

# ***Animals Bylaw review***

# *Purpose of this briefing*

- Complete statutory determinations for bylaw review under section 155 LGA
- Direction on the preferred option for the Statement of Proposal

# Review timeline



Apr-2021	scoping + research on Animals Bylaws
Jul-2021	Council briefing – Key Bylaw issues and process
Jul-2021	analysis/legal advice
Today	Council briefing - options and direction for SOP
Sep-2021	SOP development
Oct-2021	Council briefing - draft SOP
Now-2021	Council Meeting - adopt SOP
Dec-2021	formal consultation
Jan-2022	analysis/legal advice
Feb-2022	Hearing/ deliberations
Mar-2022	final drafting/ legal advice
Apr-2022	Adoption

Formal process can take 12 -18 months

# *Overview of the Animals Bylaw 2017*

Council's Animals Bylaw is designed to supplement, rather than duplicate provisions under the following:

- Animal Welfare Act 1999 and related codes of welfare
- Health Act 1956
- Biosecurity Act 1993
- Land Transport Act 1998
- RMA 1991

Dog management is out of scope → Dog Bylaw

Animal welfare out of scope → SPCA

High level of community interest in relation to the keeping of cats

- 1,019 submissions on the LTP

# ***s.155 LGA – Council must determine***

- Attachment 1 provides detailed analysis
- The perceived problem:
  - keeping of domestic animals in urban areas, and potential nuisance and health concerns it may create
- Is a bylaw the most appropriate way of addressing the perceived problem?
  - A bylaw is still appropriate
  - non-regulatory measures would be insufficient to address the problem
- Is the bylaw in the most appropriate form?
  - No – needs to be amended
  - Update the definition of urban area
  - Consideration wither additional controls are needed for cats?
- Any implications under the NZ Bill of Rights Act?
  - No implications

# Perceived problems

- Nuisance under s.145 LGA
  - the relevant behaviour is something for which a person is responsible
  - the nuisance is to the public (as distinct from, say, nuisance to other cats)
- Public health and safety under s.145 LGA
- The keeping of animals under s.146 LGA
  - the power is to regulate the keeping of cats, and not to regulate cats *per se*
- NOT wildlife protection → RMA 1991, Biosecurity Act 1993
- NOT pest control → NRC Pest Management Plan
- NOT animal welfare → SPCA under the Animal Welfare Act 1999

# ***Bylaw validity***

- ***Lawful***
  - An unlawful bylaw is ultra-vires
  - Legislation must explicitly give Council power to make the bylaw
- ***Appropriate***
  - within Council's bylaw-making purposes
  - relates to matters in respect of which the Council has a statutory role or function
- ***Reasonable and proportionate***
  - remedies the actual problem
  - proportionate to the extend of the experienced problem

# Appropriateness

## ***Relationship between sections 145 and 146 LGA***

*s.145 – nuisance, health; s.146(a)(v) – “keeping of animals”*

- s.145 is general, and s.146 is specific
- s.145 provides context to determine reasonableness of a bylaw made under s.146
- s.146 restricted to the “keeping” of the animals (e.g. cats), and not the mere existence or presence of cats in the district
- Stray cats or predation of wildlife are not lawful purposes of bylaw-making power under s.146
- S.145 is broader than section 146(a)(v) because behaviour which causes a nuisance need not be limited to the "keeping" of cats e.g. the encouragement and feeding of stray cats.

# *Reasonable and proportionate*

- Is there a real problem in enforcing the current bylaw – which microchipping would remedy?
  - In principle microchipping could be implemented to assist in enforcing limits on cat numbers
  - Other benefits of microchipping are related to matters outside the Council's bylaw-making purpose (finding lost cats, assisting in pest control)
- Depends on evidence of enforcement difficulties with the current bylaw – no difficulty since 2017 when bylaw was made.
- Mandatory desexing is likely to be too onerous and not in proportion to the extent of experienced problems.

# Microchipping

**Is microchipping within the Council's bylaw-making power to regulate "the keeping of animals" (excluding dogs)**

Problem: wildlife protection, stray cats, pest control

Tests:

- ✓ **not ultra vires** – s.146 allows to regulate the keeping of animals.
- X **appropriateness** – does not relate to matters in respect of which the Council has a statutory role or function.
- X **reasonableness** – cannot demonstrate that there has been difficulty in enforcing the current bylaw which microchipping would remedy.

Problem: assist in enforcing limits on numbers of cats kept per property

Tests:

- ✓ **not ultra vires** – s.146 allows to regulate the keeping of animals.
- ✓ **appropriateness** – Council may regulate how many cats are kept subject to conditions.
- X **reasonableness** – cannot demonstrate that there has been difficulty in enforcing the current bylaw in relation to nuisance from numbers of pet cats

# *Options for cat management*

- Option 1: No specific cat clauses in the bylaw. Regulation under the general rule (clause 6)
- Option 2: Limit the number of cats allowed per property
- Option 3: Mandatory microchipping and registration
- Option 4: Mandatory desexing of cats.
- Option 5 (**Recommended**): Non-regulatory measures in addition to retaining clause 6

# ***Reasonably practicable options following review***

- Option A – Retain the bylaw in its current form and continue without amendment
- Option B – Consultation on the full bylaw
- Option C – Allow the bylaw to expire

# *Feedback needed today:*

- Complete statutory determinations for bylaw review under section 155 LGA
  - Options for cat management
- Direction on the preferred option for the Statement of Proposal
  - Reasonably practicable options following bylaw review
  - Recommended Option B – consultation on the full bylaw. Develop a draft Statement of Proposal.