

SUPPLEMENTARY INFORMATION ON THE DOG POLICY 2009 AND THE WELLINGTON CONSOLIDATED BYLAW 2008: PART 2 - ANIMALS

1. Purpose of Report

To present additional information and revised recommendations to be considered prior to the adoption of the Dog Policy 2009 and Wellington Consolidated Bylaw 2008: Part 2 – Animals.

2. Recommendations

Officers recommend that the Council:

- 1. Receive the information.*

3. Background

On the 8 October 2009 the Strategy and Policy Committee agreed:

- a) that the Lawn Cemetery of Karori Cemetery become an off-lead exercise area for dogs under control of their owners before 9.00am and after 7.00pm year round;
- b) to provide access to Seatoun Beach from Hector Street South to Point Dorset so dogs could walk off-leash with their owners at all times.

This report provides additional information that has been identified since the 8 October 2009 Strategy and Policy Committee meeting and recommends that the Council agree to reclassify both the Lawn Cemetery of Karori Cemetery and Seatoun Beach from Hector Street South to Point Dorset as controlled public places where dogs are allowed on-leash under the control of their owners.

The draft Dog Policy 2009 and Wellington Consolidated Bylaw 2008: Part 2 – Animals are included for Councillor consideration as a separate item on this Council agenda.

4. Discussion

4.1 Allowing dogs off-leash in Karori Cemetery

Public perception of Wellington's cemeteries has been that they are 'controlled' public places where dogs are allowed on-leash and under the control of their owner; however as a matter of law, dogs are actually prohibited from cemeteries under section 57 of the Burial and Cremation Act 1964 (BC Act).

To permit dogs onto its cemeteries, the Council will need to make a bylaw under the Burial and Cremation Act 1964, amending the draft Wellington Consolidated Bylaw 2008: Part 2 – Animals (written under the Dog Control Act 1996 and Local Government Act 2002) by adding the following new clause to regularise the legal anomaly:

Dogs are permitted to enter any cemetery controlled by Council, provided that:

(a) This Part of the Bylaw is complied with; and

(b) No dog is permitted to enter any cemetery controlled by Council unless it is under the control of its owner and on-leash at all times.

This clause is made pursuant to the Burial and Cremation Act 1964.

4.1.1 Can the draft Wellington Consolidated Bylaw 2008: Part 2 – Animals be amended further to permit dogs onto Karori Cemetery off-leash?

Karori Cemetery was not included as a potential exercise area (dogs off-leash) under the original statement of proposal for the draft Dog Policy 2009. A change in classification for Karori Cemetery from a ‘controlled’ public space to a dog exercise area, is likely to be regarded as unlawful by not giving appropriate consideration to sections 82 and 83 of the Local Government Act 2002 and section 10 (4) of the Dog Control Act 1996. Given that classifying part of Karori Cemetery as a dog exercise area could generate significant controversy a decision to amend the draft Dog Policy 2009 and the Animal Bylaw in this way would give rise to material risk.

During the consultation process 58% of submissions received (84% of these submissions being from dog owners) supported maintaining the status quo of Karori Cemetery remaining a controlled public place.

4.1.2 Suggested amendments to Strategy and Policy Committee’s 8 October recommendations

It is recommended that the 8 October 2009 Strategy and Policy Committee recommendation 4(d) - allowing dogs off-leash on the Lawn Cemetery of Karori Cemetery - is removed and a new recommendation is made to amend the Wellington Consolidated Bylaw 2008: Part 2 - Animals and include the new clause identified in section 4.1 of this report.

4.2 Access for dogs off-leash on Seatoun Beach - Hector Street South to Point Dorset:

The statement of proposal for the Dog Policy 2009 that went out for consultation from 26 June to 7 August 2009 was to allow dogs on Seatoun Beach – Hector Street South to Point Dorset off-leash under the control of their owners from midnight to 9am. After consultation the times dogs would be allowed off-leash with their owners were recommended to be extended to the hours after 7pm and before 9am at all times of the year. A further extension was recommended by the Strategy and Policy Committee at the 8 October 2009 meeting, to allow Hector Street South to Point Dorset to be opened up as a dog

exercise area so dogs could walk off-leash with their owners at all times of the day and year.

Point Dorset Recreation Reserve was vested in the trustees of Port Nicholson Block Settlement Trust (PNBST) as part of Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 on 4 August 2009 (after the statement of proposal was confirmed by Council in May 2009). The Trustees of Port Nicholson Block Settlement Trust are now the owners of this area of land, though the Council administers the land.

Trustees of PNBST are happy for dog owners to walk their dogs on-leash in this area (current 2004 policy position) but do not want dogs off-leash in the Point Dorset Recreation Reserve as the area is of significant cultural importance to Taranaki Whānui and they feel that to have dogs off-leash would not demonstrate the appropriate level of respect that the reserve commands.

4.2.2 Suggested amendments

It is recommended that Seatoun Beach (Hector Street South to Point Dorset) be removed from the list of dog exercise areas under 4 (a) of the Strategy and Policy Committee's 8 October 2009 recommendations and that a new recommendation be made to reinstate this area as a 'controlled public space' where dogs can walk on-leash under the control of their owners.

4.3 LTCCP Implications

There are no LTCCP implications associated with the recommended changes.

5. Conclusion

This report provides supplementary information that has been identified since the 8 October 2009 Strategy and Policy Committee meeting and recommends that the Council agree to reclassify both the Lawn Cemetery of Karori Cemetery and Seatoun Beach from Hector Street South to Point Dorset as controlled public places where dogs are allowed on-leash under the control of their owners.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The Dog Policy 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. The issues discussed in this report do not have LTCCP implications.

3) Treaty of Waitangi considerations

Point Dorset Recreation Reserve was vested in Port Nicholson Block Settlement Trust (PNBST) under the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 on 4 August 2009. PNBST are now the land owners of Point Dorset Recreation Reserve and the area of land considered as an off-leash exercise area on Seatoun Beach (Hector Street South to Point Dorset). It is recommended that the Council reinstate this area as a controlled public place, where dogs are allowed on-leash to respect the wishes of the landowner.

4) Decision-Making

The report provides recommended changes to SPC recommendations made on 8 October 2009.

5) Consultation

Officers have met with representatives of PNBST to discuss Seatoun Beach (Hector Street South to Point Dorset).

6) Legal Implications

The Council's lawyers have been consulted on the implications of the SPC's recommendation to allow dogs off-leash on the Lawn Cemetery of Karori Cemetery. They have provided legal advice and recommended the new clause to regularise the legal anomaly in the Wellington Consolidated Bylaw 2008: Part 2 – Animals and Dog Policy 2009.

7) Consistency with existing policy

This report recommends amendments to the proposed Dog Policy 2009 and the Wellington Consolidated Bylaw 2008: Part 2 – Animals