

STATEMENT OF PROPOSAL

THE PROPOSED WANGANUI DISTRICT COUNCIL ANIMAL CONTROL BYLAW (2009)

CONTENTS

- 1. Special consultative procedure**
- 2. Statement of Proposal**
 - 2.1. Is a bylaw the most appropriate way of addressing the perceived problem?
 - 2.2. Is the Bylaw the most appropriate form of bylaw?
 - 2.3. Implications under New Zealand Bill of Rights Act 1990
- 3. Statement of Reasons for the Proposal**
 - 3.1. What is the perceived problem?
 - 3.2. Significance
 - 3.3. Assessment of Options
 - 3.3.1. Option One: Do Nothing - Status Quo – (use of current bylaws)
 - 3.3.2. Option Two: Bylaw
 - 3.3.3. Option Three: Policy and/or Management Plan
 - 3.3.4. Analysis of Options
 - 3.4. Other Relevant Matters
 - 3.4.1. Legal Justification for Bylaw
 - 3.4.2. Certainty of Bylaw
 - 3.4.3. Reasonableness of Bylaw
- 4. Conclusion**
- 5. Proposed Animal Control Bylaw (2009)**

1. SPECIAL CONSULTATIVE PROCEDURE

Section 156 of the Local Government Act 2002 (“LGA”) requires Council to use the Special Consultative Procedure when making, amending or revoking a bylaw under the Act.

The Special Consultative Procedure requires the Council to:

- A. Prepare a Statement of Proposal and a Summary of the Information contained in the Statement of Proposal; and
- B. Include the Statement of Proposal on the agenda for a meeting of the local authority.

2. STATEMENT OF PROPOSAL

This Statement of Proposal is prepared pursuant to sections 83, 86, 89, 155, and 158 of the Local Government Act 2002 (Act).

The first proposal is to revoke ***Part 4 – Animal Control – Wanganui Consolidated Bylaw 1997***.

The second proposal is to adopt the ***Wanganui District Council Animal Control Bylaw (2009)***.

Section 155 requires Council to make two separate determinations.

2.1 Is a bylaw the most appropriate way of addressing the perceived problem?

A bylaw addressing animal control is consistent with the provisions in the Local Government Act 2002 relating to the Council’s bylaw making powers. The problems addressed in the draft bylaw are similar to that contained within the existing Animal Control Bylaw. The changes promulgated are seen as enhancing and clarifying the current bylaw to ensure all aspects of the animal control issues covered under the bylaw are fair and consistent. The review which culminated in the draft bylaw being produced was undertaken in conjunction with the Wanganui Rural Community Board.

The Council considers that it is still necessary to have a bylaw relating to animal control for the purposes of:

- Regulating the keeping of animals and birds within the District so that they do

not create a nuisance. Specific reference is made to the keeping of dogs, cats, pigs, poultry, bees, goats, horses, cattle and any other animal.

- Controlling the slaughter of stock in residential areas.
- Controlling the use of animal traps.
- Minimising adverse effects on roads and to road users caused by the movement of stock.
- Controlling roadside grazing.

The proposed 2009 Bylaw will provide for adequate regulatory control to meet the community's expectations around animal control and protect the community's roading infrastructure, especially in the rural areas of the District.

2.2 Is the Bylaw the most appropriate form of bylaw?

The Local Government Act 2002, sections 145 (a)(b) and 146(a)(v) provide the necessary statutory authority for a Bylaw.

2.3 New Zealand Bill of Rights Act 1990

Council must determine whether the Bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 ("NZBORA"). Section 5 of the NZBORA states: *"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."*

The Bylaw appears to be consistent with all parts of the NZBORA and does not give rise to any implications under that Act. It is considered that the provisions in the Bylaw are reasonable and can be demonstrably justified in a free and democratic society because of the need to ensure that this issue is managed in an appropriate manner.

The issue of whether it is consistent with the New Zealand Bill of Rights Act 1990 or gives rise to any implications under that Act will need to be reviewed and determined after the special consultative procedure.

3. STATEMENT OF REASONS FOR THE PROPOSAL

The Local Government Act 2002 (LGA) requires the Council to review its current Bylaws. A review of ***Part 4 – Animal Control - Wanganui Consolidated Bylaw 1995*** has shown that due to the age of the bylaw, the structure and language used, the bylaw needs to be amended to reflect current practice and matters that have been taken for granted. The proposed bylaw will ensure certainty as to obligations and responsibilities and will make the bylaw easier to read and understand. The existing bylaw will be revoked and replaced with the proposed new bylaw.

The Local Government Act 2002 gives authority to territorial authorities to:

- I. Protect the public from nuisance;
- II. Protect, promote, and maintain public health and safety; and
- III. Make bylaws for the purpose of keeping animals, bees, and poultry.

The proposed Bylaw strengthens requirements around animal traps, movement of stock –especially dairy cattle crossing roads, grazing of animals on the roadside, temporary fencing and gates and cattle stops across roads. All of which manages any potential public nuisance, threats to public health and safety, or any damage or misuse of the District’s roads.

3.1 What is the perceived problem?

The keeping of animals, especially close to roads or neighbouring properties, has the potential to cause nuisance, threaten public health and safety, and damage public property including roads. It is therefore necessary to have regulations in place which ensure that the keeping of animals are managed in an appropriate manner.

3.2 Assessment of Options

Council has identified four possible options: Do Nothing; Status Quo (current bylaw); New Bylaw; and Policy and/or Management Plan.

3.3.1. Option One – Do Nothing – Status Quo

Animal Control is an important matter that needs managing in a manner that is sensible and appropriate to the various environments that exist. In an unregulated environment the control and use of animals especially in and around public and neighbouring environs could easily cause public nuisance or compromise public safety and health. It is therefore not appropriate for Council to take a ‘do nothing’ approach.

Under this option the current Bylaw will expire on 1 July 2010. Accordingly Council does not accept this as an option; it must review its Bylaw and the review has proposed to revoke Part 4 and adopt the proposed Bylaw.

3.3.2. Option Two – Bylaw

Sections 145 (a)(b) and 146(a)(v) of the LGA gives specific bylaw-making powers for the purposes of protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and making bylaws for the purpose of keeping animals, bees, and poultry. A bylaw allows Council to regulate and manage this activity to protect public health and property.

3.3.3. Option Three – Policy and/or Management Plan

A Policy and/or Management Plan for the control of animals does not provide Council with the ability to enforce those matters that are regulatory in nature. Given the severity of possible consequences around non compliance surrounding the control of animals, it is necessary for Council to be able to regulate for the good of the community.

Council has adopted within the proposed bylaw a structured regime surrounding droving and temporary grazing rules whereby the level of risk reflects the severity of regulatory intervention.

3.3.4. Analysis of Options

The benefit of no bylaw is outweighed by the certainty provided by a regulated activity, mitigating against the potential for serious health and safety issues to arise which impacts on the community of Wanganui.

A bylaw enabling Council to regulate the keeping of animals allows Council to set sensible rules to allow the community to keep animals whilst also allowing rules to mitigate against the problems caused when people keep animals in a non compliant manner.

Other Relevant Matters

3.4.1. Legal Justification for Bylaw

A bylaw is permitted under sections 145 (a)(b) and 146(a)(v) of the LGA.

3.4.2. Certainty of Bylaw

A bylaw is required to be certain in that the expectations of the bylaw must be clearly stated. The proposed Bylaw is clear in setting out its requirements.

3.4.3. Reasonableness of the Bylaw

In determining whether the proposed bylaw is the most appropriate form of bylaw, Council must consider the reasonableness of the bylaw. In determining what is reasonable, it is important to take account of consultation with the community. A bylaw must not unnecessarily interfere with a public or private right unless there is a corresponding benefit to the community. The Bylaw is considered reasonable in that its overarching objective is to protect the community's health and safety.

4. CONCLUSION

The review of *Part 4 – Animal Control - Wanganui Consolidated Bylaw 1997* as required by the Local Government Act 2002 proposes that Council revoke that Bylaw in favour of a new Bylaw.

An analysis of the practicable options for Council in controlling the keeping of animals indicates that the proposed bylaw is likely to be the most effective single mechanism to manage the perceived problem.

The special consultative procedure provides an opportunity for the views and preferences of all persons likely to be affected by the proposed Bylaw to be heard and considered in the public consultation process.

The issue of whether it is the most appropriate form of bylaw will need to be reviewed and determined after the special consultative procedure has been completed.

5. ANIMAL CONTROL BYLAW (2009)

The draft of the proposed Animal Control Bylaw (2009) is attached as Appendix 1. No date can be fixed by the Council as to when the Bylaw will become effective as that date will be determined by the special consultative procedure and the subsequent deliberations of the Council.