8 submissions that asked about bylaw provisions for cats; and
- 5 submissions that specifically mentioned the importance of the bylaw ensuring appropriate animal welfare.

¹ Issues raised are considered in the 8 October 2009 SPC report on the Dog Policy 2009.

5.1.2 Feedback on proposed clause 2.2.3 – ‘Requiring Council permission to keep more than six poultry or a rooster in an urban area’

Eighty percent of respondents agreed that Council permission should be required in order to keep more than six poultry or a rooster in an urban area. Ninety two percent of these respondents did not own chickens or a rooster. Of the 8% that did own poultry - 43% owned six or more chickens.

A number of respondents raised concerns with the permission requirement. Concerns included:

- the impact of the proposed bylaw on existing responsible owners of chickens and/or roosters
- the legality of the bylaw (whether it was the most appropriate way to address the perceived problem)
- no consideration of size/type of property (the same number of birds is permissible for inner city apartment dwellers and outer residential properties)
- no consideration of the breed and size of birds or the size of family that the eggs might be feeding
- chicken numbers would be restricted to six and not allow for natural growth and decline
- how the permission might be managed when chickens are breeding causing a temporary increase in numbers of chickens
- potential animal welfare implications of the bylaw – owners disposing of (killing or dumping) excess chickens to avoid having to go through the permission requirement
- a lack of defined standards such as a minimum distance between poultry houses and property boundaries and animal welfare requirements to ensure poultry shelters were kept clean, dry and well maintained.

The original problem

Animal control officers currently have a limited ability to address odour, waste and/or noise issues related to chickens and roosters as the Council must demonstrate a statutory health nuisance before it can take action. In the past, demonstrating that statutory nuisance exists and enforcement to abate the nuisance has been a lengthy and expensive process.

The proposed bylaw was developed to allow officers greater control over potential nuisances related to chickens and roosters by allowing Council the discretion to grant permission to owners to keep higher numbers of poultry and/or roosters and to take immediate enforcement action if any nuisance was caused.

Recommendation

It is recommended that the specific permission requirement to keep more than six chickens or a rooster on a property in an urban area be removed and that a new offence provision be included to ensure that animals and bees are kept in a

manner that is not (and not likely to become) a nuisance, dangerous, offensive or injurious to health.

The removal of the proposed bylaw 2.2.3 will mean that current responsible owners of chickens and roosters are not unfairly penalised but Animal Welfare officers will have an enforcement process under the bylaw and can be proactive in managing any situations that have the potential to cause distress or nuisance to neighbours of chicken/rooster owners.

5.1.3 Feedback on proposed clause 3.1.4 – ‘All animals capable of confinement must be confined within their owners property’

A number of submitters questioned the potential to confine and regulate cats in Wellington under the proposed bylaw 3.14. Although regulations can be imposed to manage cat populations and wandering cats, this is not recommended as the difficulty and cost of policing such a bylaw would outweigh any potential benefits.

Other submitters were concerned that the proposed bylaw was too vague and would be difficult to enforce.

Original problem

The Council is occasionally asked to collect animals (goats, rabbits, chickens) that are not confined on their owner’s property and wander onto neighbouring property. A bylaw was proposed to enable the Council to ask owners to confine their animals and collect animals that have wandered onto private property and impound them if necessary.

Recommendation

It is recommended that the proposed bylaw 3.1.4 be removed. It is also recommended that the proposed clause 3.1.5 be amended as follows to exclude cats and allow officers to impound any animals (other than cats) that have strayed onto public property and cause nuisance:

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

This clause becomes 3.1.4 in the amended bylaw.

5.1.4 Feedback on the proposed clause 3.2.1 – ‘Feeding of animals must be done in a manner that does not cause or is not likely to cause a nuisance’

Seventy seven percent of respondents agreed that there should be a requirement that people should feed animals in a way that is not likely to give rise to a public nuisance. A number of submitters, however, were concerned that the proposed bylaw would not allow them (or their children) to feed sparrows or ducks and that the bylaw provided no guidelines about where birds or animals cannot be fed.

Original problem

There have been limited instances where excessive feeding of wild animals and birds by the public has resulted in nuisance conditions, including the attraction of rats and the fouling of public spaces (from the accumulation of bird droppings).

Recommendation

It is recommended that the bylaw be amended as follows, to specify restrictions on the feeding of animals:

'Feeding of animals can attract rats or other vermin or cause excessive fouling to public places. Where restrictions are required for specific areas, they will be clearly signposted. Animals must not be fed in these signposted areas.'

5.1.5 Minor amendments to proposed clause 2.2.4 - Requiring Council permission to keep more than three dogs in total (over the age of three months) on an urban property

It is recommended that the wording of the clause requiring any owner of more than three dogs to have the Council's written permission, be amended as follows:

An owner or occupier of any premises (other than rural premises) keeping more than three dogs in total on a property. Permission will be required for more than three dogs over the age of three months, whether or not the dogs are registered or the owner/occupier is the registered owner of the dogs.

5.2 Including new classifications for public places where dogs are prohibited or allowed on and off-leash

The revised bylaw includes four new classifications of public places where dogs are prohibited or allowed on and off-leash to enforce the Dog Policy 2009.

The new classifications are defined in the first part of the revised bylaw and include:

- **Beach exercise areas** – beach areas where dogs can exercise off-leash under the control of their owner.
- **Beach areas restricted during summer** means areas where dogs are prohibited from 9am – 7pm every day in summer (during national Daylight Saving hours). These areas are classed as controlled public places where dogs can be on-leash before 9am and after 7pm in summer and on-leash at all times in winter.
- **Exercise area (specified times)** means any area where dogs are allowed off-leash before 9am and after 7pm in summer (during national Daylight Saving hours) and off-leash at all times in winter.

- **Prohibited place (specified times)** means any area where dogs are prohibited for a specified time.

5.3 LTCCP Implications

There are no LTCCP implications in proposed bylaw changes.

6. Conclusion

This report recommends amendments to the draft Wellington Consolidated Bylaw 2008: Part 2 – Animals, and seeks Committee agreement to refer the bylaw to Council for consideration and adoption as an amendment to the Wellington Consolidated Bylaw 2008.

Contact Officer: Aroha Rangi, Senior Policy Advisor

Supporting Information

1) Strategic Fit / Strategic Outcome

The Wellington Consolidated Bylaw 2008: Part 2 - Animals supports the Council's Social Wellbeing strategy and Public Health and Safety activity.

2) LTCCP/Annual Plan reference and long term financial impact

The policy relates to 5.4.3 Public health regulations (food/dogs) in the LTCCP. A New Initiative to the 2009/10 Annual Plan is proposed to fund signage for all exercise area, the CBD and key prohibited areas included in the Dog Policy 2009. New initiatives to fund fencing and lighting may also be put forward.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations in relation to this bylaw.

4) Decision-Making

The report sets out a number of options and reflects the views of those people who made submissions on the draft bylaw.

5) Consultation

a) General Consultation

Consultation took place from 26 June to 7 August 2009. The Council received 114 written and 5 oral submissions on the draft Bylaw during the special consultative procedure.

b) Consultation with Maori

Wellington Tenth Trust and Te Runanga o Toa Rangatira were provided with a draft version of the bylaw during the special consultative procedure.

6) Legal Implications

The Council's lawyers have been consulted on the development of the bylaws mentioned in this report.

7) Consistency with existing policy

This report makes amendments to the proposed Wellington Consolidated Bylaw 2008: Part 2 - Animals.