

Research Report

Animals bylaw

1. PURPOSE

To identify issues related to the keeping of animals in the Far North District and to identify the current and potential available options to manage and address issues related to the keeping of domestic animals.

2. CONTEXT AND SITUATION

In 2019, the Keeping of Animals, Poultry and Bees Bylaw 2007 (the bylaw) automatically revoked. Since then, Council has been managing complaints and issues relating to the matters previously covered by the bylaw using various other legislative instruments, if and where available. Without the previous Bylaw, staff are reporting a range of issues that are proving challenging to address and/or resolve.

This research report will analyse these issues and identify the most appropriate way to address the identified problems. Section 155(1) of the Local Government Act 2002 requires Council to determine whether a bylaw is the most appropriate way to address the known or perceived issues.

3. COUNCIL AND ANIMAL MANAGEMENT

Council has several options available to assist with the control and management of animals in the district. These range from a series of regulatory tools and non-regulatory options. Bylaws provide the primary legislative tool for Council to regulate, control and monitor animal issues across the district. Bylaws can be created under various legislative tools further outlined below.

Non-regulatory tools are also available to Council where Council is a landowner, or via the rules contained in the Far North District Plan. These tools provide Council with alternative means of monitoring and controlling animals across the district.

3.1 Local Government Act 2002

Council relies on legislation empowered by way of bylaw to control and monitor district-wide issues.

Section 145 of the Local Government Act 2002 is the primary provision within the Local Government Act in which Council make bylaws. Section 145 provides Council with the ability to create bylaws for one or more of the following purposes:

- (a) protecting the public from nuisance:
- (b) protecting, promoting, and maintaining public health and safety:
- (c) minimising the potential for offensive behaviour in public places.

Section 146 of the Local Government Act also provides the specific ability to regulate animals, bees, and poultry. The Local Government Act ensures Council promotes the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

Breaches of a bylaw made under the Local Government Act are subject to prosecution and a fine (upon prosecution) up to \$20,000. Further powers available under the Local Government Act and enacted by way of bylaws are the powers for Council to seize anything causing a nuisance or health and safety risk including animals.

A bylaw made under both Section 145 and Section 146 of the Local Government Act will provide Council with the opportunity to regulate animals for the protection of the public from nuisance and offensive behaviour and maintaining public health and safety alongside specific animal provisions for clarity.

Others acts that Council can use to create bylaws or to enforce animal issues are:

- Animal Welfare Act 1999
- Health Act 1956
- Reserves Act 1977
- Land Transport Act 1998
- Impounding Act 1955

3.2 Health Act 1956

The Health Act provides the broadest opportunity for the management of animals causing a nuisance due to smell, noise, or public health concerns. It empowers an environmental health officer to enter a premise and abate the nuisance.

Section 29 of the Health Act outlines several situations where nuisances are “offensive or likely to be injurious to health.” In relation to animals, subsections 29(j) and (k) include situations where animals are kept in unsuitable conditions. Currently, Council staff use the provisions of the Health Act for enforcement.

Section 64 of The Health Act allows Council to make bylaws that prevent or abate nuisance, including regulating stables, cow sheds, and piggeries. A bylaw will outline the requirements for animals such as chicken coops and pig pens to ensure they are of a high standard and do not contribute to animal nuisance.

Breaches of a bylaw made under The Health Act 1956 can amount to a fine of \$500 upon conviction, and further fines up to \$500 per day for a continuing offence.

3.3 Other acts

These other acts include provisions that either enable or compel Council to act independent of any bylaws of Council.

Animal Welfare Act 1999 compels Council to ensure all animals in our possession, custody, care, control, or supervision are provided with food, water, and shelter. It also allows Council to destroy animals that are diseased, injured, or sick, and to report animal welfare issues to the SPCA.

Impounding Act 1955 requires Council to provide pounds for wandering animals inclusive of cleanliness, food and water. The Impounding Act also provides the ability to place wandering stock in a nearby paddock, return them to owner or seize them and place them in a suitable pound.

Reserves Act 1977 allows Council to seize animals of any kind that trespass on a reserve. Council may also sell, destroy, or otherwise dispose of the seized animals.

Resource Management Act 1991 allows Council the ability to create district plan rules to regulate noise from animal keeping and zoning for activities relating to animals. Further, Council can issue directions and abatement notices for unreasonable noise.

4. OBJECTIVES

4.1 Purpose of research

The purpose of this research report is to:

- identify and define perceived and known animal related problems in the district
- clarify the legislative framework that Council operates within in relation to the above problems
- identify possible solutions to the issues identified.
- identify whether a bylaw is the most appropriate way to address the perceived problem

5. PROBLEM DEFINITION

5.1 Scope

In scope

Council has a broad range of functions, responsibilities and powers for matter relating to animals in the district. The scope of the problem defined in this report is however framed through the issues and problems arising since the automatic revocation of the Keeping of Animals, Poultry and Bees Bylaw in 2019. Therefore, the scope of the problem is focused on the keeping of animals, rather than animals in general, and more specifically relating to matters of nuisance and public health and safety.

Urban/rural

A bylaw has a primary focus to regulate animals in urban areas. Rural areas are regulated by way of district plan and the powers available to Northland Regional Council and the Department of Conservation. Animals kept in rural areas contribute to the majority of known or perceived problems. The primary lens of this report is to ensure the keeping of animals in urban areas is well regulated and nuisance issues caused by animals can be adequately addressed by Council.

Kept/wild animals

Kept animals refers to those animals that are owned, maintained, and form part of the household. Wild animals are those that are unowned and unmaintained, whether this is by neglect or an animal that has never been domesticated. This report focusses on kept animals as allowed under s146 of the Local Government Act.

Out of scope

- Dogs – A specific Dog Management Policy and Bylaw are requirements of the Dog Control Act 1996
- Pest control and protection of biodiversity – responsibility of Northland Regional Council
- Animal cruelty – Responsibility of SPCA and Police as lead prosecuting agencies
- Wild or feral animals

6. PURPOSE OF REVOKED KEEPING OF ANIMALS, POULTRY AND BEES BYLAW 2007

The previous bylaw was created under the Local Government Act 2002 and included provisions relating to the keeping of animals to support minimising nuisance issues and ensuring public health and safety.

The bylaw covered bees, poultry, pigs, and other domestic animals, and encouraged responsible animal ownership. The reason for the revocation of the bylaw was due to staff capacity and resourcing issues at the time which did not allow for a review of the bylaw to be completed within the required statutory timeframes as opposed to an active choice of Council that the Bylaw was no longer necessary to address the problems being experienced.

7. ANIMAL PROBLEMS TO BE ADDRESSED

Animal related problems and complaints are regularly raised with Council. Since the revocation of the bylaw, some of these issues have been dealt with under other bylaws of Council (e.g., the Road Use Bylaw that provides guidance and expectations relating to animal waste on a public roadway), or directly through provisions in the Health Act 1956. Some issues are however not able to be addressed within the existing legislative framework which results in unresolved Requests for Service (RFS), such as issues with the number of chickens and bees in an urban environment.

The following sections provide an overview of animal related RSFs received between 2021 and 2023. These are first categorised by problems caused by animals, followed by common types of complaints received through the RFS system.

7.1 General

The common themes evident in RFS records are:

- kept domestic animals straying or wandering onto private and public property causing damage (e.g., digging up gardens)
- poultry without adequate housing or care
- uncontrolled beehives in urban areas.

7.2 Issues currently unable to be addressed.

There are several issues that are unable to be addressed under current available tools. These include but are not limited to limiting and regulating the number of animals permitted in properties. This is a particular problem in urban areas where noise and smell nuisances can affect a greater number of adjoining properties.

The Health Act 1956 is currently used for enforcement by Council staff; however, there is no clear expectations, guidance, or rules around the keeping of animals in this Act. The Health Act 1956 contains provisions to assist with the management of nuisances including when animals are kept in a way that is injurious to health. While the Health Act 1956 does contain provisions to assist with the management of animal related issues, these are broad and not well defined. As a result of this, Council has challenges dealing with many of the known and perceived issues; further, there is a risk of ad-hoc animal management approaches and a lack of consistency opening Council up to unnecessary reputational risk. Members of the public are unsure as to what the rules are regarding the keeping of animals in the district and by and large.

For some of these issues, a bylaw may be an appropriate way to provide Council with the controls and abilities required.

7.3 Cats

Complaints about cats include getting into rubbish, excess noise, and a detrimental impact on the natural environment. While many cat owners are responsible, there is a need to encourage responsible pet ownership and reduce the number of abandoned cats.

Unwanted litters of cats often become unowned and uncontrolled. They can cause a nuisance in urban environments by entering rubbish and properties causing damage. In rural, forested, and coastal areas cats can hunt in the habitats of our native birds.

While no specific cat legislation exists, Councils can regulate against nuisance issues caused by domestic cats. Current provisions in the Proposed District Plan around Kiwi Zones allow for restrictions on the ownership of cats in Kiwi Zones to protect against our native flora and fauna.

The Northern Regional Council (NRC) has responsibilities of managing and controlling feral cats across Te Tai Tokerau. NRC has options available for the management of feral and unowned cats through the Northern Regional Pest Management Plan, this confers abilities for NRC to implement actions to eradicate and control feral

animals including cats. NRC also has responsibility to provide appropriate funding to control of manage infestations of animals in Northland.

Many Councils have recently introduced cat specific requirements as part of their bylaw process, namely limiting the number of cats per household, introducing mandatory micro-chipping and de-sexing of animals unless authorised as part of a cat sanctuary or breeding programme. Wellington District Council, Whangārei District Council and Palmerston North City Council have successfully introduced cat restrictions. The introduction of cat restrictions can mitigate against some of the common complaints related to nuisance and health and safety that we also receive in the Far North.

With regards to cats, it is important that the bylaw is not unachievable and/or detrimental to members of the Far North district. Where cat restrictions are imposed, it would be prudent for Council to consider providing some community funding through veterinarians and/or animal agencies such as the SPCA to subsidise the cost of micro-chipping and de-sexing. This would not be retrospective, and a period of amnesty would be required to allow time for members of the public to achieve this. Whangārei provided some funding alongside their bylaw implementation through a voucher system that was taken up widely.

It is important to note that feral animals are outside of the scope of a potential bylaw or controls from Council, as this responsibility sits with the Northern Regional Council Regional Pest and Marine Pathway Management Plan 2017-2027.

A bylaw is the most appropriate way for Council to limit the number of cats per property, require mandatory micro-chipping, and de-sexing of cats. These tools encourage responsible cat ownership reducing the opportunities for cats to be nuisances.

Other options available to Council to assist with the regulation of cat issues is to develop an education campaign for members of the public that identifies the risk cats may pose and provide examples.

7.4 Pigs

Pigs in urban areas can be noisy and create a smell nuisance. The previous bylaw created rules around how pigs were to be kept, including specifying a distance away from the boundary to minimise the nuisance caused to other neighbours.

Pigs are frequently complained about in RFS data. Council can impose specific requirements around the keeping of pigs in pens to ensure pigs are safe and not likely to cause a nuisance or health and safety risk to members of the public through a bylaw. Section 64 of the Health Act 1956 provides local Councils with the ability to make bylaws for several matters, including regulating the situation of stables, cow sheds, and piggeries.

7.5 Goats

Current RFS data pertaining to goats indicates recurring issues with wandering goats that are entering and damaging property. Stock wandering on private land is a matter to be resolved between land and animal owner.

Section 33 of the Impounding Act 1955 provides Council with the ability to place the wandering stock in any yard or fenced paddock for the night, and as soon as possible return it to the owner or remove it or cause it to be removed to the nearest accessible pound. All expenses reasonably incurred by any person impounding or otherwise dealing with stock shall be recoverable. Stock owners are liable for any damages caused by their stock wandering onto the road if the presence of stock on the road is due to the owner's negligence.

7.6 Horses

Wandering horses and horse deposits when being ridden are frequently mentioned and referenced in RFS data. Wild horses are another issue raised; however, responsibility for management of wild horses belongs to Northern Regional Council and Ministry of Primary Industries.

Currently, horse deposits on public roads are addressed through the Road Use Bylaw, and for reserves this is included in a proposed Parks and Reserves Bylaw.

Wandering horses often cause nuisance to neighbours and pose a health and safety risk when horses enter unfamiliar and unknown space or public roadways. Where horses wander onto private land, this is a dispute between landowner and animal owner, Council does not have powers to enforce or regulate activity here.

Where horses wander onto the roadway, Council has powers under s33 of the Impounding Act 1955 to return animals to their owner or remove them to the nearest pound.

7.7 Bees

Bees often show swarming behaviour when not cared for properly. Beehives in urban areas that do not have available supply of water will swarm near water sources, often on neighbouring property. The flight path of bees also creates a nuisance for neighbouring properties, in particular bee deposits over laundry, vehicles, and houses.

In the absence of a bylaw, it is difficult to address issues pertaining to ownership and management of bees. The Local Government Act 2002 specifically calls out bees as an animal to be addressed through a bylaw. Options available to Council through a bylaw are to limit the number of hives in an urban area, set housing requirements such as access to water and to ensure flight paths are directed away from neighbours or people who may be affected by bees in the community.

7.8 Poultry

RFS data shows numerous examples where members of the public have had concerns about noise created by roosters. Noise can constitute a nuisance or be injurious to health. Council has the ability under a bylaw to impose restrictions on the keeping of poultry, specifically restricting the keeping of roosters in urban areas.

Further, Council can limit the number of chickens including roosters in urban areas and impose specific minimum requirements for providing a pen or housing for the chickens. Restrictions can be based on land size and/or location.

Having a bylaw will provide options for Council to address nuisance roosters and chickens and take steps to mitigate the concerns by members of the public. In absence of a bylaw or appropriate controls, section 29 of the Health Act 1956 identifies a series of cases where a nuisance is defined, including where any buildings or premises used for the keeping of animals are so constructed, situated, used, or kept, or are in such a condition, as to be offensive or likely to be injurious to health. Issues of smell and noise can be injurious to health when they exceed those to be expected by a reasonable person.

7.9 Specific problem types

The Local Government Act 2002 allows Council to create a bylaw that provides opportunities for enforcement against nuisance and health and safety breaches. The Health Act 1956 allows specific instances of animal ownership problems to be addressed such as the housing of animals and animal related smell nuisance. A bylaw under these acts may provide solutions when the following nuisance, health and safety and offensive behaviour issues are identified.

Animal noise and smell: Noise concerns are among the most reported issues relating to animals by members of the public. Noisy animals such as roosters in urban areas create enough noise that could result in an injury to health or mental health. Council currently has no way to respond to noisy animals in a sensible way. Smell is another common concern for members of the public that can contribute a nuisance or a reduction in the quality of living in a particular area.

Animals in rubbish: Instances of chickens and cats breaking into rubbish bins, and roadside rubbish prior to collection, causes a health and safety risk to residents. Rubbish may contain toxic substances, can breach privacy, and pollute the natural environment. Animals that get into rubbish bags then create an environment for further animals, including feral animals and pests to participate in the destruction of rubbish. Ensuring enclosures, pens, and housing for animals is suitable, fit for purpose and encourages animals to be responsible and contained is of importance.

Unwanted litters: Pets that produce litters can also lead to a nuisance. This is prevalent with cats, where cats breed and the owner/s are unable or unwilling to look after a litter. These cats are frequently dumped and contribute to the feral cat population, as well as urban stray cats that are scavenging rubbish and entering the homes of loved cats to steal food. These cats negatively impact on the public health and safety due to unsanitary behaviours and antisocial behaviours. They further pose a danger to other pets i.e., rabbits and chickens on private property, form a nuisance and contribute to the wider feral cat population contributing to the decimation the native wildlife of Aotearoa.

Escaped animals on roadways: Animals that are not contained or housed properly pose a threat to road users. Animals are unpredictable, and often have no experience around a roadway. When an animal enters the roadway or wanders, reactions from drivers can be dangerous or result in incidents and accidents. A bylaw can require all animals to be cared for and monitored in a safe and sensible location to reduce the instances of animals creating dangerous road conditions.

Section 33 of the Impounding Act 1955 provides Council with the ability to move any stray animal on a roadway to a nearby paddock or yard overnight, and then attempt to return the animal to the rightful owner or take the animal to a suitable pound. The Far North District does not currently have the facilities to house animals seized under the Impounding Act 1955.

Council currently has regulations for animals on a road or in a reserve through the Road Use Bylaw and the Parks and Reserves Bylaw

Animal droppings: Animal droppings on the road, footpath, berms, and other areas is a nuisance to members of the public. Dog owners are currently required to immediately remove faeces and dispose of them in an appropriate waste container as a requirement of the Council Dog Management Bylaw. The Road Use Bylaw covers area where animal droppings occur on the road.

There is a problem with bees where flight paths are not carefully considered, and bees are passing directly over residential areas. RFS data shows several instances where residents have been unable to seek a resolution to this, and Council are unable to enforce or monitor behaviour.

Summary

RFS data identifies that animal related problems represent a significant function of Council monitoring and enforcement. This is particularly challenging without clear legislative guidance or requirements. Council has frequently entered a civil mediation role in absence of ability to enforce against breaches.

Internal discussions with council staff identified that a bylaw for animals would assist in responding to the numerous animal related RFS we currently receive and enforcement options. A bylaw would provide greater clarity to members of the public on what activity is permitted.

Failure to respond adequately creates a reputational risk to Council and creates ambiguity and unclear expectations for members of the public. The issues that can be addressed without a bylaw such as wandering stock would benefit from clear guidance and public expectations, supported with an education campaign that provides clear directions and expectations to members of the public.

8. RESEARCH OUTCOMES

8.1 Bylaw options

A legislative review was completed by Atlas Legal in 2020 that identified several gaps in Council operations. The review focussed on identification of areas where Council was afforded powers through legislation to deal with animal specific complaints (outlined in section 3 above). Gaps in animal management can be addressed through a bylaw that collates various controls for animals and will provide Council with a clear framework for addressing animal issues. The advice received was that a bylaw created under the Health Act 1956 and the Local Government

Act 2002 provides the greatest opportunity for enforcement and provisions that contribute to healthy and vibrant communities.

Should a decision be reached that a bylaw is the most appropriate way to address animal related issues, further consultation and research on the exact form and content of a bylaw would be required.

8.2 Non-bylaw options

If a bylaw is not created to assist with regulating the perceived animal issues, Council will be unable to adequately respond to members of the community with specific animal concerns. Council has some abilities directly under the Health Act 1956, though this is limited to specific identified problems. Many abilities are enabled by way of a bylaw.

Further, without a bylaw, Council may be able to consider options under the nuisance bylaw (1990). These severely limit the scope, and ability of Council to provide good advice, judgement, and enforcement within the district.

The District Plan currently provides provisions for some animals (cats and dogs) in areas identified as significant for Kiwi populations and the protection of biodiversity; however, this is not a purpose of a bylaw and further controls cannot be enabled by way of a bylaw with regards to protection of biodiversity.

9. BYLAW CONSIDERATIONS

9.1 Other Councils

A review of district Council bylaws in Aotearoa have shown that many Councils have a bylaw specifically to manage issues relating to animals. All bylaws were made under the Local Government Act 2002 with the majority also being made under the Health Act 1956.

Animal bylaws for other councils are varying in complexity, but all provide the opportunity for Council to enforce instances of nuisance or health and safety breaches caused by animals. Cats, bees, and chickens are the primary animals identified across animal bylaws. Auckland Council ran extensive public consultation on the bee section of their bylaw. It demonstrates that bees in urban areas contribute to nuisance complaints and health and safety for members of the public, specifically, the flight paths of bees over neighbouring properties that creates significant mess and damage through bee deposits.

9.2 Gathering accurate data for animal management

Primary data collection relating to animal related concerns, and resolutions, is through the RFS system. The RFS system collects information on complaints from members of the public and provides a place for responses from Council to be recorded. This system provides rich data when reflecting on the issues for members of the public.

There is currently no register of cats, or other animals in the Far North district. Bees have a national registration requirement for hobby beekeepers. Systems do exist for the tracking of animals' subject to registration i.e., dogs. While dogs are out of scope for this piece of work, the opportunity to learn from the management of dogs and capture similar data could be of interest should this be required, it is notable that this would incur implementation costs for Council.

Further data is captured by other parties such as the SPCA or other administering bodies. There is a NZ Companion Animal Register that incurs a one-off cost and allows people to register their microchipped cats. This register would assist as an enforcement tool, but would not assist Council to return lost, sick, or injured cats as animal welfare is not a bylaw making purpose under the Local Government Act 2002.

9.3 Limitations of a bylaw

A bylaw created under the Local Government Act 2002 provides Council with opportunities to seize animals where there is a breach of the bylaw, though currently Council would have nowhere to keep animals in accordance with the requirements of the impounding act. The Local Government Act 2002 does not provide the

opportunity to issue infringements ('instant fines'), it does provide the opportunity for prosecution in the bylaw when there is persistent breaches or non-compliance with the requirements of the bylaw.

The Health Act 1956 does not provide additional enforcement opportunities from the Local Government Act 2002. Prosecutions brought under the Health Act 1956 are liable for a fine of up to \$500. The Health Act does however identify a specific series of animal concerns that can be managed by way of a bylaw.

Bylaws cannot provide Council with infringement abilities; however, the ability for Council to seize animals and/or enclosures that are contributing to a nuisance and health and safety risk provides opportunities for enforcement outside of prosecution.

It is noted that a bylaw in isolation may not achieve what it is intended to do without a public education campaign taking place alongside. Education contributes to greater understanding of the requirements of the bylaw, encourages responsible pet ownership and allows for greater compliance.

Further limitations of the bylaw pertain to the expectation of members of the public to deal with animal issues. Council is limited in scope with regards to commonly known problems. Wandering stock may be dealt with currently under the Impounding Act 1955. Protection of biodiversity is a function of NRC. An animals bylaw would primarily assist Council to set clear expectations around animal ownership to minimise the occurrence of nuisance or health and safety concerns.

9.4 Bylaw implementation

If a bylaw is determined to be the most appropriate way to address known or perceived issues relating to animals, the responsibility for enforcement against the bylaw will be with the Council monitoring team. Should Council wish to review this process, opportunity to analyse the ability and scope of the animal management team to be warranted to address any potential animals bylaw, or part thereof could be a proposed way forward. Looking at the capacity and capability of the monitoring team could also contribute to effective management and enforcement of any animals bylaw.

10. CONCLUSION

Bylaw controls, in conjunction with effective education, remain an important regulatory mechanism for efficient and effective animal control across the Far North District. Ensuring Council has the capabilities to monitor and enforce the bylaw will be vital, as well as ensuring contributions are made to increase compliance with the bylaw.

Council is limited in the ability to control many commonly notified animal problems, but still maintains a responsibility to improve the wellbeing of residents of the Far North Region. Bylaws that provide opportunities to contribute towards a reduction in nuisance and health and safety related complaints provide confidence to the public, and enforcement opportunities to Council when notified of concerns and problems.