

WAIMAKARIRI DISTRICT COUNCIL

REPORT

FILE NO: ANC-04 / 090306006213
REPORT TO: The Council
DATE OF MEETING: Tuesday 7th April 2009
FROM: Nick Harrison, Environmental Services Manager
SUBJECT: Review: Policy on Dogs and the Dog Control Bylaw
SIGNED BY: _____

Department Manager

Chief Executive

1. SUMMARY

The purpose of this report is to initiate the statutory review of the Dog Policy and the Dog Control Bylaw 2004. The Local Government Act 2002 requires that the Council reviews the bylaw within 5 years of adoption. As the policy and bylaw are interlinked it is appropriate to also review the policy. The bylaw would become the Dog Control Bylaw 2009 and the 2004 bylaw will be revoked.

The Dog Control Act 1996 (the Act) lists the matters the Council has to address in the policy and these include ensuring that owners are aware of their obligation to register their dog, to keep their dog under control and for it not to cause a nuisance. The bylaw is necessary to implement part of the policy.

This policy recognises the benefits and problems of dogs to their owners and the community. Everyone in the community; dog owners, the public and the Council, has a role to play in order to minimise any public nuisance caused by dogs and also to continue to appreciate the benefits they offer.

One change is suggested to the policy which is to require that all dogs listed under the menacing classification should now be neutered.

The bylaw is to be updated to include the list of parks and reserves, created since 2004, that have dog control measures.

The Act requires that the policy review follows the special consultative procedure (SCP) of the Local Government Act 2002.

Key Dates for the Special Consultative Procedure process:

- Week 4th May – Public Notification and mail out to registered dog owners.
- Submission period - 30 May to 3 July 2009
- Hearing - 6 August
- Hearing panel recommendations to the Council – 1 September

Attachments:

- i. Appendix 1. Draft Policy on Dogs
- ii. Appendix 2. Draft Dog Control Bylaw 2009.
- iii. Appendix 3. Public Notice and Summary of Information.

1. **RECOMMENDATION**

THAT the Council:

- (a) **Receives** report N° 090306006213.
- (b) **Initiates** the Special Consultative Procedure with this report as a "Statement of Proposal" in terms of the Local Government Act 2002 (LGA 2002) sections 158(1) & 83(1)(b), for the review of the Dog Control Policy and the Dog Control Bylaw 2004 pursuant to section 158(2) of the LGA 2002 and section 20(4) of the Dog Control Act 1996.
- (c) **Approves** the attached draft Dog Control Policy 2009 and draft Dog Control Bylaw 2009 for notification
- (d) **Delegates** the consideration of submissions to the Hearing Committee comprised of Councillor _____, Councillor _____ and Councillor _____.
- (e) **Approves** the form of the summary of information and public notice in accordance with section 89 (b) of the Local Government Act 2002.

2. **ISSUES AND OPTIONS**

- 2.1. The Dog Control Act 1996 was amended in 2003 following a period of well publicised incidents around the country. The amendment required Councils to develop a Policy on Dogs to express how Councils implement the Act. In my view the practical outcome of the requirement for a policy actually has had little effect on the control of the dog population in Waimakariri as the existing Dog Control Bylaw 2004 was comprehensive and any significant enforcement by the Council was based on the Act itself rather than a policy.
- 2.2. Regardless, the Act requires the Council to review the Dog Control Bylaw 1997 and implicit with this is a review of the dog policy, as the bylaw is the means by which the policy is implemented and enforced. The bylaw must be reviewed within 5 years of its making as per section 158(2). The five year period ends in December 2009.

Policy Details

- 2.3. The Act is prescriptive, in section 10 (see section 5.2 of this report), about the matters that must be considered in the policy. The policy specifically addresses these with statements on responsible dog ownership, owner obligations, community awareness about dogs and funding for dog control.
- 2.4. The policy addresses responsible dog ownership by having the start point that all owners are considered to be responsible until shown to be otherwise. Owners who demonstrate that they cannot control their dog risk infringement fees, impounding costs and in more extreme cases the dog could be classified as menacing or dangerous, or the owner prosecuted. The ability to apply these penalties all come directly from the Act and are not dependent on a policy.
- 2.5. Owner education is another requirement of the Act and the policy states that the Council will provide an advisory function to the public about dog behaviour.
- 2.6. The policy is also required to detail to some extent fees for dog control. The policy identifies that fees will be set annually and that they will be structured to encourage owners to neuter their animals as neutering will reduce the overall nuisance effects to the community caused by dogs.
- 2.7. The element of the policy that has the most impact on the public, and also attempts to balance the needs of dog owners against minimising public nuisance, is the level of control for dogs in public places. The policy provides for three levels of control:

- *Prohibited* where no dog is permitted. This is usually applied to areas with playgrounds where there is potential for dogs to be a nuisance to young children, or where it's inappropriate to have dogs such cemeteries
- *Under control* where a dog is not required to be on a leash but is required to be under the control of the owner.
- *Leash only* where dogs are permitted provided they are leashed.

2.8. This policy decision of classifying dog control in public areas is implemented through the bylaw and is detailed in the bylaw's First Schedule. The fundamental premise behind the classification is to separate dogs from sensitive public facilities such as children's playgrounds. To a lesser extent this separation is suggested for sports fields to try to stop fouling nuisance, but this could also be addressed, more practically, by that part of the bylaw that makes it an offence for a dog owner not to clean up after their animal.

Proposed Policy Change

2.9. Staff propose one change to the policy. Currently dogs classified as menacing are not required to be neutered. In 2004, when the policy was first developed, all dogs that were certain breeds (Brazilian Fila, Dogo Argentino, Japanese Tosa and American Pit Bull) were required by the Act to be classified as menacing. The Council at that time did not choose to require those breeds registered in the district to be neutered because none at that time had exhibited behavioural characteristics that suggested neutering was required. It appeared that the owners would be punished twice – once by the Act and secondly by the Council requiring the dog to be neutered when otherwise the Council had no concerns about the dog or owner.

2.10. Since that time the Council's list of "menacing" dogs has grown to 30, of which 11 are breed related (all American Pit Bull Terriers). This shows that the majority of classifications are now based on aggressive behaviour by the dog and it is the staff's view that a change in the policy so that the Council required a menacing dog to be neutered would be helpful.

Proposed Bylaw Changes

2.11. One change is proposed. This is to update the list of parks and reserves, with their corresponding level of dog control. This also gives the community an opportunity to review the control levels for parks.

3. COMMUNITY VIEWS

Community views have not yet been sought. Some informal comment has been received seeking change to the way dog fees are charged for owners of 10 or more dogs and I expect this to be a submission to the policy. Other informal comment has suggested that the Council provide dog parks in the district. The community will have the opportunity to express views through the statutory submission process.

4. FINANCIAL IMPLICATIONS AND RISKS

The direct costs of amending the policy and bylaw are generated by the SCP. Cost for the project is likely to be in the order of \$4000 but in my opinion is balanced by intangible benefits in terms of community safety and public amenity. The Dog Control Act requires that all registered owners be notified of the review, so by combining the review notification with the annual registration mail out, about \$2000 in postage costs has been saved.

Risk arises when Council policies and practices are not aligned with the community outcomes or statutory duties of the Council. The policy and bylaw have been used for the past 5 years and on balance appear to align with community outcomes and community expectations. They are certainly aligned with the Council' statutory duties.

5. **CONTEXT**

5.1. **Links to Community Outcomes**

The community has told the Council that a priority is “a safe environment for all.” The Council’s administration of acts, regulations and bylaws for health and safety, such as the dog policy and bylaw, is a significant means the Council has to assist the community gain that outcome.

5.2. **Statutory Duty and Function**

The LGA 2002, section 158(1) provides the statutory requirement for the Council to undertake the review of the bylaw, while the Dog Control Act 1996 s10 lists the matters the Council needs to address in forming a Dog Policy.

10. *Duty of territorial authorities to adopt policy on dogs—*

(1) *Every territorial authority must adopt, in accordance with the special consultative procedure set out in section 83 of the Local Government Act 2002, a policy in respect of dogs in the district of the territorial authority.]*

(3) *Every policy adopted under this section—*

(a) *Shall specify the nature and application of any bylaws made or to be made under section 20 of this Act; and*

(b) *Shall identify any public places in which dogs are to be prohibited, either generally or at specified times, pursuant to a bylaw made under section 20(1)(a) of this Act; and*

(c) *Shall identify—*

(i) *Any particular public places; and*

(ii) *Any areas or parts of the district, in which dogs (other than working dogs) in public places are to be required by a bylaw made under section 20(1)(b) of this Act to be controlled on a leash; and*

(d) *Shall identify those areas or parts of the district in respect of which no public places or areas are to be identified under paragraph (b) or paragraph (c) of this subsection; and*

(e) *Shall identify any places within areas or parts of the district specified in paragraph (c)(ii) of this subsection that are to be designated by a bylaw under section 20(1)(d) of this Act as dog exercise areas in which dogs may be exercised at large; and*

(f) *Shall include such other details of the policy as the territorial authority thinks fit including, but not limited to, details of the policy in relation to—*

(i) *Fees or proposed fees; and*

(ii) *Owner education programmes; and*

(iii) *Dog obedience courses; and*

- (iv) *The classification of owners; and*
- (v) *The disqualification of owners; and*
- (vi) *The issuing of infringement notices.*

[(4) *In adopting a policy under this section, the territorial authority must have regard to—*

- (a) *the need to minimise danger, distress, and nuisance to the community generally; and*
- (b) *the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and*
- (c) *the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs; and*
- (d) *the exercise and recreational needs of dogs and their owners.]*

(6) *The territorial authority must give effect to a policy adopted under this section—*

- (a) *by making the necessary bylaws, which must come into force not later than the 60th day after the adoption of the policy;...*

(8A) *The adoption of a policy or amended policy in accordance with this section satisfies the requirements of sections 86, 155, and 156(1) of the Local Government Act 2002 in respect of any bylaw to which subsection (6) applies.]*

5.3. Section 160 of the LGA requires that the Council must follow the Special Consultative Procedure (SCP) (s83) and also consider matters in s155 when reviewing a bylaw.

5.4. The SCP (s83) requires a “statement of proposal” which for this policy and bylaw is this report and the proposed policy and bylaw as shown in the appendices.

5.5. The statement of proposal must include reasons for the proposal (s86(2)(b)).

For the policy and bylaw the principal reasons are:

- Protecting the public from nuisance
- Maintaining public safety
- The bylaw’s necessity to implement the Dog Control Policy
- The LGA 2002 requirement to review the bylaw within 5 years of its making.

5.6. The statement of proposal must include the Council’s consideration under s155 of the problems being addressed by the proposal. This involves a determination of whether the proposed bylaw is the most appropriate way to implement the dog control policy. The test for this is whether or not alternatives exist that achieve the same outcome with similar efficiency. In this case the bylaw is the only mechanism available under the Dog Control Act 1996 to implement some of the enforcement provisions of the policy.

5.7. Section 155(2)(a) also requires an assessment whether the bylaw is the most appropriate form of bylaw. Under the LGA the Council can make general bylaws for public health and safety and under the Dog Control Act 1996 the Council can make specific bylaws for dog control. In this case the proposed bylaw meets the criteria of “appropriateness” for both acts.

5.8. Section 155(2)(b) requires that any bylaw is not inconsistent with the NZ Bill of Rights Act 1990. The NZ Bill of Rights Act 1990 states:

s5 "Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

5.9. The Local Government Act 2002 provides for Councils to lawfully pass a bylaw to abate public nuisance. The Dog Control Act 1996 provides for Councils to pass a bylaw for the control of dogs. The Council has had a bylaw since 1997 and this has assisted dog control and people's enjoyment of public space. As two acts provide for the bylaw there is an assumed direction from Parliament that a dog control bylaw is not inconsistent with the NZ Bill of Rights Act 1990.

5.10. Process

If Council approves this report (being the 'Statement of Proposal'), the attached draft Dog Control Policy 2009 and draft Dog Control Bylaw 2009, for public notification, the process and key dates will be as follows:

- Week commencing 4th May - mail out to registered dog owners to include covering letter, dog registration form, draft policy and existing bylaw
- Public notification – 30 May
- Submission period - 30 May to 3 July 2009
- Acknowledge submitters – 7 July
- Hearing - 6 August
- Deliberations -10 August
- Council will consider hearing panel recommendations – 1 September
- Decision letters out - end of September

All registered dog owners will individually receive a copy of the summary of information (a summary of the statement of proposal) and public notice.

6. Policy/Delegation Reference

The Council is required to carry out the review. The Local Government Act 2002 section 145 provides the Council with the authority to make and amend bylaws to protect the public from nuisance and the Dog Control Act 1996 section 20, empowers for the Council to make bylaws for dog control.

Nick Harrison
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