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**REPORT 2**  
(1215/52/IM)

## **WELLINGTON CONSOLIDATED BYLAW 2008 REVIEW: PART 2 – ANIMALS**

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### **1. Purpose of Report**

This report presents proposed amendments to the Wellington Consolidated Bylaw 2008: Part 2 – Animals (Animals Bylaw).

### **2. Executive Summary**

The Council is reviewing the Dog Control Policy (2004) and a number of the proposed policy changes necessitate amendments to the Animals Bylaw. It is a requirement of the Act that any necessary bylaws which the Council makes to give effect to its Dog Control Policy come into force within 60 days of the policy being adopted<sup>1</sup>.

The Animals Bylaw 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 Bylaw also enables the Council to meet its statutory requirements under the Dog Control Act (1996) (DCA) to set dog exercise areas, prohibited areas and restricted access areas, to make dispensations from the requirements of the DCA<sup>2</sup>, and to give effect to other aspects of the Dog Control Policy such as the requirement for owners to remove dog faeces from public places.

The review of the Animals Bylaw primarily addresses issues relating to dogs although the opportunity has been taken to address matters concerning keeping poultry, feeding animals in a manner not to cause nuisance and adequate confinement of animals.

The proposed amended bylaw attached as Appendix 1 includes the following changes which support 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

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<sup>1</sup> Dog Control Act 1996 s10(6)

<sup>2</sup> Dispensations from the requirements of the Act include reduced fees for responsible dog owners and permission for keeping more than three dogs.

- clarification of the requirement for Council permission to keep more than 3 dogs on a property.

The proposed amended 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 Committee consideration and approval the proposed amended Animals Bylaw and Summary of Information and Statement of Proposal will be referred to Council to initiate the special consultative procedure, pursuant to the Local Government Act 2002 (LGA 2002).

### **3. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that a report on the review of the Dog Control Policy is also being considered at this meeting and should be read alongside this report.*
3. *Recommend to the Council that it:*
  - (a) *Agree that an Animals Bylaw is the most appropriate way to address the management of animals in Wellington City.*
  - (b) *Agree that the draft amendment to the Wellington Consolidated Bylaw 2008: Part 2 – Animals (draft Bylaw), attached as Appendix one, is the most appropriate form of bylaw.*
  - (c) *Note that the draft amendment to the Animals Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.*
  - (d) *Agree to the draft Animals Bylaw and Summary of Information and Statement of Proposal and initiate the special consultative procedure as required under the Local Government Act 2002.*
4. *Authorise the Chief Executive and the Associate Social Portfolio Leader to make minor editorial changes to the Summary of Information and Statement of Proposal prior to going to Council, if required as a result of SPC amendments.*
5. *Note that officers will report the results of the public consultation, with a revised proposed draft Animals Bylaw to the Strategy and Policy Committee in October 2009.*

## **4. Background**

The Council is reviewing the Dog Control Policy (2004) and a number of the proposed policy changes necessitate amendment of the Wellington Consolidated Bylaw 2008: Part 2 – Animals (Animals Bylaw). It is a requirement of the DCA that any necessary bylaws which the Council makes to give effect to its Dog Control Policy come into force within 60 days of the Policy being adopted.

The Animals Bylaw regulates animal keeping and husbandry activities, such as animal establishments, the hygiene and management of buildings for poultry and stock, and dog related matters, 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 Animals Bylaw review:

- addresses the requirements of the Local Government Act (LGA) 2002
- aligns the Animals Bylaw with the relevant legislation listed below
- amends it to match the Council's policies as amended in the proposed Dog Control Policy 2009.

### **4.1 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.

Section 155 of the LGA prescribes 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.

Following public consultation and on completion of the review process, the draft Animals Bylaw will be adopted as an amendment to the Wellington Consolidated Bylaw 2008.

## **5. Discussion**

### **5.1 Council role in relation to animals**

Council has a number of roles in relation to animals and animal welfare. In respect of dogs, it aims to ensure that the rights of the public are protected and to:

- ensure owners of dogs comply with their obligations under the DCA
- 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 draft Dog Control Policy (2009) supports this role and is largely concerned with community safety and health, animal welfare and providing mechanisms for registration of dogs.

The Council also needs to ensure that animals can live within the city 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, and regulating, licensing or prohibiting the keeping of animals in the district.

The control of animals is enforced within the Animal Control Unit of Council's Building Consents and Licensing Services Unit (BCLS). Animal control is contracted to Direct Service Solutions<sup>3</sup> and the enforcement of animal related health issues is the responsibility of environmental health officers within BCLS.

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<sup>3</sup> Direct Service Solutions are the Council's contracted provider of animal management services.

## **5.2 Proposed changes to the Animals Bylaw**

This section considers how the procedure for making bylaws set out in section 155 of the LGA has been applied for each of the proposed amendments to the Animals Bylaw.

This procedure requires the Council to determine that a bylaw is the most appropriate way of addressing the perceived problem and that the proposed bylaw is the most appropriate form of bylaw. Section 155 also requires Council to consider any implications of the bylaw under the New Zealand Bill of Rights Act (1990). This consideration is dealt with for the Bylaw as a whole at section 5.3.

### **5.2.1 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 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.

### **5.2.2 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.

### 5.2.3 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.

### 5.2.4 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

Discussion of 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

| <b>Options</b>   | <b>Assessment</b>   |
|--|---|
| <b>Public education</b> 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. |
| <b>Regulatory action</b> 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.   |
| <b>Amend the existing Animals Bylaw</b> to provide Council with legislation to manage the confinement of animals to their owners' property.    | This ensures that officers can 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.                     |

## 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 DCA.

### **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.

### **5.2.5 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 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.

### **5.2.6 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.

### **5.3 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<sup>4</sup> (BORA). In reaching a conclusion in relation to the BORA it is important 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.

### **5.4 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 section 5.2 above. These are:

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<sup>4</sup> Section 155, LGA 2002

#### 5.4.1 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.

#### 5.4.2 Deletions

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

#### 5.5 Process and timeline

The proposed Animals Bylaw has been developed through consultation with the relevant business units and key stakeholders. Public consultation will be completed under the special consultative procedure as required by the LGA 2002.

The process is as follows:

| Date                     | Action   |
|--------------------------|--|
| May 2009                 | Strategy and Policy Committee consider the proposed Animals Bylaw and, if appropriate, refer it to Council for consideration.  |
| May 2009                 | The 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. |
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## **6. Conclusion**

Amendments to the current Animals Bylaw are proposed to align it with current legislation, Council policy and operational requirements. On the recommendation of the Committee, the draft Animals Bylaw will be referred to the Council for consideration and to initiate the special consultative procedure as required under the LGA 2002.

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| <b>Supporting Information</b>  |  |
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| <b>1) Strategic Fit / Strategic Outcome</b>                          | This paper supports objective 6.5 Healthier – Wellington’s population will enjoy a healthy lifestyle and high standards of public health.  |
| <b>2) LTCCP/Annual Plan reference and long term financial impact</b> | Relates to C478 Public health  |
| <b>3) Treaty of Waitangi considerations</b>                          | Not applicable   |
| <b>4) Decision-Making</b>  | This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter who have been consulted with.  |
| <b>5) Consultation</b>   | <p><b>a) General Consultation</b><br/>Consultation will take place during the special consultative period.</p> <p><b>b) Consultation with Maori</b><br/>Local iwi will be provided with a draft of this policy during the special consultative period.</p> |
| <b>6) Legal Implications</b>   | The legal implications of the proposal are discussed in section 5.3. The proposed bylaw incorporates advice received from the Council’s legal advisers.  |
| <b>7) Consistency with existing policy</b>                           | This report makes recommendations for amendments to the Animals Bylaw to give effect to proposed changes to the Dog Control Policy.  |